



Marketing Violent Entertainment to Children:

A Fifth Follow-up Review of
Industry Practices in the Motion Picture,
Music Recording & Electronic Game Industries

A Report to Congress

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FEDERAL TRADE COMMISSION

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EXECUTIVE SUMMARY

This is the sixth Commission Report on the marketing to children of violent entertainment products by the motion picture, music recording, and electronic game industries.

The Commission's initial report, released in September 2000, examined the structure and operation of each industry's self-regulatory program, parental familiarity and use of those systems, and whether the industries had marketed violent entertainment products in a manner inconsistent with their own parental advisories. The 2000 Report found that industry members routinely targeted children in their advertising and marketing of violent entertainment products and that children under age 17 could purchase these products relatively easily. The Commission called upon the industries to strengthen their self-regulatory programs by: (1) prohibiting target marketing to children and imposing sanctions for violations; (2) improving self-regulatory programs at the retail level; and (3) increasing parental awareness of the ratings and labels. The Commission has continued to monitor industry self-regulation in this area, releasing four subsequent reports, all finding that the movie and electronic game industries had made progress in limiting marketing of R- and M-rated products to children, but that the music recording industry had not significantly changed its marketing practices since the Commission's initial report.

This Report documents the current state of marketing in the areas addressed in the Commission's previous reports. It includes a review of marketing documents from industry members; the results of ongoing Commission monitoring of television, print, and Internet advertising; and comments from third parties regarding the rating and labeling systems. In addition, it reports on a Commission-sponsored telephone survey of parents and children regarding their familiarity with and use of the video game rating system. It also provides the results of an undercover "mystery" shopper survey conducted in December 2005 and the spring of 2006, in which young teens attempted to purchase tickets to R-rated movies, or to buy music recordings with a Parental Advisory Label, R-rated and unrated movie DVDs, and M-rated games.

All three industries generally comply with their own voluntary standards regarding the display of ratings and labels. But, as the Commission has mentioned in previous reports, the limited anti-targeting advertising standards the industries have adopted still permit the advertising of these violent entertainment products in many of the media most popular with teens. This is particularly true in the evolving online advertising market.

Movies

The Commission's review of internal marketing documents for selected R-rated films showed that the studios did not specifically target advertising for those films at children under 17. The industry, however, continues to advertise R-rated movies on television shows popular with children under age 17, and some advertising violated the standard adopted by several studios that prohibits the placement of advertisements for R-rated films in media with an under-17 audience share over 35%. The

Commission's examination of the Internet advertising for twenty R-rated movies revealed that 90% were advertised on websites where under-17 visitors constitute one third or more of the audience. On several of these sites, children under 17 comprise more than half the audience.

The industry continues to do a good job of disclosing ratings and rating reasons in television and print advertising, and on studio websites. Many studios market their movies through dedicated profile pages on the popular social networking site, MySpace.com. The Commission found, however, that few of these profile pages displayed rating information. In addition, movie DVD retailers still do not display rating reasons most of the time, nor do the two major movie DVD kiosk companies.

As to rating enforcement, the Commission's mystery shopper survey showed that movie theaters' performance has not changed in the last three years. About four in ten underage children were able to gain admission, unaccompanied, to R-rated films. Retailers who sell R-rated DVDs allowed seven in ten shoppers under age 17 to purchase these movies. The same percentage of children also were able to purchase unrated versions of movies released theatrically with R ratings (*e.g.*, "Director's Cuts"). Many of these unrated movies contained content that, if rated with the movie, might have led to an NC-17 rating.

Finally, the Commission notes that the industry's inconsistent characterization of the level of violence in PG-13 movies compared to R-rated movies may be confusing to parents. Although parents report a relatively high satisfaction level with the Motion Picture Association of America ("MPAA") system, some critics assert that, over time, "ratings creep" has resulted in more violence in films rated PG and PG-13. Some have argued that the level of violence in PG-13-rated movies, in particular, has increased over time, blurring the line between PG-13- and R-rated violent content.

Music

The Commission's review of internal marketing documents and ad placements for explicit-content labeled music showed that the major record labels did not specifically target advertising for those albums to children under 17. There were few ads in print media popular with teens, but the music industry continues to advertise on cable TV shows with young teen audiences of 40% or more. In addition, the industry advertised music with a parental advisory label on websites reaching a substantial percentage of children under 17.

Few retailers have effective policies to prevent children from buying music bearing a Parental Advisory Label ("PAL"). As a result, 76% of the teen shoppers in the Commission's undercover shopper survey were able to purchase explicit-content labeled CDs.

The industry is doing a good job of displaying the PAL in print advertising, but not television advertising. Online display of the PAL is weak as well, both on the official artist and record company websites and on MySpace pages promoting these albums.

Unlike the motion picture and video game industries, the music industry has not made the PAL an age-based system. The industry asserts that the PAL does not necessarily indicate that a recording is inappropriate for any particular age group and, unlike movies and video games, consumers can purchase

edited versions of most of the popular recordings that contain explicit content. The music industry also has left the decision to apply the PAL to individual studios and artists instead of an independent body, thereby creating the possibility of inconsistent application of the PAL to recordings with similar content. Moreover, the industry as a whole still does not provide consumers with specific information on product packaging and in advertising as to why a particular recording bears a PAL.

On the positive side, Sony BMG continues to apply and advertise its enhanced Parental Advisory Label, which, in addition to the PAL's general advisory about explicit content, lists the specific type of content that triggered application of the PAL; unfortunately, other industry members have not followed Sony BMG's lead. The Recording Industry Association of America ("RIAA") has sought to limit access by consumers, including children, to peer-to-peer file-sharing sites that had provided almost unfettered access to recordings, including explicit recordings and other materials not appropriate for children. Finally, the industry has established legitimate and increasingly popular downloading sites that provide some indication that a recording has explicit content.

Games

As with the Commission's review of the other industries, internal marketing documents and ad placements for selected M-rated games showed that the video game companies contacted for this Report did not specifically target advertising for those games to children under 17. In addition, advertising on television programs popular with teens appears to be diminishing. The Commission found many examples, however, of Internet advertising that would appear to violate the industry's standard of not placing ads for M-rated games on websites with an under-17 audience of at least 45%. Sixteen of the twenty M-rated games selected by the Commission ran ads on sites that appear to equal or exceed the 45% standard. Moreover, that 45% standard, by definition, tolerates advertising on websites with very substantial under-17 audiences.

Video game retailers substantially improved their enforcement of policies prohibiting children under 17 from purchasing M-rated games without parental permission. Forty-two percent of the children in the Commission's mystery shopper survey were able to purchase M-rated games, a statistically significant improvement from the 69% able to make the purchases in the 2003 survey.

The ESRB continues to lead all three industries in providing clear and prominent disclosures of rating information in television, print, and online advertising. Still, the ESRB should enhance ratings disclosure by placing content descriptors on the front of game packaging.

Consumer groups and legislators have raised concerns about the ESRB's process for rating video games. The ESRB's current system requires game publishers to identify pertinent content for rating purposes, creating the potential for relevant content to be overlooked in the review process. In addition, the ESRB's chosen method for assigning content descriptors may fail to reveal all of the content in a game that might be of interest to parents.

The ESRB continues to sanction companies. The most recent available data indicate that the ESRB has cited companies for numerous infractions of the rating disclosure and ad placement rules, with several of these infractions resulting in fines.

Mobile phone games are a growing segment of the video game market and pose several challenges for the industry's self-regulatory system. Mobile phone game developers often do not seek ESRB ratings; they do not sell their products through traditional retail channels, instead licensing their products directly to wireless carriers. As a likely consequence, relatively few mobile phone games have ESRB ratings. For those mobile games that are rated, the wide variation in capabilities for different mobile phone models may make it difficult to display rating information clearly and conspicuously on some phones. On the positive side, the trade group for the wireless telecommunications industry has crafted content guidelines based on existing rating or labeling systems for movies, television shows, music, and games. If adopted by a particular wireless carrier, the guidelines subject certain content to age-based restrictions. The Commission will continue to monitor self-regulatory developments in this nascent segment of the video game market.

Parent-Child Survey

The Commission's telephone survey of parents and children presents an overall positive picture of the video game rating system. Parental awareness and use of video game ratings are substantially higher than were reported in the Commission's 2000 survey. Nearly nine in ten parents are aware of the ESRB system, more than seven in ten use video game ratings when their child wants to play a game for the first time, and three quarters of parents familiar with content descriptors use them. Most parents report being involved with the purchase of video games for their children, and most review at least some of the game after its purchase.

Almost two thirds of parents reported agreeing with ESRB ratings most or all the time; however, nearly one quarter only sometimes agree, and nearly one in ten rarely or never agree.

Recommendations

As in prior reports, the Commission offers suggestions for improvements by each of the industries. They are as follows:

- The electronic game industry should tighten its existing advertising placement guidelines restricting advertising in venues where the under-17 audience reaches or exceeds 35% on television or 45% in print or online, and the movie and music industry should adopt similarly rigorous guidelines. These guidelines should include other criteria as well, such as the total number of children reached, whether the content is youth oriented, and the popularity with children and apparent ages of the characters or performers. For particular media, other factors – such as the time of day an ad airs on radio or television – also could be relevant.

- The movie and electronic game industries should consider placing all of the rating information prominently on the front of product packaging to make that information more visible for parents at the point of purchase.
- The music industry should consider providing more information on product packaging and in advertising as to why a particular recording has been labeled with a Parental Advisory, which would require industry members to more thoroughly review recordings for different types of explicit content.
- The music industry should do a better job of displaying the Parental Advisory Label in television and online advertising.
- Retailers should further implement and enforce point-of-sale policies restricting the sale of R-rated movie DVDs, explicit-content labeled music, and M-rated games to children.
- The movie industry should examine whether the current methods of marketing and selling unrated or “Director’s Cut” versions of R-rated movies undermines the self-regulatory system and undercuts efforts to provide accurate and useful rating information to consumers and to retailers trying to set store sales policies.
- The ESRB should consider conducting targeted research into the reasons why a significant minority of parents believe the system could do a better job of informing them about the level of violence, sex, or profanity in some games. Based on this research, the ESRB should consider whether any changes to its rating process, criteria, or disclosure policies are warranted.

Given important First Amendment considerations, the Commission supports private sector initiatives by industry and individual companies to implement these suggestions. The Commission will continue to monitor this area, particularly as emerging technologies change the way these products are marketed and sold. The Commission will also continue to work with industry and others to encourage efforts to provide parents with the information they need to decide which products are appropriate for their children. Following a reasonable period of monitoring industry practices and consumer concerns, the Commission will issue another report.

I. INTRODUCTION

A. Commission Reports on Marketing Violent Entertainment to Children

This is the sixth Commission Report on the marketing to children of violent entertainment products by the motion picture, music recording, and electronic game industries. The Commission's initial report, released in September 2000 ("2000 Report"),¹ examined the structure and operation of each industry's self-regulatory program, parental familiarity and use of those systems, and most importantly, whether the industries had marketed violent entertainment products in a manner inconsistent with their own parental advisories. The 2000 Report found that industry members routinely targeted children in their advertising and marketing of violent entertainment products, despite self-regulatory ratings or labels indicating the products might not be appropriate for children.² It also found that children below the age of 17 could purchase these products relatively easily.³ The Commission concluded that such advertising and marketing efforts undermined each industry's parental advisories and frustrated parents' attempts to protect their children from possibly inappropriate material. It called upon the industries to strengthen their self-regulatory programs by: (1) prohibiting target marketing to children and imposing sanctions for violations; (2) improving self-regulatory programs at the retail level; and (3) increasing parental awareness of the ratings and labels.⁴

In four smaller follow-up reports released in April 2001 ("April 2001 Report"),⁵ December 2001 ("December 2001 Report"),⁶ June 2002 ("2002 Report"),⁷ and July 2004 ("2004 Report"),⁸ the Commission described the adoption and implementation of new self-regulatory initiatives by the principal industry trade associations. The Commission found that although the movie and electronic game industries had made progress in limiting the marketing of R- and M-rated products to children, the music recording industry had not significantly changed its marketing practices since the 2000 Report. The Commission continued to urge the industries to strengthen their self-regulatory programs. In addition, the Commission has undertaken efforts to educate parents about the ratings systems and has made its toll-free consumer complaint line and its website complaint form available for media violence issues.

In this Report, in addition to reporting on the marketing practices of each industry and efforts to restrict sales of R-rated movies, M-rated games, and recordings with a parental advisory label to those under 17, the Commission revisits issues concerning the structure and operation of each industry's self-regulatory program. Since the Commission's 2004 Report, the rating process and how parents use the systems have increasingly concerned consumer groups and legislators. In addition, in this Report, the Commission focuses on several new forms of marketing and distribution – such as viral and online marketing – being used to sell and distribute these products, approaches that were in their infancy when the Commission issued its 2000 Report.

B. Sources of Information for this Report

To prepare this Report, the Commission collected information from several sources. The Commission contacted the major trade and retailer groups for information on changes to their self-regulatory systems. The Commission also contacted several third-party groups seeking to change or advance alternatives to the current rating or labeling systems. The Commission reviewed internal marketing plans from nine industry members for certain R-rated movies, explicit-content labeled music recordings, and M-rated games released in the last year.⁹ As it had done for past follow-up reports, the Commission tracked advertising placements in media popular with youth, and reviewed advertisements to determine whether they included clear and prominent rating and labeling information. In addition, the Commission took an expansive look at various promotions and other activities on the Internet to assess how young teens and tweens were being marketed to online. To aid in this analysis, the Commission extracted information from the Nielsen//NetRatings' NetView and AdRelevance databases regarding paid Internet ad placements for selected products and the demographics of visitors to websites on which the ads appeared.

As in previous reports, the Commission undertook an undercover shopper survey to determine whether progress has been made at retail locations in limiting the sale to children of products rated or labeled as potentially inappropriate for them. Finally, the Commission conducted an extensive telephone survey of parents and children, similar to a survey it conducted for the 2000 Report, to assess current consumer familiarity with and use of the video game rating system and parental views on the validity of video game ratings.

II. MOTION PICTURES

A. Comments on Current Rating System

In 1968, the Motion Picture Association of America ("MPAA") and the National Association of Theatre Owners ("NATO") established a formalized, voluntary rating system for motion pictures released in theaters.¹⁰ The system is designed to provide warnings to be used as a guideline for parents, sometimes alerting them that they may need to learn more about a particular film before allowing their children to view the film.¹¹ The Rating Board of the Classification and Ratings Administration ("CARA"), funded by fees charged to film producers or distributors, determines movie ratings for theatrical releases. According to the MPAA, each rater is a parent who has no affiliation with the entertainment industry outside his or her employment with CARA.¹² By design, none of the raters has any particular expertise in child psychology or child development.¹³ Raters' main considerations include "the intensity of the themes in the motion picture, language, depictions of violence, nudity, sensuality, depictions of sexual activity and drug use."¹⁴ After viewing each film, the Board decides on the rating by majority vote.¹⁵ Each film assigned a rating other than G also is assigned "rating reasons," which are

short phrases that explain why the film was assigned the particular rating category.¹⁶ Examples of rating reasons include “Rated R for terror, violence and language,” or “Rated PG-13 for intense sci-fi violence, some sexuality and brief nudity.” In February 2007, the MPAA and NATO announced that they will provide more detailed descriptions of the rating categories and the kind of content that triggers specific ratings; however, they have not yet implemented specific guidelines.¹⁷

Parents continue to report a relatively high satisfaction level with the MPAA system.¹⁸ Nevertheless, the MPAA system has been criticized as lacking independence, being overly subjective and devoid of child development expertise, and not fulfilling the information requirements of parents and consumers.¹⁹ As to the latter criticism, some research has suggested that parents prefer (or at least find more useful) content-based ratings compared to age-based guidelines.²⁰ Alternative rating systems have been developed to satisfy this perceived deficiency in the movie rating system. For example, PSVRatings designed its ratings to be content-based, not age-based, in order to provide parents with comprehensive information about a movie’s content so that they can decide what would be appropriate for their children to see.²¹ Other alternative systems, such as Parent Previews,²² Kids-in-Mind,²³ and Screen It!²⁴ similarly inform parents about movie content without setting specific age-based categories. Common Sense Media has developed a system with both age- and content-based elements.²⁵

The MPAA makes clear that its system is designed to inform and to alert parents that they may need to learn more about the particular film before allowing their children to view it. Accordingly, it views these alternative ratings as providing supplemental information. If parents are uncertain about the level of violence or other content in a film, MPAA directs them to other resources, such as the website for “Pause, Parent, Play,” a clearinghouse for alternative ratings information.²⁶ This site links to movie rating information from Common Sense Media, MovieMom, and PSVRatings.²⁷

Critics also assail the MPAA for perceived “ratings creep.” For example, one study claimed to have found evidence of “ratings creep” based on a study of all movie ratings released between 1992 and 2003.²⁸ After combining movie content information derived from the Kids-in-Mind and Screen It! databases,²⁹ researchers concluded that “the MPAA appears to tolerate increasingly more extreme content in any given age-based rating category over time,” finding increases in violence in films rated PG and PG-13, significant increases in sex in films rated PG, PG-13, and R, and significant increases in profanity in films rated PG-13 and R.³⁰

Some have argued that the level of violence in PG-13-rated movies, in particular, has increased over time, blurring the line between PG-13- and R-rated violent content.³¹ A 2004 study of the rating reasons assigned to PG-13 movies from 2000 through 2002 concluded that rating reasons increasingly had described the violence as more “intense,” although sexual content had showed only a marginal increase.³² In recent years, PG-13 films have comprised the majority of top-grossing films for the industry.³³ It has been argued that studios have a financial incentive to obtain a PG-13 rating, a rating that does not restrict admission to anyone but tolerates a substantial amount of violent content attractive to 12- to 17-year-olds.³⁴

B. Restrictions on Marketing to Children: Advertising Placement

Six years ago, the MPAA implemented twelve initiatives³⁵ in response to the Commission's September 2000 finding that the motion picture industry had engaged in extensive marketing of violent R-rated movies to children under 17.³⁶ Each MPAA member studio promised to "review its marketing and advertising practices in order to further the goal of not inappropriately specifically targeting children in its advertising of films rated R for violence."³⁷ The Commission's four follow-up reports showed improvement in the studios' practices.

For this Report, the Commission obtained the marketing plans from three studios for nine R-rated movies released in 2006 with at least one rating reason for violence. Review of the plans revealed little or no evidence that the studios explicitly targeted their advertising to children under age 17. Plans for all nine of the movies indicate that the target audience was at least 17 years old. In fact, one studio's marketing plans incorporate specific time period and demographic restrictions on television advertising with the goal of not inappropriately advertising movies with an anticipated R rating. An entire page of all three plans – captioned "2005-2006 FTC Update" – lists the restrictions by broadcast and cable channels, spot television, spot radio, and print advertising.³⁸

Nevertheless, some plans contained statements indicating that at least part of the target audience may have been younger than 17. For example, a marketing plan for an R-rated horror movie stated that the publicity campaign would target the "High School / college base" as one of the core audiences. The plan noted that the mainstream press's "focus[] chiefly on excessive sex and violence will only further pique the curiosity of target audiences." Indeed, an exit poll of movie audiences showed that teens represented 39% of the audience.³⁹ A marketing document for another R-rated movie from the same studio stated that one of the primary targets for the media campaign would be "High School students."⁴⁰ Although marketing R-rated movies to 17- and 18-year-old high school students is not inconsistent with the rating, a marketing plan that focuses on older high school students may pose a significant risk of also reaching a substantial number of students under age 17.

1. Television ads

After the Commission's release of the 2000 Report, several studios went beyond the MPAA's initiatives, announcing that they would not advertise R-rated movies in media with an under-17 audience of more than 35%.⁴¹ Although the MPAA has not formally incorporated the 35% standard into its advertising handbook, the handbook does specifically limit the placement of television spots depicting violent or adult content to "appropriate" programming, which is determined based on audience demographics for particular times, channels, and programs.⁴² Separately, the MPAA reports that its Advertising Administration⁴³ requests that motion picture producers and distributors not advertise motion pictures "inappropriate" for children on programs that exceed a 15% to 20% audience share of children under the age of 17,⁴⁴ and that film producers and distributors have consistently complied with these demographic standards.⁴⁵ The studios do not deem all R-rated movies "inappropriate" for all children under the age of 17; rather, this restriction applies to a small subset of R-rated movies that are

especially violent or feature a relatively high degree of adult content, compared to other R-rated movies as determined by the Advertising Administration.⁴⁶

Although studios appear to be complying, for the most part, with their self-imposed 35% standard (at least on advertisements placed on broadcast and syndicated stations), as the Commission has stated previously, the 35% standard has little impact on the studios' ability to place ads for R-rated films on television shows favored by teens, given that very few network and syndicated programs popular with teens have under-17 audiences greater than 35%.⁴⁷ Data received from the Parents Television Council⁴⁸ reveal numerous ad placements for R-rated movies on shows popular with young teens. For example, in 2006, ads for *Doom* (DVD), *Hostel* (DVD), *Underworld Evolution*, *The Hills Have Eyes*, *Final Destination 3*, *V for Vendetta*, *Silent Hill*, and *Munich* appeared on Fox's *Family Guy*, and ads for *The Ice Harvest*, *Final Destination 3*, and *The Hills Have Eyes* appeared on Fox's *American Dad*, shows in which children 2 to 17 make up about 25% of the audience.⁴⁹

Moreover, data received from Nielsen show similar ad placements for R-rated movies and R-rated and unrated movie DVDs – including *Inside Man*, *Slither*, *Waist Deep*, an unrated DVD version of the R-rated *Crash*, and the *Hostel* DVD – on popular music video shows on BET, MTV, and MTV 2, including *106th & Park*, *Rap City*, *Top 25 Countdown*, *Total Request Live*, and *Pimp My Ride*, shows in which children 2 to 17 make up between 42% and 49% of viewers. These ad placements likely would violate the studios' own standard of no more than 35% under 17.

There are also questions about some ad placements for PG-13 movies. In 2006, the Children's Advertising Review Unit ("CARU") of the Council of Better Business Bureaus challenged several major film studios for running ads for PG-13 movies on children's programming.⁵⁰ These included ads for the theatrical release of Warner Brothers's *Superman Returns* that appeared on the Cartoon Network; Sony Pictures' *Click* that ran on the Cartoon Network, and during Nickelodeon's *Drake & Josh*, *Fairly Odd Parents*, and *Just for Kicks*; Warner Brothers's *Harry Potter - Goblet of Fire* that ran during ABC's Saturday morning children's programming; Buena Vista's *Pirates of the Caribbean - Dead Man's Chest*, that ran on Nickelodeon during children's programming; and Sony Pictures's *Talladega Nights: The Ballad of Ricky Bobby* that ran on Nickelodeon and the Cartoon Network. CARU also questioned ads for Lionsgate Entertainment's *Ultimate Avenger* DVD that ran on the Fox Network's 4 Kids TV block on Saturday morning.

Except for Lionsgate, each of the advertisers contended that its advertising complied with the CARU guidelines, but declined to appeal CARU's action because the ad campaigns had ended. Lionsgate stated it would take CARU's guidelines into account in reviewing placement of advertising for its PG-13 animated movie titles.

2. Print ads

In the 2000 Report, the Commission found that studios placed advertisements for violent R-rated films in publications that appealed to teens. The Commission's subsequent reviews showed that the studios have limited these placements. For this Report, the Commission reviewed teen-oriented

publications from 2005 and 2006 and found no advertisements for R-rated films in these publications. However, consistent with the 2004 Report, a small number of ads for R-rated films on DVD continued to be placed in magazines popular with teens.⁵¹

3. New media and marketing methods

a. Internet marketing

The studios' television advertising expenditures have decreased since 2001, while their expenditures for online advertising have doubled.⁵² The Commission examined the paid Internet advertising placements for twenty movies released in 2006 with an R-rating and at least one violence-related rating reason.⁵³ According to data obtained from Nielsen//NetRatings, eighteen of the twenty movies were advertised on websites where under-17 visitors constitute one third or more of the audience. These sites include atomFILMS, Cartoon Network, Cheat Code Central, eBaum's World, GameFAQs, GameSpot, GameSpy, GameWinners, IGN, MTV.com, Newgrounds, nickjr, Runescape, and Ultimate-Guitar.com. Three of these sites have an under-17 audience composition greater than 50%, and four others have an under-17 audience composition greater than 40%.⁵⁴

b. Viral marketing

Viral marketing is a catch-phrase for a variety of promotional strategies used to encourage consumers to talk to one another about a particular product. Leveraging the ubiquity of the Internet and the popularity of online social networks such as MySpace and Xanga, companies can promote their products through large-scale word-of-mouth marketing. In the context of its July 2006 study of online food marketing to children, the Kaiser Family Foundation noted research showing that peers can be an important source of influence in purchase decisions. Peer influence can dovetail with viral marketing that encourages children to talk to one another about a company's products.⁵⁵ Given these developments, the Commission examined online viral marketing practices for three entertainment industry members.

Some viral marketing may take place on websites containing user-generated content, such as YouTube. To the extent this content is created and posted by private individuals, it is unlikely to be covered by industry rating or labeling systems. Therefore, parents concerned about this content may need to exercise greater oversight of their children's access to these websites.⁵⁶

Banner ads for at least ten of the twenty movies appeared on MySpace, an extremely popular social networking site.⁵⁷ More than one third of all 2- to 16-year-olds with home Internet access visited MySpace between July and September 2006.⁵⁸ Moreover, data suggest that younger users are more engaged with the content of the site compared to older age groups. Although 2- to 16-year-olds represented slightly less than one quarter (24%) of MySpace visitors during the relevant time-frame, they accounted for over 40% of all web page views for the site.⁵⁹

The studios did not limit their promotion of R-rated movies on MySpace to paid banner ads. Of twenty official movie sites that the Commission examined for rating disclosure practices,⁶⁰ nine⁶¹

also had profiles pages on MySpace that were similar to the official sites for the films.⁶² These sites featured not only the trailer, but also options to add the trailer to one's own profile page, add movie-related graphics as a background to one's profile page, download "buddy icons,"⁶³ play music from the soundtrack, participate in a message forum, view other clips from the movie, add the movie to one's network of friends, and forward the movie profile page to friends.⁶⁴ Few of the movies' MySpace pages displayed rating information.⁶⁵

Even if the movies lacked a MySpace profile page, most of the twenty official websites the Commission examined had viral marketing elements akin to what might be available on MySpace, such as the ability to email the website to a friend, send a video e-card to a friend, participate in message boards, download "buddy icons" to be pasted into instant messages, install video clips and sound bites on one's own website, and add one's website to the movie's web ring.

C. Disclosure of Ratings and Reasons for Ratings in Ads

Since its 2000 Report, the Commission has noted the studios' steady progress in disclosing ratings and rating reasons clearly and prominently in advertising.⁶⁶ Among the specific requirements implemented by the MPAA in this regard is the inclusion of rating reasons for all films (other than those rated G) in newspaper ads above a certain size, websites, posters, and billboards (but not television or radio spots).⁶⁷ Recently, the MPAA introduced its "Red Carpet Rating Service," which allows parents to sign up to receive weekly emails that show upcoming movie releases, their ratings, and rating reasons.⁶⁸ The MPAA also provides weekly reports of the ratings and rating reasons of newly rated movies to Blockbuster and the Internet Movie Database (imdb.com).⁶⁹ In addition, NATO has pledged to seek ways to encourage local newspapers to include the rating and rating reasons in their movie reviews.⁷⁰

For this Report, the Commission reviewed studio documents and conducted its own monitoring of studio and retailer advertisements in various media. For television ads,⁷¹ print ads,⁷² and studio websites, the Commission found near universal display of legible ratings and less frequent and somewhat legible display of rating reasons. Several television ads included both a visual and oral presentation of the rating, *e.g.*, "Rated PG-13." For some television and newspaper ads, as in past reports, it was difficult to see or read the rating reasons displayed along with the rating, usually because of the small size of the disclosure. In some instances, television ads did not display any rating reasons. Further information on the display of ratings on studio websites is found in Appendix D to this Report, § I.A, Table 1.

The Commission found that all theater and movie ticket websites displayed ratings and rating reasons. (Appendix D, § I.B, Tables 2 & 3.) Online sellers and renters of DVDs also displayed the ratings consistently, but a majority did not display the rating reasons. (Appendix D, § I.C, Table 4, & § I.D, Table 6.) In addition, the Commission briefly reviewed the websites of four movie studios that are selling R-rated movies directly from their sites, finding that three out of the four displayed both ratings and rating reasons for such movies; three out of four sites also were selling unrated versions of R-rated movies.⁷³

For the first time, the Commission reviewed the practices of five online movie retailers' sites to assess their rating information practices with respect to violent unrated movies that also have an MPAA R-rated version.⁷⁴ The sites used terms like "NR," "Not Rated," or "Unrated" to indicate that the movies were unrated.⁷⁵ Most of the sites used phrases like "Director's Cut" to indicate why the films were unrated. A majority also contained some other warning or cautionary statements relating to the content of the movie, such as "Violence" or "Not For Children." Even though the majority of websites indicated that the unrated movie also had a rated version, many of the sites did not present this information in a clear and conspicuous manner.⁷⁶ (Appendix D, § I.C, Table 5.)

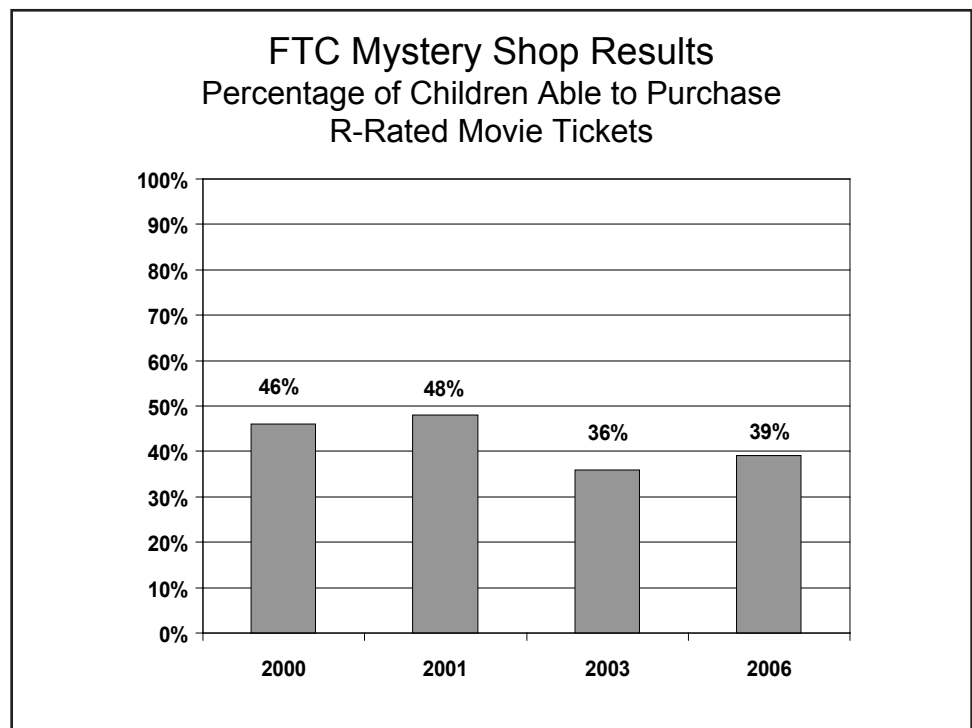
D. Industry Efforts to Enforce Rating System in Theaters and at Point-of-Sale

1. Box office enforcement of the rating system

In three previous reports, the Commission reported on the results of nationwide undercover studies of the extent to which unaccompanied children under 17 were able to purchase movie theater tickets to R-rated films. In these shops, a contractor uses children ages 13 to 16 as shoppers, who, unaccompanied by a parent, attempt to purchase movie tickets, movies on DVD, music recordings, and electronic games at theaters and stores across the country. In the Commission's first two surveys, about half of the mystery shoppers were able to buy tickets.⁷⁷ Following increased efforts by NATO to improve theater owner enforcement of the rating system, the Commission's 2003 survey found a substantial improvement: 36% of the mystery shoppers were able to buy tickets.⁷⁸

For this Report, the Commission conducted a fourth undercover survey in June and July 2006.⁷⁹ The results of this survey were

roughly the same as in 2003: 39% of the "mystery shoppers" were able to buy tickets to R-rated films, a difference that is not statistically significant from the 2003 results.⁸⁰



2. Home video retailers and online sellers

The Commission obtained information directly from a number of DVD/home video retailers regarding their policies, if any, governing the sale of R-rated and unrated movies to children under 17.⁸¹

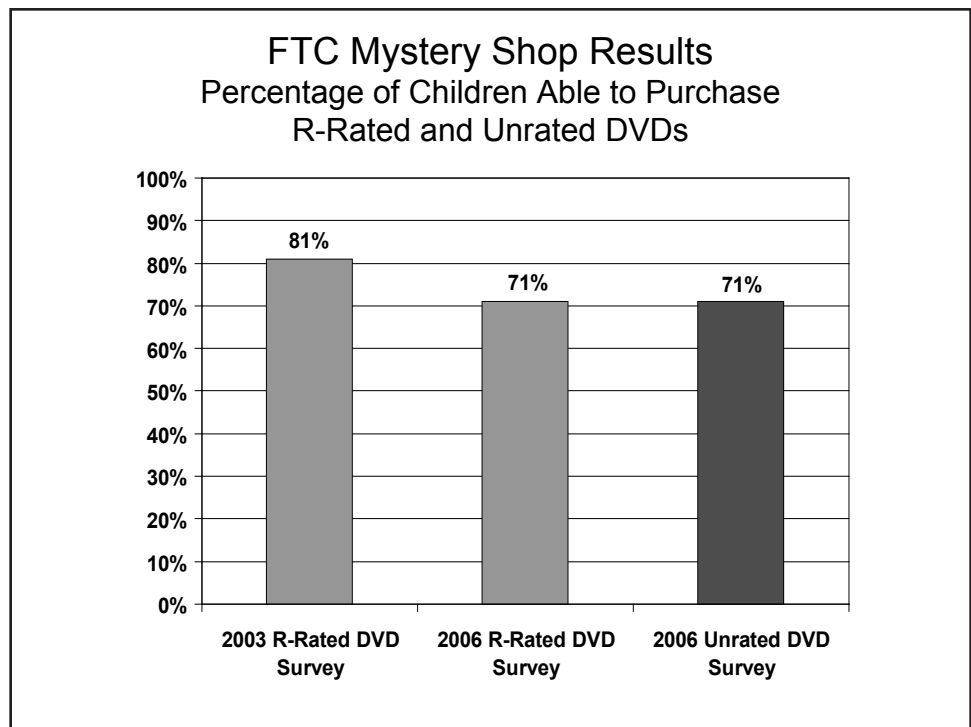
A few major retailers indicated that they do have such policies. Some require clerks or cashiers to check the identification of anyone who appears to be under 17 seeking to purchase an R-rated movie, and use a cash register prompt that reminds the clerk to perform an ID check when a restricted product is scanned for purchase.

For the Commission’s 2004 Report, 81% of

underage shoppers who visited retailers selling R-rated movie DVDs were able to purchase those products. In the Commission’s 2006 survey, 71% of the teen shoppers were able to purchase the product, a statistically significant yet modest reduction.

The Commission also conducted 101 shops for so-called Director’s Cut or unrated DVDs for movies that were rated R when they were first released in theaters. The Entertainment Merchants Association (“EMA”), a trade group representing DVD retailers, has reported that, of all R-rated films with both a rated and an unrated version released on DVD since 2002, on average 64% of unit sales are for the unrated version.⁸² In that shop, 71% of shoppers were able to buy the unrated DVD – results identical to the R-rated movie DVD shop. This result is particularly troubling because unrated DVDs may contain footage that would have resulted in CARA assigning an NC-17 rating.

The EMA points out that it can be difficult for retailers to set a policy for unrated DVDs because many do not necessarily contain restricted or adult content.⁸³ Unrated DVDs may be based on movies that had been originally rated PG-13 or less. Others may simply never have been rated. To eliminate this problem, CARA would have to rate unrated movies that are released for retail sale. Stores could then rely on the actual rating for the product when setting sales policies, and theater owners would not be enforcing a system that turns children away at the box office only to have them obtain even more explicit content simply by purchasing an unrated DVD. Moreover, NATO has expressed concern over the practice of some studios building marketing campaigns around the very fact that the DVD is “unrated” or “unrated and uncensored.”⁸⁴ As NATO has stated, “The intended implication is obvious, troubling, and venal: the rating system is tantamount to censorship, and see how easy it is to evade that system of censorship. Such a practice breeds cynicism about the rating system [and] complicates [theater owners’] task of promoting strict adherence to the letter and spirit of the rating system. . . .”⁸⁵



As discussed in Appendix D, § I.C, the Commission surveyed five online movie retailers' sites to determine their rating information practices for five movies rated R for violence, as well for five violent unrated movies that also have an MPAA R-rated version. All five of the sites required a form of payment, such as a credit card, to which many children may not have access. Consistently, the EMA reports that most retailers rely on the use of a credit card or debit card as a proxy for parental authorization for online purchases of R-rated DVDs by persons under age 17, noting that Visa and MasterCard will not issue cards to minors unless an adult co-signs the card.⁸⁶ EMA also reports that it is investigating the feasibility of retailers using third-party online age-verification services, which check a credit card user's name against government databases.⁸⁷

3. DVD vending kiosks

According to the EMA, up to 2,500 self-service kiosks, located in fast-food restaurants and grocery stores, rent or sell DVDs. Redbox Automated Retail, LLC (operating under the *redbox* brand) and TNR Entertainment Corp. (The New Release) currently are the largest kiosk operators in the United States.⁸⁸ DVD kiosks can hold anywhere from 500 to 1,000 DVDs; charge relatively small, per-night rental fees; and are easily operated with a touch-screen and a credit card.⁸⁹ The Redbox website now allows consumers to use its website to rent a DVD from a particular kiosk for later pickup.⁹⁰

At the time of the Commission's review, both the Redbox website and its kiosk touch-screen displayed the rating for R-rated movies with a small gray box containing the letter "R"; the kiosks also displayed the movie's box art, but the box art either lacked rating information or the information was illegible. Although Redbox did not provide rating reasons for movies online or at a kiosk, to effectuate the rental, consumers must click a box stating, "I confirm that I am at least 18 years of age and understand that the movie I have selected is rated "R" and most likely contains scenes with violence, nudity, graphic language or all three, that are unsuitable for children."⁹¹ Redbox relies on this confirmation and the user's possession of a credit or debit card in his or her name to verify age.⁹²

On the TNR kiosk, once a particular R-rated movie is selected, the touch screen displayed the movie's front box art and provided a description of the movie that includes a statement that the movie was rated R. Also, a sidebar under the box art states, among other things, "Not Under: 17 Years Old." The TNR kiosk did not provide rating reasons for any of the movies or any other advisory about the content of the movies available for rent. The TNR kiosk the Commission visited also offered at least one unrated DVD of a movie that had an R-rated, theatrical version (*Hostel*). The movie description indicated that it was unrated, but the sidebar regarding age appropriateness was blank. A credit card was necessary to rent movies from the TNR kiosk.

E. Analysis of Current Industry Practices

The MPAA should evaluate third-party criticisms regarding the need to clarify its standards to better distinguish the level of violence in PG-13 movies compared to R-rated movies. On the marketing side, the industry continues to advertise R-rated movies on television shows popular with children under

age 17. Indeed, some advertising placements violate the 35% standard adopted by several studios. Similarly, the industry continues to advertise R-rated movies on websites very popular with teens, including the social networking site MySpace. The industry's performance appears to be much better regarding ratings disclosures in television and print advertising, and on studio websites (but not for profile pages established on MySpace). DVD retailers, however, still do not display rating reasons most of the time, and neither of the two major DVD kiosks display rating reasons at this time.

As to rating enforcement, the Commission's mystery shopper survey showed that theaters' performance remains at the same level as three years ago. About four in ten underage children still were able to gain admission, unaccompanied, to R-rated films. Retailers who sell R-rated DVDs performed better than in 2003, but were still sub-par: seven in ten shoppers under age 17 were able to purchase these movies. Likewise, seven in ten underage shoppers were able to buy unrated DVDs of movies that have R-rated versions. Given that many of these unrated "Director's Cuts" contain content that, if rated with the movie, might lead an NC-17 rating, MPAA, NATO, and the major retailers should work together to address this potential problem.

III. MUSIC RECORDINGS

A. Comments on the Current Rating System

In 1985, the Recording Industry Association of America ("RIAA") created the parental advisory program in response to concerns of parent groups about children's exposure to music with mature themes.⁹³ The RIAA describes the Parental Advisory Label ("PAL") as a tool for record companies to use to alert parents to explicit lyrics, and to provide notice to consumers that these recordings may contain strong language or references to violence, sex, or substance abuse, and caution that "parental discretion is advised."⁹⁴ RIAA members, as well as non-member companies, routinely use the PAL.

The PAL is black and white and says "Parental Advisory, Explicit Content."



The RIAA requires that the label be displayed, "clearly and conspicuously," in a "legible, non-removable form" on the product's cover artwork (and not the wrapper, jewel case, removable sticker, or cellophane covering).⁹⁵ The RIAA encourages, but does not require, that the label be 1" x 5/8", and be placed on the bottom left or right corner of the product's cover.⁹⁶

Unlike the film and electronic game self-regulatory systems, the recording industry has not set up a rating board to determine whether a music recording should display the PAL. Instead, each company reviews and labels its own recordings, following general guidance set out by the RIAA for determining whether a recording should be stickered.⁹⁷

In its first Report, the Commission noted that this decision to label is subjective and is made on a case-by-case basis.⁹⁸ As one company then reported to the Commission, its employees, often in partnership with the artists involved, make “good faith judgments about what kinds of lyrics and depictions parents might find offensive, because of racial epithets, vulgarities, curse words, sexual references, violence, and drug descriptions.” As another company put it, “the ultimate judgment call of whether the content of a recording warrants the [PAL] is made in light of the message and identity of the artist, the current social climate, and, perhaps most importantly, straightforward common sense.” Companies may decide to label a recording as soon as they hear a number of expletives in one song, without listening to an album’s entire content.⁹⁹

Also, unlike the rating systems set up for movies and video games, the PAL is not age-based. As noted above, the music industry resists any suggestion that the presence of the PAL is an indication that the recording is not appropriate for any particular age group. Although the Commission has consistently encouraged the music recording industry to consider a change in this view,¹⁰⁰ the industry has declined, asserting that the PAL program is significantly different from the programs applied by other industries. One key difference, according to the RIAA, is that the music recording industry routinely releases edited versions of its most popular products.¹⁰¹ The RIAA points out that 93% (42 out of 45) of the explicit-content labeled recordings on the 2005 year-end Billboard 200 were also available in an edited version.¹⁰² In addition, as the RIAA points out, the PAL is meant as a signal to parents of the presence of *any* type of content – language, sex, substance abuse, or violence – that they may find unsuitable for their children.

Another issue regarding the labeling system is that the decision whether to label a product rests solely with the recording studio or artist. Unlike other self-regulatory programs, where a rating decision is made by a ratings board or other administrative body that is at least somewhat independent of any particular company, each artist or recording company evaluates its own product. As noted above, this process can lead to situations where a label might be applied by one recording company or artist but not by another for similar content. The RIAA has previously claimed that any other system would prove unworkable, because tens of thousands of recordings are released each year.

A third concern, raised in previous Commission reports, is the absence of specific information as to why a particular recording is labeled. Unlike the movie industry’s rating reasons, or the video game industry’s content descriptors, no specific reasons or additional guidance on content are given. In past reports, the Commission has recommended that the music industry go beyond the RIAA’s requirement and provide more specific information on product packaging and in advertising about the nature of the explicit content in a music recording.¹⁰³ Although industry members would have to conduct a more thorough review of recordings than the PAL system currently requires, Sony BMG’s practice of providing an enhanced label demonstrates the feasibility of an industry-wide rule that would enable parents and children to make better informed purchase decisions. The FTC continues to recommend Sony BMG’s approach as a model for other industry members.

B. Restrictions on Marketing to Children: Advertising Placement

Because the RIAA's Parental Advisory Program Guidelines are not age-based,¹⁰⁴ they do not prohibit companies from placing advertising for explicit-content labeled recordings in media popular with children. Not surprisingly, therefore, in past reports the Commission has noted instances when recordings with a parental advisory were advertised on television shows and in print magazines popular with teens. The Commission has noted that such marketing appears to be inconsistent with a label that cautions parents about some material in the recording.¹⁰⁵ For this Report, in addition to reviewing ad placements in 2006 on popular teen shows, the Commission also requested that three music recording companies provide marketing plans for nine explicit-content labeled recordings.

1. Television ads

The Commission's review of Nielsen data revealed numerous placements of ads for recordings with a PAL on music shows on BET, MTV, and MTV2, including *106th & Park*, *Rap City*, and *Total Request Live*. Each of these shows is viewed by a large percentage of children and young teens, ranging from 42% to 49% under 18. Similar placements, if done to promote R-rated movies or M-rated video games, would violate the 35% standard used by those industries. Nonetheless, recording companies routinely advertise on these shows. The Commission also found ads on Nick at Nite's *Full House* and *Fresh Prince of Bel-Air*, shows widely watched by even larger percentages of teens.

The recording industry's frequent use of these media is consistent with the marketing plans reviewed by the Commission, which also show plans to place ads on these networks. None of these placements violates any music industry guidelines, because, as noted above, the industry has not adopted any marketing guidelines.¹⁰⁶

2. Print ads

In past reports, the Commission has noted numerous instances when ads for recordings with a parental advisory have appeared in magazines popular with young teens, although in the Commission's 2004 Report, it noted that such ads were appearing with less frequency. That positive trend continued for this Report. At various times in 2005 and 2006, the Commission conducted a review of advertisements in magazines popular with teens. Only three advertisements for explicit-content labeled albums appeared in the issues of the popular teen magazines reviewed. All three ads were placed in *Thrasher* magazine.¹⁰⁷ These results are consistent with the 2004 Report, which reported only six total ads for stickered albums in teen-oriented publications.

3. New media and marketing methods

a. Internet marketing

The Commission examined the Internet advertising placements for twenty music albums released in 2006 and bearing a PAL.¹⁰⁸ This review showed that at least thirteen of the twenty albums were

advertised on sites with substantial audiences under age 17, including AddictingGames, ARTISTdirect, Bolt, eBaum's World, eCRUSH, GameFAQs, GameSpot, Newgrounds, Runescape, Ultimate-Guitar, and SparkNotes.¹⁰⁹ In addition, marketing documents obtained from three recording companies indicated that Internet marketing was not limited to traditional paid advertising: recording companies often provided third-party websites with audio or video clips or other information about the artist or album and encouraged the sites to post this content. Some of these targeted websites have substantial teen audiences, such as Ultimate-Guitar, Bolt, ARTISTdirect, IGN, and MTV. The plan for one album stated "Target teen sites" as part of its online publicity campaign.

b. Viral marketing

Of the twenty music albums examined for paid Internet advertising placements, six were advertised on one of two social networking websites popular with children, MySpace and Xanga. Further, all of these albums were separately promoted on MySpace through artist profile pages containing the same viral marketing elements that appeared on the motion picture profile pages discussed above;¹¹⁰ several marketing plans touted the number of "friends" affiliated with the MySpace page and the number of songs streamed from the page.¹¹¹ The Commission's review of twenty official music album websites¹¹² revealed that all of the artists had MySpace profile pages promoting the albums.¹¹³ The official websites for most of the music albums examined by the Commission also contained viral marketing elements, such as the ability to share the website with, or send an e-card to, a friend; sign up to receive emails about contests and other promotions; participate in message boards and online chats; paste buddy icons of the artists into instant messages; and join the band's "street team" to help promote the album.

Several recording company marketing plans obtained for this Report elaborated on their viral marketing strategies. One plan reported that the company had uploaded a video from the album to over ten viral video sites, including YouTube, Revver, and Google Video. Another plan for the same album stated that the artist's "online campaign will begin with community building at such powerful web-hubs as MySpace, PureVolume and YouTube, in conjunction with our street team, e-team, and other grassroots music partners." (PureVolume has a substantial audience under the age of 17,¹¹⁴ and, as previously noted, so does MySpace.) The plan further indicated that the "Street and E Teamers" would be directed by email to post ecards for the band "all over MySpace" as well as other message boards and fan sites.¹¹⁵

A marketing document for another album touted the fact that the band's profile page was the top page on the MySpace Artist page during one particular month, with over 4.7 million total views. The marketing plan also detailed several community-building elements contained on the band's official website, such as a "backstage area" where fans could access uploaded video content, a "gallery" in which fans could have their photos posted on the website, a journal, and a "polling area" where fans could vote on the fan of the week.¹¹⁶ Another marketing document for the same album referred to an online fan "Army" named after the band. Fans would sign in and become members of the army by

“sending the most on-line banners to friends, signing the most NEW members up to My Space, going to the most shows, etc. . . .”

C. Disclosure of Advisory Labels and Reasons for Labels in Ads

The RIAA’s guidelines regarding PAL notices in consumer advertisements require print, radio, mobile, online, and television advertising for explicit-content recordings to “communicate the presence of PAL content” in the sound recording as well as the availability of an edited version, if such version exists.¹¹⁷

As the Commission has noted in each of its reports, the PAL does not provide the reasons for the advisory. Although the Commission has recommended that the Parental Advisory include reasons for the PAL, only one of the major recording companies, Sony & BMG Music Entertainment (“Sony BMG”), uses an “enhanced” advisory label on its explicit-content labeled recordings. This enhanced label indicates whether the recording has been stickered because of “Strong Language,” “Sexual Content,” “Violent Content,” or “Sexual + Violent Content.”¹¹⁸ Other recording companies have not followed Sony BMG’s lead.

The recording industry’s performance on disclosing rating information is mixed. Four of the eleven television ads the Commission reviewed contained a parental advisory, and, even in those instances, just one parental advisory was prominently depicted. On the other hand, industry members continue to show improvement in placing the PAL logo in print advertising for stickered recordings. Most of the print ads for explicit-content recordings reviewed by the Commission contained clear and conspicuous PAL logos.¹¹⁹ Additionally, Sony BMG continues to place descriptors, such as “Strong Language,” along with the required PAL logo in advertisements for explicit-content recordings. In retailer ads, by contrast, the PAL logo was less conspicuous and smaller.

As with the 2004 Report, despite the extension of the RIAA guidelines to include the online distribution and promotion of explicit-content labeled recordings on the Internet, the recording industry’s performance in this area showed little, if any, improvement. Fifty-five percent (11 of 20) of the official artist and record company websites reviewed by the Commission¹²⁰ displayed the PAL logo, compared to 60% in the 2004 Report.¹²¹ On only six of the eleven sites was the PAL logo legible. Ninety percent (18 of 20) of the websites examined offered the opportunity to purchase the explicit-content labeled recording, either from an official recording company website or through a link to a third-party online retailer. The PAL logo or other advisory language about the explicit content of the recording was visible at some time during the search or purchase process on about 89% (16 of 18) of the websites, an improvement from 2004.¹²² (See Appendix D, § II.A, Table 1.)

All of the artists had a MySpace page promoting their music albums either by providing album information or the ability to view a video or download a track from the album. Only 35% (7 of 20) of these pages displayed the album’s PAL anywhere on the page, and in those instances, the PAL was very difficult to read.

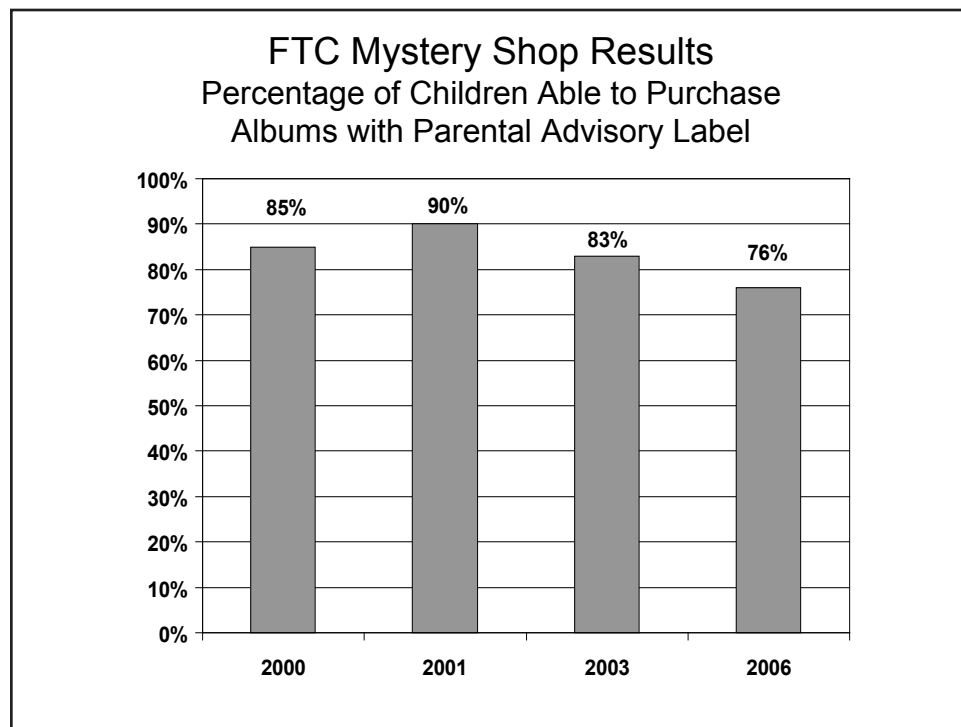
All of the five music retailer websites reviewed indicated, either through a PAL logo or by other language, that the albums surveyed had explicit content.¹²³ In many of these cases, the PAL logo was difficult to read.¹²⁴ Nearly two thirds of the time (in 15 of 25 instances), the visitor, regardless of age, could play audio or video clips from the explicit album. Only one of the websites provided any detailed information about the PAL system.¹²⁵ (See Appendix D, § II.B, Table 2.)

In reviewing five music download websites (iTunes, MusicMatch, Napster, RealNetworks' RealOne Rhapsody, and AOL Music), all generally displayed the music track's PAL logo somewhere on their websites, although the logo was readable on only two of those sites.¹²⁶ Two of the five websites (iTunes and Music Match) offered some kind of parental controls to limit children's access to explicit content. (See Appendix D, § II.C, Table 3.)

D. Industry Efforts to Enforce the Rating System at Point-of-Sale

In the 2006 mystery shop, shoppers (unaccompanied teens, ages 13 to 16) made 249 attempts to purchase a music recording with a PAL logo at various retail locations across the country. In the 2003 survey, the Commission had found that 83% of these teens were able to buy an explicit recording.¹²⁷ The latest shop found some slight improvement, with 76% of shoppers able to make a purchase. Although this change was statistically significant, and demonstrates some progress, the numbers are still high.

Several retailers contacted by the Commission say that they do not have any formal policy on



selling music with a Parental Advisory to children. Others do. One retailer, for example, indicated it will only sell such recordings to a child who is at least 13. Two others said they require that buyers be at least 17. Wal-Mart continues its policy of not stocking music recordings with a Parental Advisory; it sells only edited versions of those recordings.

E. Analysis of Current Industry Practices

Industry products and most print and some television ads reviewed by the Commission continue to disclose the existence of explicit content in a recording, although, with the exception of Sony BMG's enhanced PAL, advertisements provide only general and very limited information about the nature of

that content. In addition, the RIAA has sought to limit access by consumers, including children, to peer-to-peer file-sharing sites that had provided almost unfettered access to recordings, including explicit recordings and other materials not appropriate for children. Finally, industry has established legitimate and increasingly popular downloading sites that provide at least some indication that a recording has explicit content.

Nonetheless, the absence of any restrictions on the marketing of explicit-content recordings to children results in widespread exposure of children and young teens to advertising that promotes albums and recordings with an explicit-content label. Commission review of television and Internet advertising confirms the widespread marketing of such products on venues widely seen or viewed by those under 17. Moreover, few retailers appear to have in place effective policies to prevent children from buying these products.

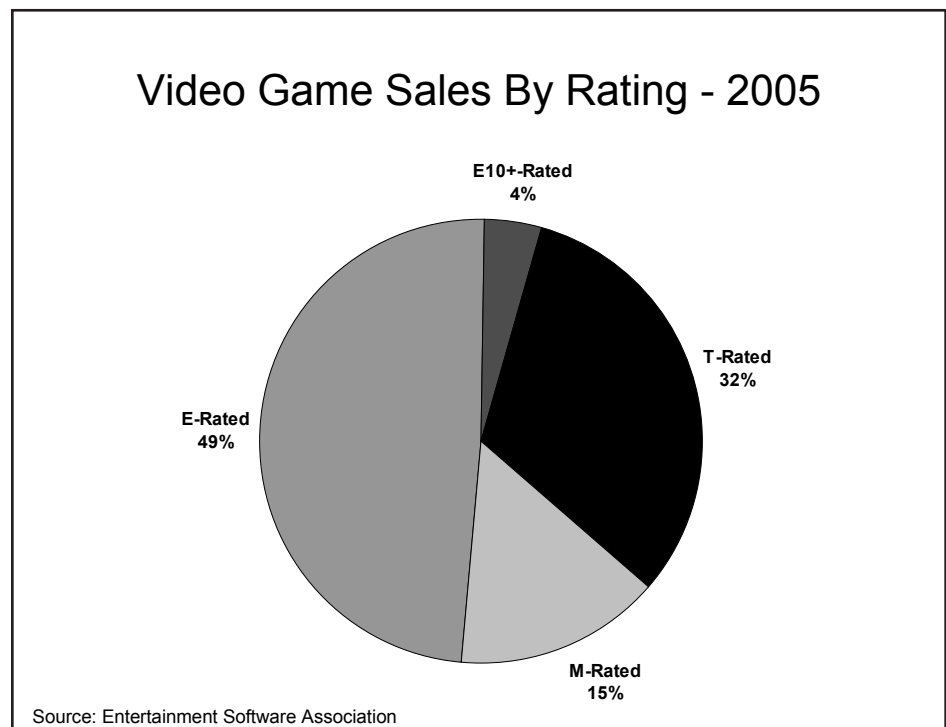
The music recording industry maintains that the Parental Advisory is not meant to indicate that a sound recording is either appropriate or inappropriate for any particular age group. The industry notes that it provides edited versions of many of its most popular recordings bearing a Parental Advisory, which parents can use as a tool to restrict their children’s exposure to certain content. Nonetheless, sales of edited versions represent only a small portion of overall sales. Even short of setting age limits, the industry could do more to lessen children’s exposure to ads for recordings with a Parental Advisory.

IV. ELECTRONIC GAMES

A. Comments on Current Rating System

In 1994, the electronic game industry established the Entertainment Software Rating Board (“ESRB”) to rate electronic games. The rating system combines age-based rating icons

[“EC” (Early Childhood – may be suitable for age 3 and above), “E” (Everyone 6 and above), “E-10+” (Everyone 10 and above), “T” (Teen – 13 and above), “M” (Mature – 17 and above), and “AO” (Adults Only – only for 18 and



above)], usually with one or more content descriptors, including violence, sexual content, language, use of controlled substances, and gambling, that highlight content in the game that may be of interest or concern to parents.¹²⁸ Overall, the vast majority of games are rated E, with approximately 32% of games rated either T (24%) or M (8%). AO-rated games constitute less than 0.02% of games rated. Despite their relatively small percentage in terms of number of games rated, M-rated games, in any given year, account for 15% or more of video game sales.¹²⁹

The ESRB's advertising guidelines¹³⁰ ("Ad Code") require game companies to include this rating information on product packaging and in game advertising. The system has evolved over the years to respond to new developments and concerns regarding electronic games. In March 2005, for example, the ESRB added a new rating category – E10+ – to identify those games with content that might be more suitable for older children.¹³¹

To obtain a game rating from the ESRB, companies must submit a ratings application answering questions about game content and describing scenes in the game that, for example, depict violence, use offensive language, show the use of drugs, alcohol, or tobacco, or contain sexual or suggestive content. In addition, they must provide footage of the game (generally no longer than forty-five minutes) showing the most extreme content of the game in each of those areas. Working independently, three raters then view the game footage (but not the questionnaire) and recommend the rating and content descriptors they believe are most appropriate.¹³² According to the ESRB website, additional raters may be used if needed to achieve a consensus on a rating and content descriptors. Once a consensus is reached, the ESRB then issues an official rating certificate to the game's publisher.¹³³

Concurrent with the rating submission, companies may also apply for a Rating Pending ("RP") rating. The RP icon must appear in advertising for the game and may appear on packaging produced for marketing or promotional purposes only.¹³⁴ Companies are free to promote and accept orders for games that the ESRB has not yet rated. Therefore, consumers can order a game to which the ESRB might ultimately assign a more restrictive rating than consumers had anticipated.¹³⁵

Within fifteen days after release of the game, a game company is required to submit game packaging and a final version of the game to the ESRB. The ESRB checks the game packaging to see if the rating information is properly displayed¹³⁶ and may play the final game to verify that all the information provided during the rating process was accurate and complete.¹³⁷

Some have criticized the ESRB for not playing through each game before issuing a rating. As noted above, raters see excerpts from the game, selected by the game publishers, meant to reveal the most extreme content in the game. Because of this practice, raters may not see the full extent of some content in a game.¹³⁸ On the other hand, the ESRB has significantly enhanced its fines for any company that fails to disclose fully all pertinent content on a game disc that may be relevant to a rating when seeking an ESRB rating.¹³⁹

The ESRB's practice of not reviewing the entire game before assigning a rating may also contribute to the discrepancy in content descriptors observed in some studies. In a series of published studies, Professor Kimberly Thompson of the Harvard School of Public Health has questioned why several E-

T-, and M-rated games were not assigned more descriptors, especially those indicating that the game contains scenes depicting drug or alcohol use, which her research found in playing through portions of the games.¹⁴⁰ In her content analyses, 44% of E-rated games had no content descriptors for violence yet contained acts of violence in more than one third of the game.¹⁴¹ Furthermore, according to Professor Thompson, the ESRB had not assigned applicable content descriptors for many T-rated games that contained blood or depicted the use of alcohol, tobacco, or illicit drugs; nor had the ESRB assigned descriptors for many M-rated games that contained sexual themes, profanity, and the depiction of substance use.

The ESRB has rejected most of Professor Thompson's criticisms, noting that she appeared to be using a different methodology in assessing the need for a descriptor.¹⁴² In addition, the ESRB asserts that content descriptors "are meant to reflect what a parent might be most concerned about when considering the purchase of a game" and "are not assigned as a comprehensive list of observable content."¹⁴³ Rather, they are there to indicate elements in a game "that may have triggered a rating and/or may be of interest or concern to a consumer."¹⁴⁴ Thus, according to the ESRB, in an M-rated game that has descriptors for intense violence and sexual themes, the ESRB might not assign a descriptor for use of tobacco, even if its use was depicted in the game, because consumers are already on notice of the mature content in the game.¹⁴⁵

The ESRB asserts that reviewing the entire content of games would likely necessitate a change in who does the review, and lengthen the review process. Given the length of games (up to fifty to one hundred hours) and the sophistication and skill needed to play a game through all levels, the ESRB claims it would have to use expert gamers to rate the game, as opposed to the representatives of the general public and of parents they use now. According to the ESRB, using gamers to rate games "would likely bias rating assignments as they would surely bring a different sensibility to content than the pool of raters [it has] always used."¹⁴⁶ In addition, it would change the practice of game publishers, which typically submit games for rating prior to their completion.

Critics also have argued that children have too easy access to M-rated games.¹⁴⁷ For example, in 2005 the National Institute on Media and the Family surveyed over 600 4th through 12th grade students and found that seven of ten children report playing M-rated games, with 61% of children reporting that they own their own M-rated games. In addition, 60% of children list at least one M-rated game as their favorite (75% of boys and 35% of girls).¹⁴⁸

Finally, some consumer groups question whether the ESRB is truly independent of the gaming industry given that its board and funding come from industry sources.¹⁴⁹ They believe this may contribute to raters assigning less restrictive ratings than warranted based on the game's content because of economic pressures by industry members, particularly in the area of M-rated games. Specifically, because most major retailers will not stock AO-rated games, some consumer groups believe raters are pressured into assigning an M rating to games with an increasing amount of violence. The ESRB counters that this concern instead leads to industry members who seek to avoid the AO rating to delete

scenes that would otherwise result in that rating either before submitting the game, or during the rating process.¹⁵⁰

B. Restrictions on Marketing to Children: Ad Placement

In response to findings in the Commission's 2000 Report that industry members frequently marketed M-rated electronic games to children under 17¹⁵¹ – a practice that violated the anti-targeting provision of the game industry's Ad Code – the electronic game industry amended its anti-targeting provision to add specific standards defining targeting. Under those provisions, ads for M-rated games cannot appear on TV and radio programs with a 35% or more under-17 audience, or in print media or on Internet sites with a 45% or more under-17 audience.¹⁵² In 2005, the ESRB created a "safe harbor" modification to its anti-targeting guidelines that allows companies to advertise M-rated games in programs telecast between 10 p.m. and 6 a.m. on a local time-zone basis, regardless of the audience composition.¹⁵³

Since the Commission's last report, the ESRB has added specific requirements regarding the marketing of T-rated games. Although the guidance does not provide a cutoff for the permissible composition of the under-13 audience, it does indicate that the ESRB will look at a variety of factors in determining whether an ad for a Teen game is being appropriately marketed, including the content in the game and the audience composition or median age of the medium in which the ad appeared.¹⁵⁴ This guidance is somewhat consistent with the Commission's recommendation in the 2000 Report that industry consider a variety of factors, not solely the percentage of the audience, to avoid advertising in venues popular with the restricted age demographic.

In addition, the ESRB continues to enforce its Ad Code and to assess points, fines, and sanctions for violations of the code's provisions. From July 2005 through June 2006, the ESRB issued over 100 citations for non-compliance with ESRB rules, more than 80% of which were technical in nature,¹⁵⁵ and in several instances fined companies for violations.¹⁵⁶ As noted, the ESRB has significantly enhanced its fines for any company that fails to disclose fully all pertinent content to the ESRB when seeking a rating.

1. Television ads

The Commission's review of advertising on popular teen shows and of selected marketing plans did not find any examples of companies placing or planning to place ads for M-rated games on shows that likely would violate the ESRB's 35% standard. It is clear, however, that the ESRB's 35% threshold does little to limit the exposure of children under 17 to such ads. Of the top one hundred shows watched by teens on broadcast and in syndication, only a few exceed the ESRB standard. In addition, the under-17 viewership of many of the top cable shows watched by teens does not exceed that threshold,¹⁵⁷ but these shows reach large numbers of teens every week. Industry members can and do advertise on some of these shows. In fact, marketing documents supplied by one of the companies indicate that several shows contemplated for ad placements would actually be slightly more effective in reaching teens 12 to 17, than adults 18 to 34. Yet the audience for none of those shows is more than 35% under 17. As the

Commission has stated in previous reports, the 35% standard cuts off very few shows popular with teens and tweens, and permits companies to widely expose younger teens to ads for M-rated games.

2. Print ads

To monitor industry-wide print ad placements of M-rated video games, the Commission monitored *Electronic Gaming Monthly*, *GamePro*, and *Nintendo Power* magazines. *Electronic Gaming Monthly* and *GamePro* are widely read by young teens, with 29% and 44%, respectively, of their readership 17 and under. Sixty-nine ads for M-rated games were placed in *Electronic Gaming Monthly* in issues reviewed between September 2005 and July 2006. Thirty-one ads for M-rated games were placed in the subscription edition of *Game Pro* magazine.

Under the 45% industry standard, none of the popular game enthusiast magazines, other than *Nintendo Power*, is off-limits for M-rated game ads. The marketing plans the Commission reviewed for this Report indicate that all nine of the M-rated games were marketed in one or more of these magazines. These findings are consistent with those of the previous reports regarding the large number of M-rated games advertised in publications widely read by young teens.¹⁵⁸

In the 2004 Report, the Commission also noted the placement of a large number of T-rated games in *Nintendo Power*, which is widely read by child gamers (the median age of readers is just under 14, with over 25% of its readership under 13). Similar to the results in the 2004 Report, ads for a large number of T-rated games continue to appear in *Nintendo Power*.¹⁵⁹ The ESRB, however, does not view the placement of ads for T-rated games in *Nintendo Power* as a violation of its anti-targeting standards.¹⁶⁰ Ads for the T-rated game *Bionicle Heroes* ran in the November 2006 editions of *Sports Illustrated for Kids*, *Disney Adventurers*, and *National Geographic for Kids*, publications that ESRB claims to be inappropriate for the advertising of T-rated games based on a review of the publications' demographic data.¹⁶¹

3. New media and marketing methods

a. Internet marketing

The Commission examined the paid Internet advertising placements for twenty video games released in 2006 with an M rating and at least one violence-related content descriptor.¹⁶² According to data obtained from Nielsen//NetRatings, all twenty games were advertised on websites popular with teens. Such sites include AddictingGames.com, ARTISTdirect, atomFILMS, A-Z Lyrics Universe, Bolt, Cheat Code Central, CheatCodes.com, eBaum's World, GameFAQs, GamesRadar, GameSpot, Gamespy Network, GameWinners, IGN, Lyrics on Demand, MP3.com, MTV, Newgrounds, Runescape, and Ultimate-Guitar.com.¹⁶³ Ads for sixteen of the twenty sampled games ran on sites that have audiences comprised of at least 45% children under the age of 17.¹⁶⁴ As noted, under the Ad Code, paid ads for M-rated games cannot appear on Internet sites with a 45% or more under-17 audience.¹⁶⁵ Thus, the Commission's monitoring suggests that the ESRB is not adequately enforcing even this very limited standard.

b. Viral marketing

Most of the twenty official game sites studied had viral marketing components, including downloadable buddy icons, a community forum or message board, the ability to send e-cards to friends, and links to fansites. One company reported a particularly creative example of viral marketing for its official game website in which the user could select a fighter for the game and then challenge a friend to a fight by inputting the user's and the friend's email addresses. Only one of the twenty games studied for Internet ad placements was found to have advertised on MySpace, and the Commission located no MySpace profile pages for any of the games studied for this Report.

Marketing documents for one game emphasized the high value and relatively low cost of viral marketing, stating, "Leverage viral online video. . . viral push of users to the site is expected to create buzz. . . . MEDIA WILL BE NON-PAID." The marketing plan for another game referred to a "New and improved FanPimp program" that reportedly had over 3,000 members and indicated a strategy to draw fans with the use of in-game credits.¹⁶⁶

C. Disclosure of Ratings and Reasons for Ratings in Ads

In its reports, the Commission has recommended that all advertising for movies, music, and video games contain both the rating or label and the reasons for that rating or label. As noted in prior Commission reports, the ESRB has adopted much of what the Commission has recommended. It requires that game ratings and content descriptors be prominently displayed in print advertisements, and that the rating (but not the content descriptors) be included in television and radio advertising.¹⁶⁷

Since the Commission's first report, the ESRB has made several revisions to its Ad Code that increase the visibility and usefulness of its ratings information, by, for example, increasing the size of the rating icon in print ads, changing the size, design, and prominence of its descriptors on the back of packaging, and requiring age identifiers on the Mature and Adults Only icons (Mature icon now says "MATURE 17+") and on a new (as of March 2005) rating category Everyone 10+ (E10+). The ESRB also has given game publishers additional guidance on displaying rating information on the Internet and in email marketing campaigns.

For this Report, the Commission's review of advertising on television and in video game magazines and general interest publications popular with teens found that an overwhelming majority of advertisers were compliant with industry regulations regarding the disclosure of rating information in ads.¹⁶⁸ Likewise, of the twenty game websites surfed to determine their compliance with certain ESRB disclosure requirements,¹⁶⁹ all displayed the ESRB rating and icon as well as the game's content descriptors without requiring the visitor to hold the cursor over the rating icon, a notable improvement from 2004.¹⁷⁰ Sixty-five percent (13 of 20) of the game sites asked the visitor to disclose his or her age before viewing the site. Of those thirteen sites, all of them prevented the visitor from viewing the site if the visitor entered an age under 17. (Appendix D, § III.A, Table 1.)

Retailers also did a good job of displaying rating information on their websites.¹⁷¹ Further, retailers linked from the web page to information on the ESRB rating system and also linked to the ESRB's

website, a dramatic improvement from 2004, when only Circuit City’s site did. Some of the sites also provided additional information, such as reviews or descriptions of the game, that may give more details about game play and content. (Appendix D, § III.B, Table 2.)

D. Industry Efforts to Enforce the Rating System at Point-of-Sale

1. Mystery shops

The Commission’s three prior nationwide undercover surveys found that unaccompanied children ages 13 to 16 were able to buy M-rated games 85% (2000), 78% (2001), and 69% (2003) of the time.

In late 2003, video game retailers committed to changing store policies to require that children be at least 17 years old to make a purchase.¹⁷² The survey results for this Report show substantial improvement in retailer practices. Forty-two percent of the children were able to purchase M-rated games, a statistically significant improvement from the 69% in the 2003 survey.

There were, moreover, significant and substantial differences between major and non-major game retailers, with national retailers more often restricting sales (62% vs. 37%), posting information about the rating system (47% vs. 20%), and asking age (55% vs. 34%).¹⁷³ Of all the major retailers shopped, Wal-Mart did the best, allowing only 15% of young teen shoppers to purchase an M-rated game.

In November 2005, the ESRB established the ESRB Retail Council, composed of most of the major sellers of video games.¹⁷⁴ Members of this council not only pledge to have in place policies to restrict sales of M-rated games, but also agree to allow and help fund unannounced undercover shops of their stores, currently scheduled for twice a year, to check on their compliance with this policy. The first undercover shop of council members occurred in September 2006. The September results – 65% of shoppers turned away – are similar to the results in the Commission’s most recent mystery shop of national video game retailers, where 62% of the shoppers were unable to buy an M-rated game.¹⁷⁵



2. Mobile phone games

Since the 2004 Report, video games playable on cell phones have become increasingly popular. For example, in the Holiday 2005 issue of *Official Xbox Magazine* and the December 2005 issue of *Electronic Gaming Monthly*, ads for the following cell phone games appeared: *Doom*, *Brothers in Arms*, *Tom Clancy's Splinter Cell: Chaos Theory*, *Midnight Bowling*, *Midnight Pool*, *Prince of Persia: Warrior Within*, *Platinum Solitaire*, *Tom Clancy's Rainbow Six: Lockdown*, *Ultimate Spider-Man*, *Ancient Empires II*, *SOCOM: U.S. Navy Seals*, *King Kong*, *Medieval Combat*, and *The Legend of Zorro*. None but *Splinter Cell: Chaos Theory* has an ESRB rating, and none of the ads contained any kind of rating for the games.

All of the major mobile phone companies offer some type of parental restriction on phone usage, whether it be a specialized phone with parental controls that can be purchased for the child, or the option of restricting access on the child's phone to limit certain services, such as Internet usage and downloading of music and games.¹⁷⁶ However, none of the phone company websites made it easy for the user to find out information about parental restrictions or special phones without doing extensive research throughout the website.

For this Report, the Commission examined the websites of Cingular, Sprint, Alltel, Verizon Wireless, and T-Mobile regarding their marketing of downloadable games for mobile phones. All of the websites advertised mobile phone games unrated by the ESRB but which have M-rated versions on other video game platforms.¹⁷⁷ Some of these games had descriptions that implied a high degree of violence.¹⁷⁸ A few sites promoted games that have ESRB ratings for the mobile phone version,¹⁷⁹ but they did not display the ESRB rating.

In November 2005, CTIA, the international association for the wireless telecommunications industry, introduced the Wireless Content Guidelines and Classification Criteria for wireless carriers.¹⁸⁰ If implemented by a carrier, these Guidelines classify mobile content as either Restricted Carrier Content¹⁸¹ or Generally Accessible Carrier Content¹⁸² based on existing rating or labeling systems for movies, television shows, music, and games. Any content that is not classified as "Restricted Carrier Content" would be considered "Generally Accessible Carrier Content" and would be made available to all consumers. Mobile games that are rated M on other video game platforms would be considered Generally Accessible Carrier Content if they have been edited to not include any Restricted Content Identifiers such as intense profanity or intense violence. Until age verification systems are put in place, carriers have agreed that they will only offer carrier content that is classified as Generally Acceptable.¹⁸³

E. Analysis of Current Industry Practices

The ESRB continues to set a high standard for the clear and prominent disclosure of rating information in television, print, and the Internet. In addition, placements of advertising on television programs popular with teens appear to be diminishing. Yet the Commission's review of Internet advertising found many examples of advertising that would appear to violate the industry's 45% standard. Even if enforced, that standard permits widespread marketing to young teens. Ratings

disclosure on product packaging would be enhanced if content descriptors were included on the front of product packaging. Furthermore, the substantial improvement by major retailers in enforcing the M rating at point of sale should help prevent many children from being able to buy these games, unless they have parental permission.

Critics continue to raise questions about the ESRB's system for rating video games, which relies on game companies to select what game content will be viewed by ESRB raters. This approach creates the potential for the ESRB rating process to miss content that might affect the rating, although this risk may have been ameliorated somewhat by the ESRB's recent enhancement of fines for a company's failure to disclose pertinent content during the rating process.¹⁸⁴ In addition, the ESRB's chosen method for assigning content descriptors, at least as applied, may fail to reveal all of the content that might be of interest to parents.

V. THE COMMISSION'S 2006 PARENT-CHILD SURVEY ON VIDEO GAME RATINGS

A. Background

For the 2000 Report, the Commission conducted national surveys of parents and children regarding their awareness and use of the ESRB's video game rating system.¹⁸⁵ With the ESRB system only six years old at the time, the survey revealed a relatively low level of parental awareness and use of video game ratings. On the positive side, more than eight in ten parents and seven in ten children reported that parents were involved in the decision to purchase a video game for their children as well as the purchase or rental transaction.

In the 2000 survey, parents and children reported significantly different levels of parental restrictions on video game choices, but agreed that when parents did restrict, the predominant reason was due to the game's violent content; a game's sexual content or profanity, and even its rating, were much lesser considerations. Although only slightly more than half of parents believed that the rating system did a good job of informing them about the level of violent content in video games, more than three quarters stated that the ratings were easy to understand, and the same percentage indicated they were at least somewhat satisfied with the system. Of the children who could name their favorite games, nearly one quarter identified an M-rated game.

Additional research on awareness and use of the ESRB ratings has been conducted since the 2000 Report. The most recent ESRB telephone survey¹⁸⁶ reported that 83% of parents are aware of the ESRB ratings, and 74% of parents use them regularly when buying games for their families. Additionally, 91% of parents said they are at least somewhat confident that ESRB ratings accurately describe the game's content. According to a report of ESRB's most recent "validity" study of the ratings,¹⁸⁷ parents agree with the ESRB ratings 82% of the time, while 13% of the time they find the ratings "too lenient," and 5% of the time believe the ratings are "too strict." The study similarly suggests that parents generally

consider ESRB ratings “about right” when examined by individual rating category – E (90% of the time), E10+ (71%), T (76%), M (72%). When parents disagree with ESRB ratings, they believe that the ESRB ratings are either “too strict” – E (3% of the time), E10+ (6%), T (7%), M (11%), or “too lenient” – E (7% of the time), E10+ (23%), T (17%), M (17%).

The 2005 Report Card of the National Institute on Media and the Family (“NIMF”) stated that its parent survey¹⁸⁸ had found that only 40% of parents understood all of the video game rating symbols, about one quarter said they allow their children to buy M-rated games, and one half of parents said they do not allow their children to play M-rated games. The Report Card also challenged the “accuracy” of ESRB ratings based on a comparison of several M-rated games from the 1990s to several games from 2004.¹⁸⁹ NIMF asserts that this comparison shows that games in 2004 were on average more violent, contained more sexual content, and had more profanity compared to games from the late 1990s, and, therefore, that the ESRB system is flawed in its failure to apply the AO rating more regularly to games that now receive M ratings.¹⁹⁰ The most recent Report Card noted survey results showing a wide disparity in the way parents and children perceive parental oversight of game-playing habits, with parents reporting more active involvement and restrictions than their children report.¹⁹¹

With a grant from the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), the Harvard Medical School Center for Mental Health and Media conducted two surveys that explored, among other things, children’s game-playing habits.¹⁹² A 2004 survey of middle school students found that about 37% of games that boys frequently played and 11% of games that girls frequently played were “violent” or “very violent” based on ESRB content descriptors for those games; games in the *Grand Theft Auto* series were listed as the boys’ favorite and the girls’ second favorite. A parent survey found that only one quarter of parents play video games with their child at least sometimes. Also, more than 80% of parents said that they “always” or “often” pay attention to a game’s ESRB rating when deciding to buy or rent a game for their child.

In recent years, some legislators, researchers, and parental advocacy groups have voiced concern about parents’ knowledge and use of the ESRB system, the validity of the ratings that the ESRB has assigned to some games, and children’s ability to purchase M-rated games.¹⁹³ In response to these concerns and as part of the agency’s ongoing monitoring of the electronic game industry’s self-regulatory system, the Commission contracted with the survey research firm Synovate to survey parents and children about their familiarity with, use of, and evaluation of the ESRB system. The surveys were similar to the surveys conducted for the 2000 Report, but, in addition to exploring parents’ awareness of and attitudes regarding the ESRB system, the new parent survey also contained questions about parents’ game playing habits and about their level of agreement with ESRB ratings both generally and specifically regarding rated games that they have personally encountered through buying, renting, playing, or watching games with their children. The child survey also posed some new questions regarding playing habits and their parents’ attitudes toward video games. A total of 1,311 parents and 354 children completed interviews. The survey instruments, annotated with results, are reproduced in Appendix C.

B. Results

1. Awareness and use

Overall, the results of the parent and child surveys reflect positively on the ESRB system. Awareness levels of the ESRB system have risen significantly since the 2000 survey. Nearly nine in ten parents (87%) and 75% of children said they are aware that the game rating system exists (compared to 61% of parents and 73% of children reported in 2000). More than eight in ten parents claimed to be aware of and at least slightly familiar with the system. Three quarters of parents claiming familiarity with the video game rating system correctly indicated that the system provides both an age rating and content descriptors (up from 53% in 2000).¹⁹⁴ In addition, half of the parents familiar with the rating system named, unaided, three ESRB ratings (E, T, or M), also an improvement from the 2000 survey, which had found that three in five could not name a single one of the game ratings unaided.¹⁹⁵ Slightly more than half (55%) of parents familiar with the ESRB system said they are moderately or very familiar with the content descriptors, and another 31% claimed to be slightly familiar.¹⁹⁶

System usage also is up substantially since 2000. Of parents familiar with the ESRB system, nearly three quarters (73%) use the video game’s rating most or all of the time when their child wants to buy, rent, or play a game for the first time.¹⁹⁷ This result contrasts with the 2000 survey, in which that figure was only 39%. Overall, 61% of parents whose children play video games claimed to use the rating all or most of the time, compared to the 22% level reported in 2000.¹⁹⁸ Also encouraging is that three quarters (75%) of parents familiar with content descriptors reported that they use them most, nearly all, or all of the time when their child wants to buy, rent, or play a game for the first time.¹⁹⁹ However, slightly over half (54%) of all parents surveyed are familiar with and use content descriptors.

Parents who sometimes allow their children to play T- and M-rated games reported using the ESRB system more than parents who generally allow their children to play such games.²⁰⁰ These discrepancies in usage data might be explained by the need for parents who allow their children to play T- or M-rated games only on a case-by-case basis to be more engaged with the ESRB system in order to grant or deny permission.

ESRB System: Parental Awareness, Familiarity & Use²⁰¹			
	2000 FTC Survey (Parents)	2006 FTC Survey (Parents)	2006 ESRB Surveys (Parents)
Aware of ESRB system	61%	87%	83%
Familiar with ESRB system and aware of both rating icons and content descriptors (unaided recall)	30%	63%	N/A
Use rating icons most or all the time	22%	61%	74%
Familiar with content descriptors	N/A	72%	65%
Familiar with and use content descriptors most or all the time	N/A	54%	51%

2. Parental monitoring of video game purchases, rentals, and play

Up substantially from the 2000 survey, 85% of parents said that they restrict the video games their child can play, compared to 65% of children who reported that their parents restrict their games. As in 2000, the data show that parents are more likely to restrict younger children (those between ages 8 and 13) compared to older children (those between ages 14 and 16). About one quarter (24%) of all parents reported restricting based on the game’s rating, whereas more than half (52%) reported restricting based on violent content.²⁰² In contrast to the 2000 survey, larger percentages of parents and children reported that parents restrict based on sexual content and profanity (as well as the game’s rating).

Forty percent of parents familiar with the ESRB system reported that they either sometimes (34%) or generally (6%) allow their child under age 17 to play M-rated games. Children reported an even higher level of parental permissiveness; 57% reported that they are sometimes (36%) or generally (21%) allowed to play M-rated games, including 37% of child respondents between the ages of 8 and 10 years.²⁰³ Consistent with the 2000 survey, nearly one quarter (23%) of children identified at least one M-rated game as a favorite.²⁰⁴ The survey data also suggest that children are more likely to be permitted to play M-rated games the older they are, the more hours per week they play video games, and the more hours per week their parents play video games.²⁰⁵

Parental Restrictions on Video Game Play²⁰⁶					
	2000 FTC Survey (Parents)	2000 FTC Survey (Children)	2006 FTC Survey (Parents)	2006 FTC Survey (Children)	2006 ESRB Telephone Survey
Parents restrict the video games children can play	69%	45%	85%	65%	N/A
Parents restrict games based on violence	34%	24%	52%	26%	N/A
Parents restrict games based on sexual content	4%	1%	18%	10%	N/A
Parents restrict games based on profanity	4%	4%	14%	13%	N/A
Parents restrict games based on ESRB rating	3%	2%	24%	23%	N/A
One of under-17 child’s favorite games is M-rated (unaided)	N/A	24% ²⁰⁷	7%	23%	N/A
Parents allow under-17 child to play M-rated games	N/A	N/A	40% ²⁰⁸	57% ²⁰⁹	46% ²¹⁰

As in the 2000 survey, parents and children reported a high level of parental involvement in selecting and purchasing video games for their children.²¹¹ Almost three quarters of children (71%) and 86% of parents claimed that the parent is involved in the decision about which video games to buy or rent. With regard to the purchase or rental transaction, 83% of children and 89% of parents reported that the parent usually is involved.²¹² This high level of parental involvement suggests that, at the very least,

most parents have the opportunity to review rating and other information on the product packaging to determine whether they approve of the game’s content.²¹³

Parental Involvement with Video Game Purchase or Rental²¹⁴					
	2000 FTC Survey (Parents)	2000 FTC Survey (Children)	2006 FTC Survey (Parents)	2006 FTC Survey (Children)	2005 ESA Survey (Parents)
Parents involved in or present at purchase or rental	84%	74%	89%	83%	92%

Finally, it appears that most parents review at least some of the game content after its purchase by or for their child. When asked about the last game that was purchased by or for their child, 39% of those parents reported that they had watched or played most of the game or the entire game at least once, and another 37% said that they had watched or played some of the game at least once. This post-transaction monitoring may give parents another opportunity to approve or disapprove of video game content.²¹⁵

3. Parental satisfaction and agreement with ESRB ratings

Although more than half of parents familiar with the system (60%) said that the rating system does a “good” or “excellent” job informing them about the level of violence in games, 36% said the system does a “fair” or “poor” job. Parents reported similar satisfaction for the levels of sexual content and profanity. Nevertheless, nearly all parents (94%) at least slightly familiar with the ratings reported that the ratings were “moderately” or “very easy” to understand, and a similarly large majority (87%) of these familiar parents reported that they were either “very satisfied” (36%) or “somewhat satisfied” (51%) with the ratings.

As noted, ESRB research indicates that 82% of the time parents agree with ESRB ratings overall and, specifically, that parents have a very high level of agreement with E-ratings and a moderately lower level of agreement with E10+, T, and M ratings. The Commission’s survey included several questions designed to determine parents’ general level of agreement with ratings assigned to games with which they are personally familiar. Among parents familiar with the ESRB system, 64% said that most or all of the time video game ratings match their personal view of whether a game may be suitable for children in the age group indicated in the game’s rating. Another 24% of parents said they agree with the ESRB ratings some of the time.²¹⁶ More parents of younger children (26%) expressed agreement with ESRB ratings all or nearly all of the time compared to parents of older children (12%).²¹⁷

Parental Agreement and Satisfaction with ESRB Ratings²¹⁸				
	2000 FTC Survey (Parents)	2006 FTC Survey (Parents)	2006 ESRB Telephone Survey	2005 ESRB "Validity Study"
Parental agreement with ESRB ratings	N/A	21% (all the time) 43% (most of the time) 24% (some of the time) 8% (rarely or never)	43% "very confident" in ratings 48% "somewhat confident" in ratings	82% (ratings "about right") 5% (ratings "too strict")
ESRB ratings are easy to understand	77%	94%	N/A	N/A
ESRB system does a good or excellent job informing about violence in games	54%	60%	N/A	N/A
ESRB system does a good job informing about sex in games	N/A	54%	N/A	N/A
ESRB system does a good or excellent job informing about profanity in games	N/A	57%	N/A	N/A
Satisfaction with ESRB system	21% ("very satisfied") 55% ("somewhat satisfied") 9% ("somewhat dissatisfied") 2% ("very dissatisfied")	36% ("very satisfied") 51% ("somewhat satisfied") 9% ("somewhat dissatisfied") 3% ("very dissatisfied")	72% (system "very helpful") 22% (system "somewhat helpful")	N/A

C. Analysis of Survey Findings

The parent and child surveys paint a mostly positive picture of the ESRB system. The system is a useful and important tool that parents increasingly use to help them make informed decisions about games for their children. The survey results do suggest, however, at least two important issues that the ESRB should explore. First, as was the case six years ago, more than one third of parents believe that the ESRB system does a "fair" or "poor" job informing them about the level of violence in video games. Parents expressed similar opinions about the system with regard to sexual content and profanity. Only a little more than one third of parents are "very satisfied" with the way the system provides information

about the games their children want to play. Second, almost one third of parents reported agreeing with ESRB ratings only some of the time, rarely, or never. Likewise, the ESRB's research suggests that nearly half of parents are only somewhat confident in ESRB ratings, and raises a question about whether a relatively small, but significant, percentage of E10+-, T-, and M-rated games should be rated more restrictively.

These data do not suggest that ESRB ratings overall, or for a particular rating category, are generally invalid or "inaccurate." Uniform agreement among parents about game ratings is unrealistic, given that the rating exercise involves some degree of subjectivity. Moreover, the impact of occasional disagreement with ESRB ratings may be buffered by the relatively high level of participation and monitoring parents have reported exercising when it comes to their children's game play. Of particular note was the high percentage of parents who played or viewed some or most of the last game that was purchased for or by their child, as well as the increasing percentage of parents who reported using ESRB ratings as a basis to restrict the games their children play. Accordingly, although parents are not universally satisfied, and do not universally agree, with the ESRB ratings, they generally appear to be using ESRB ratings as a decision-making tool in conjunction with their own separate monitoring of their children's game-playing habits.

VI. CONCLUSION

Six years after the Commission's first report on self-regulation and industry practices by the motion picture, music recording, and electronic game industries, the Commission finds, with a few exceptions, general compliance with existing voluntary standards, but insufficient attention to the development and application of these standards to evolving marketing trends. The movie and video game industries continue to comply, for the most part, with their self-regulatory limits on ad placement on television and in print media. Yet, as the Commission has noted in previous reports, the industries continue to market R-rated movies, M-rated video games, and explicit-content labeled music in media with large teen audiences. This practice is particularly evident in the industries' marketing on the Internet, an increasingly important medium that reaches millions of children each day. Although the video game industry has adopted limits on Internet advertising, the relevant standard – ads cannot appear on a site where more than 45% of visitors are under 17 – is so permissive that advertisements for M-rated games can reach large numbers of young teens and children. Moreover, the Commission's review found many examples of non-compliance with even that limited restriction. The movie and music industries have adopted no standards restricting Internet advertising for R-rated movies and explicit-content labeled music.

The Commission therefore recommends that the video game industry tighten its existing ad placement guidelines restricting advertising in venues where the under-17 audience reaches or exceeds 35% on television and radio and 45% in print or online, and that the movie and music industries adopt such guidelines. Specifically, as in prior reports, the Commission suggests that to further limit the use

of popular teen media to advertise violent entertainment products, the industries consider using a range of factors to help identify those venues most popular with teens.²¹⁹ Such factors include: the percentage of the audience under 17; the total number of children reached; and the popularity with children and apparent ages of the characters or performers. Other factors – such as the time of day an ad airs on radio or television – also could be considered.²²⁰ Such guidelines would diminish children’s exposure to ads for M-rated games, R-rated movies, and explicit-content labeled recordings, while still permitting their promotion to their intended audience.

The Commission is encouraged that all three industries disclose rating information in most forms of advertising, and generally in a clear and conspicuous manner, although the music industry needs to do significantly better in television advertising, and both the movie and music industries should exercise greater care in newer venues, such as artist or product profile pages on social networking sites. Moreover, the music industry has responded positively to the growing use of the Internet to buy and download music by enhancing its guidelines to require a disclosure whenever an individual song’s content is explicit. Music download sites, however, need to do a better job of making the PAL readable.

For product packaging, the movie industry typically places the movie’s rating and rating reasons on the back of each video and DVD. Although the electronic game industry places the rating on the front of the package, it still places the content descriptors on the back. The Commission renews its recommendation that both industries consider placing all of the rating information prominently on the front of product packaging to make that information more visible to parents. Moreover, the Commission continues to recommend that the music industry consider providing more information on product packaging and in advertising as to why a particular recording has been labeled with a Parental Advisory. Sony BMG’s use of an enhanced label that includes additional information is a good model for others to follow.

As the Commission’s latest mystery shops show, national video game sellers significantly improved their record of enforcement compared to their performance at the time of the Commission’s last report. They cut the rate at which underage shoppers could buy M-rated games nearly in half, to under 40%. One retailer – Wal-Mart – stood out from the others, permitting fewer than two out of ten shoppers to buy an M-rated game.

On the other hand, music and movie DVD retailers have made little progress in adopting and enforcing point-of-sale age restrictions. The Commission continues to find that most teens (more than 70%) can purchase rated or labeled entertainment products at a significant number of stores. Excluding Wal-Mart and Kmart, which enforced their point-of-sale policies very well, retailers showed little improvement in restricting sales to children. Although theater owners performed much better than DVD retailers – denying admission to six out of ten underage moviegoers, their record of denying admission has remained flat since the 2004 Report, even though all theater chains have longstanding policies restricting such admissions. The Commission encourages further implementation and enforcement of these point-of-sale policies.

The Commission encourages the MPAA and CARA to consider whether the current marketing and sales of unrated or “Director’s Cut” movie DVDs that have R-rated versions undermine the self-regulatory system. Because it appears that some of these unrated DVDs contain content that, if rated, would result in an NC-17 rating, the Commission suggests that the MPAA, together with the EMA, consider establishing policies for the advertising and sale of these DVDs. Such policies would assist retail store clerks seeking to enforce any store policy of not selling such movie videos to children.

Finally, researchers, policymakers, and industry critics have raised questions about the various methods used by each industry to rate and label their products. Parents should be able to rely on complete rating systems where decisions are made after a fair review of all appropriate content, and where rating and labeling information reasonably informs them about the content. To this end, the motion picture industry should evaluate the need to clarify its standards to better distinguish the level of violence in PG-13 movies compared to R-rated movies.

The Commission repeats the recommendation it has made in prior reports that the music industry consider providing more specific information on product packaging and in advertising about the nature of the explicit content in a music recording. This modification would require industry members to conduct a more thorough review of recordings than currently required under the PAL system, but would allow parents and children to make better informed purchase decisions.

As the Commission has recommended in the past, the ESRB should make the content descriptors, which convey information about the level and type of game content, more prominent on the package. Also, the ESRB should consider conducting targeted research into the reasons why a significant minority of parents believe the system could do a better job of informing them about the level of violence, sex, or profanity in some games. Based on this research, the ESRB should consider whether any changes to its rating process, criteria, or disclosure methods are warranted.

Given important First Amendment considerations, the Commission supports private sector initiatives by industry and individual companies to implement these suggestions. The Commission will continue to monitor this area, particularly as emerging technologies change the way these products are marketed and sold. The Commission also will continue to work with industry and others to encourage efforts to provide parents with the information they need to decide which products are appropriate for their children. Following a reasonable period of monitoring industry practices and consumer concerns, the Commission will issue another report.

Endnotes

1. Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries: A Report of the Federal Trade Commission (Sept. 2000) (hereafter “2000 Report”), *available at* www.ftc.gov/reports/violence/vioreport.pdf.
2. *See id.* at iii-iv.
3. *See* 2000 Report, *supra* note 1, Appendix F at 27, *available at* www.ftc.gov/reports/violence/appendicesviorpt.pdf.
4. *See* 2000 Report, *supra* note 1, at 54-55.
5. Marketing Violent Entertainment to Children: A Six-Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries: A Report to Congress (April 2001) (hereafter “April 2001 Report”), *available at* www.ftc.gov/reports/violence/violence010423.pdf.
6. Marketing Violent Entertainment To Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (Dec. 2001) (hereafter “December 2001 Report”), *available at* www.ftc.gov/os/2001/12/violencereport1.pdf.
7. Marketing Violent Entertainment to Children: A Twenty-One Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries: A Report to Congress (June 2002) (hereafter “2002 Report”), *available at* www.ftc.gov/reports/violence/mvecrpt0206.pdf.
8. Marketing Violent Entertainment To Children: A Fourth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (July 2004) (hereafter “2004 Report”), *available at* www.ftc.gov/os/2004/07/040708kidsviolencrpt.pdf.
9. The Commission staff obtained information from the following media companies: Universal Studios, Inc., Sony Pictures Entertainment, Lionsgate Entertainment Corp., Sony BMG Music Entertainment, Universal Music Group, Warner Music Group, Electronic Arts, Inc., THQ, Inc., and Ubisoft Entertainment.
10. *See* www.mpaa.org/Ratings_history1.asp (last visited Sept. 20, 2006).
11. *See* Letter from Gregory P. Goeckner, Senior Vice President and Deputy General Counsel, MPAA, to Richard F. Kelly, Senior Attorney, Federal Trade Commission, at 7 (Aug. 10, 2006) (hereafter “MPAA Letter”) (on file with Commission staff).
12. *See* www.mpaa.org/Ratings_FAQ.asp (last visited Sept. 15, 2006). A recent documentary on the film rating system, however, reports that nearly half of the raters have children no younger than their twenties or thirties. *See* National Public Radio, Fresh Air Segment, *A Look Inside Hollywood's Ratings System*, Interview with Kirby Dick, maker of *This Film Is Not Yet Rated* (Sept. 13, 2006), *available at* www.npr.org/templates/story/story.php?storyId=6068009 (last visited Oct. 12, 2006). The MPAA recently announced that it will formalize its rule that a member of the ratings board cannot stay on the rating board after his or her children are grown. *See* Pamela McClintock, *MPAA, NATO Reform Ratings System*, *Variety*, Jan. 16, 2007, *available at* www.variety.com/article/VR1117957535.html?categoryid=13&cs=1 (last visited Mar. 27, 2007).
13. *See* Interview with Joan Graves, Chairman of the CARA Board, *available at* www.npr.org/templates/story/story.php?storyId=6068012 (last visited Oct. 13, 2006).
14. www.mpaa.org/Ratings_FAQ.asp (last visited Sept. 15, 2006).
15. *See* www.mpaa.org/Ratings_HowRated.asp (last visited Sept. 15, 2006).
16. *See* www.mpaa.org/Ratings_FAQ.asp (last visited Sept. 15, 2006).
17. Other recently announced changes to CARA rules, designed to increase the transparency of the ratings process, include: 1) providing demographic information on all the raters; 2) publishing the names of the CARA Chairperson and Senior Raters; 3) publishing CARA rules on the MPAA and NATO websites; and 4) formalizing a training process for raters. For more information about these changes, see Kendrick Macdowell, NATO Vice President, General Counsel and Director of Government Affairs, *Reviewing the Ratings System: Ratings Reforms Focus on Transparency, Efficiency*, *Boxoffice Magazine*, *available at* www.boxoffice.com/boxoffice_scr/boxoffice_story.asp?terms=2821 (last visited Mar. 28, 2007); Editorial, *Movie Ratings Get a Much-Needed Makeover: The Industry's Aging Ratings System Make [sic] a Promising First Step Toward More Transparency*, *L.A. Times*, Jan. 19, 2007, *available at* www.latimes.com/news/printedition/opinion/la-ed-mpaa19jan19,1,749915.story?coll=la-news-comment&ctrack=1&cset=true (last visited Mar. 27, 2007).

18. According to the MPAA, its latest poll showed that 80% of parents with children under 13 found the ratings to be “very useful” to “fairly useful” in helping them make decisions for the moviegoing of their children. See MPAA Press Release, *Parents Give Rating Board High Marks* (Nov. 1, 2006) (on file with Commission staff).
19. Letter from Common Sense Media to Keith Fentonmiller, Attorney, Division of Advertising Practices, Federal Trade Commission at 3 (Oct. 17, 2006) (criticizing the MPAA system for being fully funded by the major studios and for lacking transparency with regard to the criteria for awarding ratings, including whether any criteria are based on child development principles); *Testimony of David Kinney, CEO, PSV Ratings, Inc. before the U.S. Senate Committee on Commerce, Science & Transportation* (Sept. 28, 2004), available at www.commerce.senate.gov/hearings/testimony.cfm?id=1322&wit_id=3852 (last visited Oct. 26, 2006); Gail Schiller, *Indie Group Forms Ratings Coalition*, *The Hollywood Reporter* (July 1, 2004) (quoting David Kinney), available at www.psvratings.com/news_article2.html (last visited Oct. 26, 2006); www.kids-in-mind.com/help/methodology.htm (arguing that the MPAA system is “not accurate” because the “MPAA itself is not an independent body but is financed and controlled by the film industry, its standards are constantly shifting to accommodate marketing decisions by the film industry, the ratings are negotiable . . . , and the ratings are age-specific, not content-specific and thus essentially approximations”); www.kids-in-mind.com/help/ratings.html (last visited Oct. 26, 2006) (“While the MPAA is doing a good job most of the time, we have found that its close relationship with the filmmaking industry has produced some questionable ratings, especially when it comes to films by powerful directors or producers”); Brad J. Bushman & Joanne Cantor, *Media Ratings for Violence and Sex: Implications for Policymakers and Parents*, 58 *Am. Psychologist* 139 (Feb. 2003) (criticizing the MPAA system, among others, for not involving child development experts or psychologists in determining ratings); NPR Interview with Kirby Dick, *supra* note 12 (advocating greater transparency in the rating system, the use of professional raters, and an additional rating category between R and NC-17).
20. Bushman, *supra* note 19, at 134.
21. The PSVRatings system uses trained auditors to record and quantify all instances of profanity, sex, and violence in a movie. These data are then filtered through a complex set of rating rules developed by an independent board of child experts to assign each content symbol (“P” for profanity, “S” for sex, and “V” for violence), a color that denotes the degree of that content in the movie – ranging from white (no such content) and escalating to green, yellow, and then red (most intense or explicit content). See www.psvratings.com/about_chart.html (last visited Sept. 15, 2006). PSVRatings temporarily suspended operations on May 30, 2006. See Brendan Sinclair, *PSVRatings Shuts Down*, *Game Spot* (Sept. 11, 2006), available at www.gamespot.com/news/6157403.html (last visited Oct. 26, 2006); Jason Dobson, *ESRB Ratings Alternative PSVRatings Shuts Down*, *Gamasutra* (Sept. 11, 2006), available at www.gamasutra.com/php-bin/news_index.php?story=10827 (last visited Oct. 26, 2006). PSVRatings plans to resume operations in the near future.
22. The Parent Previews system uses a staff of reviewers to assign letter grades (e.g., A, B, C, D) based on the level of violence, sexual content, language, and drugs/alcohol content in a movie; it also assigns a more subjective “overall” grade that reflects an opinion on the artistic merits, quality, and theme of the movie. Like PSVRatings, Parent Previews is not an age-based system. See www.movies.go.com/parentpreviews/info?topic=grades (last visited Sept. 15, 2006); movies.go.com/parentpreviews/info?topic=faq (last visited Sept. 15, 2006).
23. According to the Kids In Mind website:

Unlike the MPAA, we do not assign a single, age-specific rating and we do not make recommendations. Instead we assign each film three distinct, category-specific ratings: one for **SEX & NUDITY**, one for **VIOLENCE & GORE** and one for **PROFANITY**. Each rating is on a scale of zero to ten, depending on quantity . . . as well as context

In addition to assigning three ratings, we also explain in detail why a film rates high or low in a specific category, and we include instances of **SUBSTANCE USE**, a list of **DISCUSSION TOPICS** (topics that may elicit questions from kids) and **MESSAGES** (what values the film conveys).

www.kids-in-mind.com/help/methodology.htm (last visited Oct. 26, 2006) (emphases in original).
24. Screen It! is an online service that provides content and plot summaries, scene-by-scene details, and artistic reviews. See www.screenit.com (last visited Sept. 15, 2006). Its ratings consist of a content grid, describing the intensity of content in 15 categories, including alcohol/drugs, blood/gore, disrespectful/bad attitude, frightening/tense scene, guns/weapons, profanity, sex/nudity, smoking, and violence. Its ratings also provide extremely detailed descriptions of all of the scenes and elements that fit into each content category.
25. Using child development criteria, Common Sense Media reviewers classify movies based on age appropriateness and create a “content grid” that lists specific information on content such as sexuality, language, violence, alcohol/drug use,

- “commercialism,” and “social behavior.” See www.common sense media.org/reviews/age-grid.php (last visited Sept. 18, 2006); www.common sense media.org/reviews/our_ratings.php (last visited Sept. 18, 2006).
26. See www.mpa a.org/RatingsParentInfo.asp (last visited Sept. 20, 2006); www.mpa a.org/Ratings_FAQ.asp (last visited Sept. 15, 2006).
 27. See www.pauseparentplay.org/see/index.php#movies (last visited Sept. 19, 2006).
 28. Kimberly M. Thompson & Fumie Yokota, *Violence, Sex, and Profanity in Films: Correlation of Movie Ratings with Content*, *Medscape General Medicine* (July 12, 2004), available at www.medscape.com/viewarticle/480900 (last visited Oct. 26, 2006).
 29. See *supra* notes 21 to 25 and accompanying text for brief descriptions of these alternative rating systems. The MPAA argues that the researchers’ analysis is flawed because Screen It! is a commercial site that requires a subscription fee and makes value judgments on the quality of the films it reviews. See MPAA Letter, *supra* note 11, at 6. MPAA further asserts that, unlike CARA raters, the “critics” employed by Kids-in-Mind fail to consider the content of movies in context, instead simply conducting a “numerical calculation of the elements of a motion picture.” *Id.*
 30. See Thompson, *Violence, Sex, and Profanity*, *supra* note 28. A recent study of the 100 top-grossing films from 1994 found that, on average, R-rated films contain more acts of violence than PG or PG-13 films. See Lucille Jenkins, Theresa Webb, Nick Browne, A.A. Afifi, & Jess Kraus, *An Evaluation of the Motion Picture Association of America’s Treatment of Violence in PG-, PG-13-, and R-Rated Films*, 115 *Pediatrics* 512-17 (May 2005). The study also found, however, a significant variation in the number of violent acts within the PG and PG-13 rating categories; 20% of the PG films studied exceeded the average number of violent acts in the PG-13 films, and the violence in 10% of the PG films exceeded the average amount of violence in the R-rated films. Moreover, at least one quarter of the violent acts depicted in the PG-, PG-13-, and R-rated movies involved the use of deadly force. It is unclear whether the study considered the intensity of the violence depicted in films with different ratings or whether the films with less restrictive ratings tended to depict fantasy or cartoon violence versus realistic violence. Nevertheless, an overlap in the number of violent acts across rating categories could make it more difficult for parents who restrict their children’s access to movies based on violence.
 31. MPAA has not always been consistent on the distinctions between the two ratings. According to the MPAA, “[i]f violence is too rough or persistent, the film goes into the R (restricted) rating,” implying that some level of rough or persistent violence may be present in PG-13 films. See www.mpa a.org/FilmRat_Ratings.asp (last visited Sept. 19, 2006). Yet CARA’s website states that “[r]ough or persistent violence is absent” from a PG-13 movie. See www.filmratings.com (Ratings Guide) (last visited Sept. 20, 2006).
 Moreover, descriptions of violence in some PG-13 films, such as “intense sequences of violent action” (*The Transporter 2*, *The Marine*); “intense sequences of violence” (*The Island*, *End of the Spear*); “violence and terror” (*83 Hours ’til Dawn*); “horror violence and disturbing images” (*Ghost Rider*); and “violence, disturbing images” (*The Fog*), suggest a level of violence similar to, and in some cases greater than, that found in some R-rated movies. Compare *Dragon Head* (“some violence and disturbing images”); *Thunderbolt* (“violence”); *Hell Raiders* (“violence”); *The Contract* (“violence”); *Half Light* (“some images of violence”); *The Lost City* (“violence”); *Premonition* (“some disturbing images”); and *The Psychic* (“some violence”). *Id.*
 32. Ron Leone & Lynn Osborn, *Hollywood’s Triumph and Parents’ Loss: An Examination of the PG-13 Rating*, 2 *Popular Comm.* 85-101 (2004).
 33. MPAA Worldwide Market Research, *U.S. Theatrical Market: 2005 Statistics* at 3, available at www.mpa a.org/researchStatistics.asp (last visited Oct. 26, 2006). In 2005, twelve of the top twenty grossing films were rated PG-13. *Id.* at 12.
 34. Leone, *supra* note 32, at 88-89; *Kinney Testimony*, *supra* note 19. See also www.kids-in-mind.com/help/about.htm (“[T]he rating of choice right now is PG-13. A movie with a PG-13 rating is just easier to market: parents like it better than the more adult R-rating, and kids like it better than the more juvenile PG rating; plus, a PG-13 rating is merely a ‘cautionary’ rating, as opposed to the more restrictive R-rating So, in order to accommodate the marketing demands of studios and theaters, the MPAA has been slowly but surely changing its criteria so that a PG-13 movie today contains far more violence, sexual content and profanity than a few years ago”) (last visited Sept. 15, 2006).
 35. See *Marketing of Violent Motion Picture Products to Children*, Hearing before the Committee on Commerce, Science, Transportation of the U.S. Senate (Sept. 27, 2000) (statement of Jack Valenti, President and CEO, MPAA), available at frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_senate_hearings&docid=f:85586.wais (last visited Oct. 26, 2006). Not every movie studio is an MPAA member. Studios who subscribed to the MPAA’s Twelve-Point

Initiatives are: Walt Disney Company, Dreamworks SKG, Metro-Goldwyn-Mayer, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox Film Corporation, Universal Studios, and Warner Bros. *Id.*

36. 2000 Report, *supra* note 1, at 13-14.
37. See Valenti Testimony, *supra* note 35.
38. For “prime” (broadcast) television ads, the plan stated in part, “None of the 2005-‘06 shows has a V2-17 comp [audience composition] of 35% or more.” For cable, the plan stated, “Will avoid after school sitcoms on all networks.” With regard to USA’s WWE programming, the plan stated “Recommend only purchasing Mon, 9-11p airing per net[work] restriction.” For MTV, the plan restricts television ads to “[p]ost 7p in addition to net[work]’s restriction from TRL [Total Request Live].” The plan recommended against purchasing spots on MTV2. Spot television restrictions include avoiding “after school sitcoms (4-6pm PT/ET or 3-5pm CT/MT) plus select dating/reality shows with high V2-17 comp during these time periods.” The plan noted no restrictions for spot radio advertising, but for print advertising, it said to avoid Teen People, Seventeen, Dirt Rider, Marvel Comics -Jr/Sr net, DC Comics - Youth, Young Nets, MAD, WWE magazines, SI for Kids, Boys Life, Teen Vogue, and Cosmo Girl. The plan asks to “include in buy schedule % comp for V2-17, in order to monitor shows which may be inappropriate for an R rating.”
39. An accompanying chart broke out the teen group by age “19 and under.” Another R-rated movie by the same studio revealed that 14% of the audience was under age 17.
40. Fourteen percent of the movie audience during the opening weekend was under age 17.
41. See *Marketing of Violent Motion Picture Products to Children* (statements of Jim Gianopulos, Chairman, Fox Films; Alan Horn, President and COO, Warner Brothers; and Chris McGurk, Vice Chairman and Chief Operating Officer, MGM), *supra* note 35.

Many studios also pledged not to attach trailers for violent R-rated movies to PG-rated movies. Members of NATO similarly pledged not to show trailers advertising R-rated films in connection with any G- or PG-rated feature film and for some PG-13 rated films. See National Association of Theatre Owners, *Response of the National Association of Theatre Owners (NATO) to the Report and Recommendations of the Federal Trade Commission* (Nov. 2, 2000), available at www.natonline.org/NATO_FTC_Response.pdf (last visited Oct. 27, 2006). Specifically, with respect to trailers for R-rated films shown in connection with PG-13-rated features, NATO members pledged to “examine the trailers to ensure that their tone and content are consistent with the feature film.” *Id.* Recent examples of trailers for R-rated movies deemed inappropriate to run before PG-13 movies include the horror movies *Hostel* and *Saw II*. See *Revised Response by the National Association of Theatre Owners (NATO) to the Federal Trade Commission Regarding the Commission’s 2006 Study of the Marketing of Violent Entertainment to Children* at 9 (Oct. 6, 2006) (hereafter “NATO Letter”). NATO reported that one theater chain deemed trailers for films like *Boogeyman*, *Devil’s Rejects*, *40 Year Old Virgin*, *Brokeback Mountain*, and *Texas Chainsaw Massacre* would not be appropriate for blockbuster PG-13 films that tend to attract large family audiences, such as *Superman*, *Spider-Man 2*, or *Pirates of the Caribbean 2: Dead Man’s Chest*.

Recently, NATO reported that different individual theater companies have gone further by either adopting a policy of playing no trailers for any given rating before feature films with a lower rating; never playing trailers for R-rated movies before PG-13-rated films; or considering some trailers for PG-13 films inappropriate for certain audiences of G films. See NATO Letter, *supra*, at 9.

In May 2006, MPAA revised its advertising guidelines on trailer placement for R and NC-17 movies to be consistent with NATO’s policy. MPAA Advertising Handbook at 22-30 (2006) (on file with Commission staff). Movie producers or distributors cannot request that trailers for R or NC-17 movies run before movies rated G and PG. *Id.* at 30. Additionally, the Advertising Administration may limit the placement of trailers for R and NC-17 movies before PG-13 movies. *Id.* The same theatrical trailer restrictions apply to the home video and DVD formats. *Id.* at 41.

42. *Id.* at 31.
43. All advertising for films rated by CARA must be submitted to the MPAA Advertising Administration prior to being released to the public. The Advertising Administration reviews these materials to determine their suitability for general audiences, and to make sure that the advertising is placed appropriately. See www.mpaa.org/FilmRat_Advertising.asp (last visited Oct. 20, 2006).
44. See MPAA Letter, *supra* note 11, at 9.
45. *Id.* at 9-10.

46. Telephone Conference with Gregory P. Goeckner, Senior Vice President, Acting General Counsel, MPAA, and Marilyn Gordon, MPAA Advertising Administration (Oct. 16, 2006).
47. December 2001 Report, *supra* note 6, at 5.
48. According to its website, the Parents Television Council (“PTC”) is “a nonpartisan organization that works with elected and appointed government officials to enforce broadcast decency standards The PTC has more than 100,000 hours of entertainment programming in its custom-designed Entertainment Tracking System (ETS),” a database the PTC uses to produce “research and publications focusing on a variety of topics relating to the content of prime time television – including in-depth analyses of the ‘family hour’ and the television ratings system.” www.parentstv.org/PTC/aboutus/main.asp (last visited Oct. 23, 2006).
49. Ads for R-rated movies also appeared on two reality series – UPN’s *America’s Top Model* and the syndicated *Fear Factor* – that are widely watched by young teens. These placements included ads for *Saw II* (DVD), *Miami Vice*, *The Omen*, *Final Destination 3*, *V for Vendetta*, *Doom* (DVD), and *Inside Man*. In addition, ads for R-rated movies appeared on several other syndicated shows popular with teens – *Bernie Mac*, *Girlfriends*, and *That ’70s Show* – including *Freedomland*, *Final Destination 3*, *Underworld Evolution*, *Hostel* (DVD), *Slither*, *The Omen*, *Waist Deep*, and *Miami Vice*. Children 2 to 17 make up between 20% and 25% of the audience for each of these shows.
50. CARU’s self-regulatory guidelines provide that products that are inappropriate for children under the age of 12 should not be advertised or promoted directly to such children. CARU believes that by placing ads for PG-13 movies during children’s programming, the advertising is sending an implicit message that “these films are suitable for all children.” CARU Press Release, *CARU Reviews Advertising for “Click”* (Oct. 2006), available at www.caru.org/news/index.asp (last visited Oct. 26, 2006).
51. Advertisements for two R-rated DVDs from New Line Home Entertainment, *Running Scared* and *Final Destination 3*, appeared in *Electronic Gaming Monthly*.
52. *U.S. Theatrical Market*, *supra* note 33, at 16 (reporting that from 2001 to 2005, television advertising expenditures decreased from a high of 42.3% of total expenditures to 36%; over the same period, expenditures for online advertising increased from 1.3% to 2.6%). Still, Internet advertising on third-party websites remains a relatively small component of advertising expenditures.
53. The movies examined for paid Internet ad placements were: *The Descent*, *Inside Man*, *Miami Vice*, *The Black Dahlia*, *Slither*, *Crank*, *Basic Instinct 2*, *The Omen*, *Haven*, *Silent Hill*, *Snakes on a Plane*, *Idlewild*, *Hostel*, *See No Evil*, *A Scanner Darkly*, *The Quiet*, *The Protector*, *Waist Deep*, *The Texas Chainsaw Massacre: The Beginning*, and *District B13*. The movies were selected based on the following criteria: released or scheduled for release in 2006 (starting with the most recent release); rated R, with at least one rating reason involving violence; and promoted through paid Internet advertising, according to the Nielsen//NetRatings AdRelevance database.
54. See Appendix E, § III., Table 5.
55. See, e.g., Kaiser Family Foundation, *It’s Child’s Play: Advergaming and the Online Marketing of Food to Children* at 15-16 (July 2006) (reporting on many food companies’ use of viral marketing tools, such as the ability to send friends e-cards, links to the site, or games on the sites), available at www.kff.org/entmedia/7536.cfm (last visited Oct. 27, 2006).
56. Internet web browsers often contain tools for restricting children’s access to particular types of content. Internet service providers also may allow parents to control access to content based on the child’s age and to implement controls for chat, instant messaging, e-mail, newsgroups, and file downloads, including file-sharing. Parents even may install filtering software on their computers to block access to particular websites or control the download of programs, music files, and movies. These tools are imperfect, however, and may not restrict all objectionable content or may unduly restrict permissible content.
57. The Nielsen//NetRatings AdRelevance database did not indicate that Universal Picture’s *Miami Vice* was advertised on MySpace during 2006. Universal Pictures, however, informed the Commission that it purchased a “User Homepage Roadblock” on MySpace. See Letter from Carolyn A. Hampton, Vice President, Legal Affairs, Universal Pictures Business & Legal Affairs, to Keith R. Fentonmiller, Attorney, Federal Trade Commission, at 2 (Sept. 18, 2006) (on file with Commission staff) (stating that a User Homepage Roadblock was purchased for *Miami Vice* targeting MySpace users in the 18 to 49 age group). As described in a marketing document from another studio, the result of a roadblock is that any person who goes onto MySpace must log in on the homepage, where there will be large ads for the movie directly above and to the left of the sign-in area.
58. See Appendix E, § III., Table 6. A recent Los Angeles Times/Bloomberg poll reported that 43% of 12- to 17-year-olds go on MySpace or other social networks, including 38% of children between the ages of 12 and 14. See Los Angeles

Times/Bloomberg, *Computers, Cell Phones and Multitasking: A Look Inside the Entertainment Life of 12-24 Year Olds at 25* (Summer 2006), available at www.latimes.com/media/acrobat/2006-08/24767411.pdf (last visited Oct. 27, 2006).

59. See Appendix E, § III., Tables 6 & 7.
60. The Commission examined official websites promoting the following twenty motion pictures in September 2006: *10th and Wolf*, *A Scanner Darkly*, *Children of Men*, *Crank*, *District B13*, *Feast*, *Haven*, *Idlewild*, *Miami Vice*, *Saw III*, *Snakes on a Plane*, *The Black Dahlia*, *The Departed*, *The Descent*, *The Fountain*, *The Omen*, *The Protector*, *The Quiet*, *The Texas Chainsaw Massacre: The Beginning*, and *Waist Deep*. The movies were selected based on the following criteria: (a) released or scheduled for release between June 1, 2006 and December 31, 2006; rated R, with at least one rating reason involving violence; and an active website or webpage promoting the movie. This list of official movie websites differs from the list of twenty R-rated movies the Commission examined for paid Internet advertising placements. See *supra* note 53 for a list of these movies. The Commission’s examination of the official movie websites is discussed in greater detail in Appendix D, § I.A.
61. These movies were *Idlewild* (through the Outkast profile page), *A Scanner Darkly*, *Crank*, *District B13*, *Haven*, *Snakes on a Plane*, *The Departed*, *The Omen*, and *Texas Chainsaw Massacre: The Beginning*. Universal Pictures also reported that it created a MySpace profile page for the movie *Slither*. See Universal Pictures Letter, *supra* note 57, at 2 (stating that a MySpace profile page was created for *Slither*).
62. Two other movies (*The Quiet* and *The Black Dahlia*) had MySpace profile pages, but they did not appear to have been created by the studio.
63. A buddy icon is another term for an avatar, which is an icon or image that represents the user.
64. A plan from one studio proposed to “target Myspace users that have similar films and related actors listed in their profile.”
65. See Appendix D, § I.A., Table 1.
66. See, e.g., 2004 Report, *supra* note 8, at 6-8, 10; 2002 Report, *supra* note 7, at 4-6, 9-10; December 2001 Report, *supra* note 6, at 9-12.
67. MPAA Advertising Handbook, *supra* note 41, at 16, 18, 31-32, 34. Films rated G are not assigned rating reasons. See www.mpa.org/Ratings_FAQ.asp (last visited Sept. 15, 2006).
68. See www.mpa.org/FlmRat_RedCarpet.asp (last visited Sept. 21, 2006).
69. See MPAA Letter, *supra* note 11, at 10.
70. See NATO Letter, *supra* note 41, at 11.
71. See Appendix E, § I. & Table 1.
72. The Commission reviewed newspapers and magazine advertisements between September 2005 and December 2005 for movies rated PG-13 and R for violence to determine whether the ratings and reasons were disclosed and whether the disclosure was made in a clear and conspicuous manner. Consistent with prior Commission reports, nearly all of the ads contained both the ratings and reasons, and in most cases, the rating reasons were clearly and conspicuously displayed. The reasons in some ads were notably clear, such as those for Lions Gates’ *Saw II* and New Line Cinemas’ *A History of Violence*. In several ads, the rating reasons were smaller and sometimes difficult to read due to gray-on-black or gray-on-white text. In some other ads, the rating or reasons were entirely unreadable, including some ads for Focus Features, Aloha Films, Universal, Sony Picture Classics, Warner Brothers, Dimension Films, and 20th Century Fox.
73. The four websites were those of Twentieth Century Fox, Sony Pictures, Universal Pictures, and Warner Brothers. The website for Sony Pictures indicated only the movies’ ratings, not their rating reasons. The Commission located no unrated movies for sale on Universal Pictures’ website.
74. The Commission examined the practices of five online retailers in September 2006 – Amazon.com, BestBuy.com, CircuitCity.com, SamGoody.com, and TowerRecords.com – with respect to five violent unrated movies that also have an MPAA R-rated version: *Alexander*, *Bloodrayne*, *Crash*, *Basic Instinct* (re-release), and *The Yards*. See Appendix D, § I.C, Tables 4 & 5 for more detailed results of the survey.
75. TowerRecords.com had four of the unrated movies at its site. Of those four movies, the site indicated that two of them were unrated.
76. Amazon.com advised the visitor that the movie was unrated, a Director’s Cut, and/or an Unrated Director’s Cut, even when the user put the item in their online shopping cart to purchase. Amazon.com also let the user enlarge the DVD

icon picture next to the product description, so the user could see that the movie was unrated or a Director's Cut. However, the site did not give more detailed information when a user clicked on the unrated icon, such as by providing a link to mpaa.org or a pop-up window explaining the rating system. Additionally, there were no descriptions related to movie content.

When searching BestBuy.com for the movie *Bloodrayne*, the search results included both the "NR" and "R" versions of the movie. However, when clicking on the NR version, the site brought the user to a page that listed the movie as R, even though the DVD image next to the product information said "Unrated Director's Cut." The product description also contained "Ratings Flags" for "Sexual Situations, Nudity, Gore." When clicking on any of those words, the user was linked to a pop-up window that contained information on MPAA ratings. However, the site did not make clear why it was linking the user to that page. If one decided to purchase the DVD, the product description in the user's cart did not state that the DVD was Unrated, or give any other indication of rating. Similar results were also found for *Alexander*, *Basic Instinct*, *Crash*, and *The Yards*.

CircuitCity.com indicated that the viewed item was unrated and a "Director's Cut" or "Unrated Director's Cut." There were flags in the product description that told the person more about the movie content, such as "Not For Children" or "Gore." However, if one decided to purchase the DVD, the product description in the user's cart did not state that the DVD was Unrated, or give any other indication of rating.

When the user searched SamGoody.com homepage for the movie *Bloodrayne*, the user was brought to a page displaying the movie's unrated version; the page displayed the letters "NR" to indicate the DVDs unrated status. If, however, the user was already in the movies subsection of the site and then searched by movie title, the user would be brought to the unrated version of the movie but the page indicated that the movie was rated R. When searching for *Alexander* under either method, the site brought up the Director's Cut but indicated an R rating. As with BestBuy.com, if one decided to purchase the DVD, the product description in the user's cart did not state that the DVD was unrated or give any other indication of rating.

At TowerRecords.com, the DVD titles for *Alexander*, *Bloodrayne*, and *Crash* indicated that they were unrated versions. Although the page for *Basic Instinct* did not notify the visitor that the movie was unrated, it did note, "This product is intended for adults and may only be purchased by persons 18 years of age or older." When purchasing *Basic Instinct*, the site also requested confirmation that the user was at least 18 years old. During the purchase process, the site provided unrated or Director's Cut descriptors for all of the movies.

77. 2000 Report, *supra* note 1, at 20; December 2001 Report, *supra* note 6, at 13.

78. Specifically, the MPAA member studios pledged to "strongly encourage theater owners and video retailers to improve compliance with the rating system." Motion Picture Association of America, *A Response to the FTC Report* (Sept. 26, 2000). NATO members promised to take steps to reaffirm NATO's existing ID-check policy for R-rated films, which was announced in 1999. See National Association of Theatre Owners, *Response of the National Association of Theatre Owners to the Report and Recommendations of the Federal Trade Commission* (Nov. 2, 2000) (on file with the Commission); comments of John Fithian, President, National Association of Theatre Owners, at Marketing Violent Entertainment to Children: A Workshop on Industry Self-Regulation (Oct. 29, 2003), transcript at 176-77, available at www.ftc.gov/bcp/workshops/violence/index.html.

The Video Software Dealers Association ("VSDA") had an existing "Pledge to Parents" program, through which participating retailers committed, among other things, not to rent or sell R-rated movies to children under 17 without parental consent. See Statement of the VSDA, Senate Comm. on Commerce, Science and Transp. (Mar. 21, 2000) (on file with Commission staff). Finally, some studios sent letters to individual theater owners and video retailers urging them to improve compliance with the rating system by not selling tickets or granting admission to R-rated movies, or selling or renting R-rated videos or DVDs, to any persons under 17 not accompanied by a parent or adult guardian.

79. See Appendix B for a discussion of the survey methodology and results.

80. In addition, theaters checked the ages of the teen shoppers more often in this latest survey, rising to 56% from 48% in the 2003 survey.

81. In all, the Commission sought information from eight retailers: Best Buy Co., Inc., Target Corporation, Wal-Mart Stores, Inc., Circuit City Stores, Inc., Barnes & Noble, GameStop Corp., Trans World Entertainment Corp., and Tower Video and Records. The Commission requested information about the companies' policies affecting the sale or rental of restricted products.

82. Letter from Crossan R. Andersen, President, Entertainment Merchants Association, to Richard F. Kelly, Senior Attorney, Federal Trade Commission, at 6 (Sept. 15, 2006) ("EMA Letter").

83. *Id.*
84. See NATO Letter, *supra* note 41, at 12.
85. *Id.* The Commission found examples of DVD movie packaging where studios exploit the lack of an MPAA rating to promote the movie. For example, the DVD cover art for *The Texas Chainsaw Massacre: The Beginning* states in large type, “UNRATED: TOO SHOCKING FOR THEATERS.” The cover art for *The Hills Have Eyes* shows the image of a terrified woman whose face is pinned down by a partially gloved hand. Superimposed over this image is the word “UNRATED” printed in a red scrawl that simulates dripping blood; the cover also states, “THE VERSION TO DIE FOR.” The cover art for *Hostel* depicts a large label stating, “SICK AND TWISTED: UNRATED.” The implicit message of this packaging is that the unrated DVD version contains content that the MPAA would have rated more restrictively than the rating for the movie’s theatrical version. See also Rod Gustafson, Parents Television Council, *Unrated Movies Further Erode MPAA System* (Feb. 16, 2006) (noting that unrated movie DVDs contain content that likely was cut to obtain a less restrictive rating for the theatrical release), available at www.parentstv.org/ptc/publications/rgcolumns/2006/0213.asp (last visited Mar. 27, 2007).
86. See EMA Letter, *supra* note 82, at 7.
87. *Id.*
88. *Id.* Redbox reports that its machines are located at more than 1,400 locations nationwide. See Redbox Press Release, *Redbox Launches Online Movie Rentals* (Sept. 19, 2006). According to the EMA, Redbox expects to grow to 2,000 locations by the end of 2006. EMA Letter, *supra* note 82, at 7. TNR reports that its machines are located in 600 locations, and that it plans on adding another 1,300 locations by early 2007. See TNR Press Release, *TNR Entertainment Completes \$45 Million Funding for Nationwide Expansion of DVD Rental Kiosks in Supermarkets* (Sept. 6, 2006).
89. See, e.g., Redbox Press Release, *Redbox Announces Agreement to Install DVD Rental Kiosks in Stop & Shop and Giant Food Stores Throughout the Northeast* (Jan. 25, 2006) (indicating that its machines can hold up to 500 DVDs representing fifty to sixty of the newest movie releases); TNR Entertainment Corp. Press Release, *TNR Entertainment Announces Agreement to Install DVD Rental Kiosks in A&P Stores Throughout the Northeast* (May 1, 2006) (indicating that its machines can hold up to 1,000 DVDs and up to 200 titles).
90. See Redbox Press Release, *Redbox Launches Online Movie Rentals* (Sept. 19, 2006).
91. See www.redbox.com/Rent/Billing.aspx (last visited Sept. 25, 2006).
92. The terms of use for the Redbox service state that the user is acknowledging that he or she is at least 18 years old and using a credit or debit card issued in his or her name. See Redbox Terms of Use, available at www.redbox.com/Rent/Billing.aspx (last visited Sept. 25, 2006). Individuals under the age of 18 may use Redbox kiosks, “but only with the permission and involvement of a parent or legal guardian.” *Id.*
93. The RIAA is a trade association that represents the creators, manufacturers, and distributors of over 90% of the sound recordings produced and sold in the United States. See *RIAA About Us-Who We Are*, www.riaa.com/about/default.asp (last visited Oct. 6, 2006). The RIAA first announced its labeling system on behalf of many of its larger members in 1985. See Parents’ Music Resource Center, *PMRC, PTA and RIAA Agree on Recorded Lyrics Identification* (Nov. 1, 1985). The two parents’ groups that pushed the industry to provide information about recordings with explicit lyrics were the Parents’ Music Resource Center (“PMRC”) and the National Parent Teacher Association (“NPTA”). The PMRC was founded in 1985 to promote a consumer labeling plan for music recordings that contain explicit sexual or violent references. See William Raspberry, *Filth on the Air*, Wash. Post, June 19, 1985, at A21.
94. RIAA, *Guidelines and Requirements Regarding Use of a Logo on Physical Products* (effective Oct. 2006) (hereafter “RIAA Logo Guidelines”), available at www.riaa.com/issues/parents/advisory.asp#notice (last visited Mar. 27, 2007). The RIAA and the National Association of Recording Merchandisers (“NARM”), a trade association for the music retailing community, have taken steps to educate the public about this labeling program, highlighting the program on their websites and joining with other groups to promote the existence of the program in ad campaigns directed at parents. See www.parentalguide.org (a joint program with the movie, television, and video game industries to promote understanding of each of their rating and labeling self-regulatory programs). Recently, the RIAA created Spanish-language materials to expand the reach of its educational efforts of parents and music consumers. In addition, the RIAA has worked with the Healthy Media, Healthy Kids Coalition to provide parents with added resources to help them decide what their children watch, hear, and play. See the Coalition’s website at www.PauseParentPlay.org.

95. RIAA Logo Guidelines, *supra* note 94. If a company or an artist determines that a recording contains explicit content, the RIAA guidelines require that the company place the label on the packaging of all CDs, DVDs, Dual Discs, Enhanced CDs and such other current or future physical media in which a sound recording may be embodied. *Id.*
96. *Id.* This change – the previous guidelines required a uniform size – was made, according to the RIAA, to give companies more flexibility in affixing the label to the different types of products that are now or will in the future be available for sale.
97. *Uniform Guidelines for Determining Whether a Sound Recording Should Use a PAL Notice* (effective Oct. 2006) (hereafter “RIAA Use of PAL Guidelines”), available at www.riaa.com/issues/parents/advisory.asp#notice (last visited Mar. 27, 2007).
98. *See* 2000 Report, *supra* note 1, at 23-24.
99. *Id.* at 24. As one recording company explained:
- In determining whether to sticker a particular album . . . record labels initially examine and evaluate the use of expletives in the album. Once it is determined that the use of expletives in a song on an album warrants a sticker, the inquiry ends and the record labels do not further proceed with the inquiry with respect to the remainder of the album.
- This company also pointed out that “since the decision to sticker is made on a case-by-case basis and the basis for each decision to sticker is not memorialized, it is possible that in some cases particular individuals might exercise their editorial judgments to sticker a recording for reasons other than use of expletives.” *Id.* at 77 n.131.
100. *See, e.g.*, 2002 Report, *supra* note 7, at 31.
101. Edited versions are “modified versions of the PAL content original” that do not include all of the same content contained in the original, and no longer merit a PAL notice. Nonetheless, the RIAA points out that the edited version may still contain “potentially objectionable content.” For example, “some such content might be retained in order not to compromise artistic expression.” Edited versions of a PAL recording are required to include a label stating “Edited Version,” that should be displayed in a “legible manner” on the cover artwork, or on the top spine of the cover. RIAA Logo Guidelines, *supra* note 94.
102. In response to a request from Commission staff for information on the sales of edited versions of PAL recordings, the RIAA provided the results of an internal review of album shipments for the forty-two PAL recordings listed on the 2005 year-end Billboard chart that have an edited version. Nearly 42 million PAL labeled albums were shipped, along with nearly 7.7 million edited versions of such albums. *See* September 15, 2006 letter from Mitch Bainwol, RIAA to Richard Kelly, Staff Attorney, Federal Trade Commission (on file with Commission staff).
103. *See* 2004 Report, *supra* note 8, at 29; June 2002 Report, *supra* note 7, at 18; December 2001 Report, *supra* note 6, at 35-36.
104. *See* RIAA Use of PAL Guidelines, *supra* note 97.
105. In response to the Commission’s “continued criticism of the recording industry for advertising to teens,” the RIAA has noted that most recordings are available in an “edited version” and that recording companies advertise these edited versions “as well as and along with” the versions carrying the parental advisory label. Letter from Hilary Rosen, President and CEO, Recording Industry Association of America, to the Honorable Timothy J. Muris, Chairman, Federal Trade Commission (Apr. 26, 2002) (on file with Commission staff).
- The RIAA guidelines note that “[i]f an edited version is also available for sale, consumer advertising may also contain language indicating such a version of the recording is available.” *See RIAA Guidelines and Requirements Regarding PAL Notices in Consumer Advertisements* (effective Oct. 2006) (“RIAA PAL Advertising Guidelines”), available at www.riaa.com/issues/parents/advisory.asp#notice (last visited Mar. 27, 2007).
106. For a brief time in 2000, the RIAA had adopted a standard that would have prohibited advertising for explicit-content labeled recording in publications, websites, or other commercial outlets whose primary (i.e., 50% or more) market demographic was 16 years of age or younger. The RIAA withdrew that standard, saying it feared that the formal adoption of such a provision would only increase the likelihood that its members would be the subject of law enforcement actions and thus discourage participation in the parental advisory program. *See* April 2001 Report, *supra* note 5, at 13.
107. Two ads were placed by UMG and one by an independent label. All three ads contained a clear and conspicuous parental advisory label.

108. These albums were: *Idlewild* by Outkast, *Curtain Call* by Eminem, *Hypnotize* by System of a Down, *The Dutchess* by Fergie, *We Don't Need to Whisper* by Angels & Airwaves, *Teenage Graffiti* by the Pink Spiders, *Good Appollo, I'm Burning Star IV, Volume One: From Fear through the Eyes of Madness* by Coheed and Cambria, *The Charm* by Bubba Sparxxx, *4:21* by Method Man, *On Top of Our Game* by Dem Franchize Boyz, *Fishscale* by Ghostface Killah, *The Sufferer and the Witness* by Rise Against, *In My Mind* by Pharell, *Second Round's on Me* by Obie Trice, *The Big Bang* by Busta Rhymes, *Sacrament* by Lamb of God, *Come What(ever) May* by Stone Sour, *Port of Miami* by Rick Ross, and *She Wants Revenge* by She Wants Revenge. These albums were selected based on the following criteria: albums bearing a Parental Advisory Label and promoted through paid Internet advertising in 2006, according to the Nielsen//NetRatings AdRelevance database.
109. See Appendix E, § 3, Table 5.
110. See § II.B.3.b, *supra*.
111. A marketing document boasted that the artist's MySpace page had 22,000 friends and over 330,000 songs streamed. A marketing document for another artist indicated that the band's MySpace page had over 75,000 friends and a particular video had over 1.2 million streams.
112. Appendix D, § II.A discusses the results of the Commission's examination of twenty official music album websites regarding their practice of disclosing the Parental Advisory Label and, if applicable, restricting access to particular content based on age.
113. The Commission is aware of at least one album that was separately promoted virally by disseminating a hyperlink to a video on YouTube. One company reported that it created a dedicated website containing audioclips from the album, "buddy icons," and an email signup. A marketing document for that album mentioned distributing a YouTube link to the premiere of a video for a song from the album. The document went on to say that "[c]ollege reps are ... using the YouTube link to spread on virally. In reference to grassroots marketing, another document said, "[I]mmediate 'awareness' campaign started virally with seeding online communities with the ... non-censored [video] through YouTube."
114. See Appendix D, § III, Table 9.
115. These street marketers were also encouraged to distribute posters, stickers, and postcards, and to throw parties on college campuses hyping the band and the album's release.
116. The drafter of this plan, however, appeared to be especially concerned about targeting children, stating, "We will need to verify 18 years old+; we can NOT explicitly state the age requirement, otherwise we are inviting fans to simply enter an appropriate birth year."
117. The guidelines note that this may be achieved by using the PAL logo in the ad, or by including the words "Explicit Content - Parental Advisory," "Explicit Content," "Explicit," or "Parental Advisory" in legible form and in close proximity to the title or artwork for the recording. To communicate the availability of an Edited Version of the recording, the words "Edited Version Also Available" may be included. *RIAA PAL Advertising Guidelines, supra* note 105. The revised RIAA guidelines, released in October 2006, extend the PAL labeling requirements to recordings distributed through a digital distribution platform. *Id.* This requirement applies to both albums and individual recordings on an album. *RIAA Use of PAL Guidelines, supra* note 97.
118. A spot-check of explicit-content labeled recordings showed that the enhanced label is being placed on certain Sony BMG recordings. In addition, the Commission found that the additional descriptive information for certain recordings was also displayed by some online retailers as part of the cover art.
119. For this Report, the Commission reviewed magazine issues between September 2005 and August 2006.
120. The websites reviewed were: www.beenieman.net, www.buckcherry.com, www.bustarhymes.com, www.dmx-official.com, www.e-40.com, www.icecube.com, www.kelisonline.com, www.lamb-of-god.com/sacrament, www.method-man.com, www.obietrice.com, www.pharrellwilliams.com, www.defjam.com/site/artist_home.php?artist_id=607, www.shallowbay.com, www.slayer.net, www.stonesour.com, www.trapmuzik.com, www.theroots.com, www.tooshortworld.com, www.young-dro.com, and www.yungjoc.com. These websites were selected based on the following criteria: the artist had an album ranked on the Billboard 200 list for the week ending September 16, 2006; the album was released in 2006 and bore a Parental Advisory Label; and the artist's or record label's website was actively promoting the album.
121. See 2004 Report, *supra* note 8, at 15.
122. For the 2004 Report, the PAL logo or other advisory language about the explicit content of the recording was visible sometime during the search or purchase process for about 67% (ten of fifteen) of the websites. *Id.*

123. The Commission reviewed five music retailer sites: Amazon.com, BestBuy.com, CircuitCity.com, Samgoody.com, and TowerRecords.com. The recordings examined at these retailers' websites were *Future Sex/Love Sounds* by Justin Timberlake, *Game Theory* by The Roots, *Extreme Behavior* by Hinder, *Dutchess* by Fergie, and *Phobia* by Breaking Benjamin. These albums were the top five selling albums with a Parental Advisory Label on Amazon.com as of September 14, 2006. Language used by the websites to describe the albums' content included: "Explicit Lyrics," "Parental Advisory," and "Explicit Content." BestBuy.com, SamGoody.com, and TowerRecords.com consistently provided advisory language throughout the purchase process. Many of the websites also provided non-explicit, *i.e.*, "edited" or "clean" versions of the albums sold.
124. At Amazon.com one could click on the album image to enlarge the picture and make the PAL logo readable.
125. BestBuy's website noted whether an album had a PAL or not on the album's product information page. If it did, it would say "Yes" next to the words "Parental Advisory." If the user clicked on the words, it would direct the user to a pop-up box with more information regarding the PAL system.
126. The Commission reviewed these online music downloading websites for their disclosure practices regarding five tracks from albums bearing a PAL. The music tracks examined at these online music download websites were *SexyBack* by Justin Timberlake, *London Bridge* by Fergie, *Lips Of An Angel* by Hinder, *Pullin' Me Back* by Chingy Featuring Tyrese, and *Money Maker* by Ludacris Featuring Pharrell.
127. See Appendix B.
128. See ESRB, *Game Ratings and Descriptor Guide*, www.esrb.org/ratings/ratings_guide.jsp (last visited Mar. 28, 2007).
129. See Entertainment Software Association ("ESA"), *Essential Facts about the Computer and Video Game Industry*, at 4 (2006) (citing The NPD Group), available at www.theesa.com/archives/files/Essential%20Facts%202006.pdf (last visited Nov. 16, 2006). Another source reports that M-rated video game sales have accounted for as much as one-third of all video game sales in a given year. See www.iccr.org/issues/violence/featured.php (last visited Nov. 16, 2006). See also Micahel Felberbaum, *Parents Search for Family-Friendly Games*, USA Today (Jan. 11, 2005) ("Data analyzed by GamerMetrics and IGN.com show that 46% of all games sold in 2004 were rated 'E,' while 'T' and 'M' sales accounted for 54% of overall sales."), available at www.usatoday.com/tech/products/games/2005-01-11-family-gaming_x.htm (last visited Oct. 26, 2006).
130. *Principles and Guidelines for Responsible Advertising Practices & Advertising Code of Conduct for the Entertainment Software Industry* ("Ad Code") (as amended April 1, 2006) at 11, 32 (on file with Commission staff).
131. See ESRB Press Release, *New Video Game Rating Category, "E10+," Added to ESRB Rating System* (Mar. 2, 2005), available at www.esrb.org/about/news/E10Release_3_2_05.pdf (last visited Oct. 2, 2006).
132. Game raters are recruited from the New York City area. They are all adults, at least 18, and are not necessarily gamers. Typically, they may have some experience with children and have no ties to the entertainment software industry. They are specially trained by the ESRB and work on a part-time basis, attending no more than one two- to three-hour rating session per week. See Testimony of Patricia Vance, President, ESRB before the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights at 3 (Mar. 29, 2006).
133. See ESRB, *Ratings Process*, www.esrb.org/ratings/ratings_process.jsp (last visited Oct. 26, 2006).
134. For advertisements that are placed before the ESRB has assigned a rating, the Ad Code requires companies to use their best efforts to place ads in media with "an audience that is appropriate for the content within the title. Such efforts should be based on the company's good faith effort and reasonable expectations regarding the anticipated rating." See Ad Code, *supra* note 130, at 35.
135. This was a major concern for some industry critics in connection with the pre-sale of the game *Bully*, although ultimately ESRB rated this game T, instead of the M rating that some critics had expected.
136. The rating icon must be on the package front; the content descriptors are placed on the back of packaging next to the rating icon. Ad Code, *supra* note 130, at 11-12.
137. *Id.* The ESRB has informed Commission staff that it does not play through every game following its release. Instead, it plays the final version of a small percentage of games, randomly selected, as well as a number of hand-selected titles. Each review takes about four hours. Telephone Conversation between ESRB President Patricia E. Vance and Commission staff (Oct. 13, 2006). The ESRB has advised Commission staff that it will be changing its post-release testing regimen and will start reviewing a greater number of games in the near future.
138. Proposed Congressional legislation introduced in the 109th Congress would have required the ESRB to review all of the content of a game before issuing a rating. These bills, among other things, would have required the FTC either to enact

- rules or to enforce provisions that would require the ESRB to review all the content of a game before issuing a rating. In addition, provisions in one or more of these bills would penalize companies who fail to provide the ESRB with all of the content of their games. The Commission has not expressed views on the merits or constitutionality of these bills. See Truth in Video Game Rating Act, H.R. 5912, 109th Cong. (2006), available at frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5912ih.txt.pdf (last visited Oct. 27, 2006); Truth in Video Game Rating Act, S. 3935 109th Cong. (2006), available at frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3935is.txt.pdf (last visited Oct. 27, 2006); Video Game Decency Act of 1006, H.R. 6120, 109th Cong. (2006), available at frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h6120ih.txt.pdf (last visited Oct. 27, 2006).
139. The ESRB took this step in response to the *Hot Coffee* controversy, where sexually explicit scenes that the game developer had removed from normal game play subsequently became accessible when a third party hacked into the game software, created a program called “Hot Coffee” that would render this content playable if downloaded by players of the game’s PC version, and then disseminated this program on the Internet. See ESRB Press Release, *ESRB Concludes Investigation into Grand Theft Auto: San Andreas, Revokes Mature (M) Rating* (July 20, 2005), available at www.esrb.org/about/news/7202005.jsp (last visited Mar. 27, 2007). For details of the Commission’s investigation and subsequent action in response to the game developer’s and publisher’s allegedly deceptive marketing of this game, see *Makers of Grand Theft Auto: San Andreas Settle FTC Charges* (June 8, 2006), available at www.ftc.gov/opa/2006/06/grandtheftauto.htm.
 140. Kimberly M. Thompson, Karen Tepichin & Kevin Haninger, *Content and Ratings of Mature-Rated Video Games*, 160 Archives of Pediatrics & Adolescent Med. 402-10 (Apr. 2006) (hereafter “*Mature-Rated Video Games*”); Kevin Haninger & Kimberly M. Thompson, *Content and Ratings of Teen-Rated Video Games*, 291 J. Am. Med. Ass’n 856-65 (2004) (hereafter “*Teen-Rated Video Games*”); and Kimberly M. Thompson & Kevin Haninger, *Violence in E-rated Video Games*, 286 J. Am. Med. Ass’n 591-98 (2001) (hereafter “*E-Rated Video Games*”).
 141. For purposes of the study, violence was defined “as acts in which the aggressor causes or attempts to cause physical injury or death to another character.” *Id.* at 593.
 142. See ESRB Press Release, *Statement by ESRB President Patricia E. Vance in Response to the Release of a Harvard School of Public Health Study* (Apr. 3, 2006) at www.esrb.org/about/news/downloads/Response_to_Harvard_M_games_4.3.06.pdf (last visited Oct. 26, 2006).
 143. *Id.*
 144. See *Game Ratings & Descriptors Guide*, www.esrb.org/ratings/ratings_guide.jsp (last visited Oct. 26, 2006).
 145. See Letter from Patricia Vance, President, ESRB, to Richard F. Kelly, Staff Attorney, Federal Trade Commission (Aug. 28, 2006) (“Vance Letter”) at 7 (on file with the Commission).
 146. Written Testimony of Patricia Vance, President, ESRB, Hearing before the U.S. House of Representatives Subcommittee on Commerce, Trade and Consumer Protection at 4 (July 14, 2006), available at www.esrb.org/about/news/downloads/pvtestimony_6_14_06.pdf (last visited Mar. 27, 2007).
 147. See Chris Fusco, *Boy, 15, Has No Trouble Buying Violent, M-Rated Video Games*, Chicago Sun-Times (Jan. 3, 2005), available at www.safegamesillinois.org/media/releases/Chicago%20Sun%20Times%201_3_05.pdf (last visited Mar. 28, 2007).
 148. See National Institute on Media and the Family, *10th Annual MediaWise Video and Computer Game Report Card* (Nov. 29, 2005), available at www.mediafamily.org/research/report_vgrc_2005.shtml (last visited Oct. 26, 2006). Because twelfth grade students were included in the survey, it is likely that some of the students who used M-rated games were 17 or older.
 149. See, e.g., 2004 Report, *supra* note 8, Appendix A, at 4. It is unclear how an industry’s self-regulatory system would be funded other than through industry sources.
 150. See ESRB Press Release, *Comments on MediaWise Video Game Report Card 2005*, www.esrb.org/about/news/downloads/nimf_fail.pdf (last visited Oct. 26, 2006).
 151. 2000 Report, *supra* note 1, at 45.
 152. Ad Code, *supra* note 130, at 32, 39, 42.
 153. ESRB, *Safe Harbor Modification to TV Marketing Guidelines for Mature-Rated Games* (Oct. 2005) (on file with Commission staff).

154. Ad Code, *supra* note 130, at 10.
155. Technical violations include the display of an incorrectly sized rating icon or content descriptors on product packaging or in advertising.
156. Vance Letter, *supra* note 145, at Attachment O. Fines were imposed for several different types of rules violations, including the submission of incomplete or inaccurate content during the rating submission process and inappropriate target marketing. *Id.*
157. Many of the popular cable music programs, such as BET's *106th & Park*, and MTV's *Total Request Live* do appear to exceed that threshold.
158. *See, e.g.*, 2004 Report, *supra* note 8, at 21-22.
159. In issues reviewed from September 2005 through July 2006, thirty-one ads for T-rated games appeared in *Nintendo Power*.
160. In fact, the ESRB has indicated that, based on the demographic information on their readership, none of the game enthusiast magazines are off-limits for T-rated game ads. Vance Letter, *supra* note 145, at 7.
- Though game companies continue to widely promote and market their games through game enthusiast magazines, industry is shifting some of its ad dollars away from magazines and to the Internet. Advertising Age magazine reports that video game advertisers have cut their magazine spending by 37% since 2002, while increasing their web spending by 174% during the same time period. *Teen Mags? So Five Years Ago. Advertisers Enamored with Web, Niche Channels*. Advertising Age, Aug. 1, 2006. Spending on magazines dropped from \$46.1 million in 2002 to \$28.8 million in 2005. Web spending increased from \$4.6 million in 2002 to \$12.6 million in 2005.
161. The *Bionicle Heroes* ad appearing in *Sports Illustrated for Kids* displayed an RP (Rating Pending) icon.
162. The games examined for paid Internet ad placements were: *50 Cent: Bulletproof*, *Brothers in Arms: Road to Hill 30*, *Condemned: Criminal Origins*, *Dead Rising*, *Devil May Cry 3: Special Edition Greatest Hits*, *Elder Scrolls IV: Oblivion*, *Far Cry Instincts Predator*, *Final Fight: Streetwise*, *The Godfather*, *Hitman: Blood Money*, *Mortal Kombat: Shaolin Monks*, *Onimusha: Dawn of Dreams*, *The Outfit*, *Prey*, *Resident Evil 4*, *Saint's Row*, *Scarface*, *Tom Clancy's Splinter Cell Chaos Theory*, *Prince of Persia: The Two Thrones*, *Full Spectrum Warrior: Ten Hammers*, and *Drakengard 2*.
163. *See* Appendix E, § 3, Table 5.
164. The Commission also examined a different sample of twenty games consisting of the most frequently advertised M-rated games on the Internet between October 2005 and September 2006, as measured by the number of impressions generated by the ads. (The term "impressions" refers to the number of times an ad is displayed to a website visitor.) Ads for eighteen of these twenty games ran on sites with audiences of at least 45% children under the age of 17. These sites accounted for approximately 10% of the total advertising impressions generated by the twenty M-rated games.
165. *See* Ad Code, *supra* note 130, at 10.
166. According to its website, FanPimp is now known as Affinitive, and provides technology and marketing solutions to cultivate long-lasting loyalty and awareness with consumers through word-of-mouth marketing. *See* www.beaffinitive.com/about/ (last visited Oct. 12, 2006).
167. In the past, some game publishers have exceeded the ESRB requirements to include content descriptors in television ads. In previous reports, the Commission has noted that, according to the ESA, it has not imposed such a requirement for television because the descriptors can be difficult to read on a television screen and because it does not believe that descriptors can be displayed in a 30-second ad in a way that permits viewers to absorb the information. *See* 2002 Report at 22 n.95.
168. There were a few instances of advertisements containing multiple games in which no icon appeared in the ad. These ads appeared in the August 1, 2005 issue of *Official Xbox Magazine*, the July 28 and August 11, 2005 editions of *Rolling Stone*, and the September 2005 issue of *Game Pro*. The Commission reviewed television ads placed in the first six months of 2006, and print magazines published from August 2005 through September 2006.
169. The Commission examined the following twenty electronic game websites: *50 Cent: Bulletproof*, *Brothers in Arms: Road to Hill 30*, *Condemned: Criminal Origins*, *Darkwatch*, *Dead Rising*, *Devil May Cry 3: Special Edition Greatest Hits*, *Elder Scrolls IV Oblivion*, *Far Cry Instincts Predator*, *Final Fight: Streetwise*, *God of War*, *Godfather*, *Hitman Blood Money*, *Mortal Kombat: Shaolin Monks*, *Onimusha: Dawn of Dreams*, *Outfit*, *Prey*, *Resident Evil 4*, *Saint's Row*, *Scarface*, and *Tom Clancy's Splinter Cell Chaos Theory*. Each of the games selected was released in 2006 with an M rating and a violence descriptor.

170. In the 2004 Report, 75% of the websites displayed the ESRB rating icon somewhere on the site. In this surf, 75% (15 of 20) required the visitor to scroll down the screen to view the rating, as did 80% (16 of 20) for the descriptor. Thirteen of the sites had a demo available either to view or to play, but only 54% (7 of 13) of the demos displayed the rating, and only 31% (4 of 13) displayed the content descriptors. The websites for *50 Cent: Bulletproof*, *Condemned: Criminal Origins*, *Elder Scrolls IV Oblivion*, and *Final Fight: Streetwise* all provided demos with both the rating icon and descriptor.
171. The Commission reviewed five retailer websites – Amazon.com, BestBuy.com, CircuitCity.com, EBGames.com, and GameStop.com – to see if they included rating information for five M-rated games. The games surveyed at these five sites were *Condemned Criminal Origins*, *Dead Rising*, *God of War*, *Halo 2*, and *Saint's Row*.
172. See *Major Retailers Announce New Campaign to Enforce Video Game Rating System*, available at releases.usnewswire.com/GetRelease.asp?id=24172 (last visited Oct. 26, 2006).
- IEMA members included: Best Buy, Blockbuster Entertainment, Circuit City, CompUSA, Gamesource, Electronics Boutique, Hastings Entertainment, Hollywood Video, KB Toys, Kmart, Meijer, Movie Gallery, Musicland, Shopko Stores, Target, Toys “R” Us, Transworld Entertainment and Wal-Mart. Taken together, these retailers sell approximately 85% of all computer and video games sold in the United States.
173. Since the Commission’s last report, national video game retailers have taken a number of steps to both adopt and enforce policies to prevent the sale of M-rated video games to minors. For a comprehensive review of those efforts, see two reports of the Interfaith Center on Corporate Responsibility (“ICCR”), *Retailers and Violent Video Games, Progress Made but Disclosure Needed* (Dec. 11, 2006), available at www.iccr.org/issues/violence/retailercomparisonchart120606.pdf and *Retail Guidelines for the Sale of Violent Video Games* (Dec. 13, 2005) available at www.iccr.org/issues/violence/videogameretailguidelines121305.pdf. (last visited Dec. 11, 2006). The ICCR, a coalition of 275 faith-based institutional investors, has been documenting steps taken by video game retailers to prevent the sale of such games to those under 17.
174. Council members include Best Buy, Blockbuster Entertainment, Circuit City, Game Stop, Movie Gallery/Hollywood Video/Game Crazy, Target, and Wal-Mart.
175. See Fax from the ESRB to Commission Staff (Nov. 21, 2006) (on file with Commission staff).
176. Cingular has a wireless Internet access service called MEdia Net that allows its users to download games, surf websites, and check email. MEdia Net provides the option of setting up Parental Controls on a child’s phone to restrict access to websites containing mature content and to restrict purchase of downloads such as games, ringtones, and graphics.
- Alltel gives a parent the option to place restrictions on a child’s phone by calling Alltel and asking to disallow “access to applications.”
- Sprint PCS Vision Phone SCP-2400 by Sanyo has a built-in Parental Control that includes restricting access to Sprint services such as downloading mobile games. Sprint also offers a Restricted/Unrestricted Web Access feature that allows primary account holders to manage access to the open Internet for all plans on the account.
- T-Mobile has a phone plan entitled “Kids Connect,” which allows a parent to restrict the child from downloading anything onto the phone.
- Verizon’s LG Migo offers parents a “kid-friendly” phone that does not provide any capabilities for downloading games or web browsing.
177. Verizon’s website had mobile games for *Elder Scrolls IV: Oblivion*, *Prince of Persia: Two Thrones*, *True Crime: Streets of L.A.*, *Brothers in Arms: Earned in Blood*, and *SOCOM: U.S. Navy Seals*. Sprint’s website had mobile games for *24*, *Brothers in Arms: Earned in Blood*, *Prince of Persia: Two Thrones*, *True Crime: Streets of L.A.*, and *SOCOM: U.S. Navy Seals*. Cingular’s website had mobile games for *Jaws*, *Elder Scrolls IV: Oblivion*, *Scarface*, *SOCOM: U.S. Navy Seals*, *Brother in Arms: Earned in Blood*. All of these games have M-rated versions on consoles such as PlayStation 2 & 3, Xbox and Xbox 360, GameCube, Windows PC, and PlayStation Portable (“PSP”).
178. Although a game on Sprint’s website, *Mafia Wars*, did not have an official ESRB rating on another game console, the description for the game read, “Earn the respect of New York’s top crime family by doing their dirty work, with your machine gun.” On Verizon’s website, the game *Brothers in Arms: Earned in Blood*, had a description that read, “Take the fight to the enemy on the beaches and hills of Normandy, battle-ravaged Northern African towns, and deep into German territory inside an immense German castle headquarters stocked with all the luxurious spoils of war. You and your brothers will push back the enemy with rifles, grenades, machine guns, flamethrowers, bazookas, even tanks. Based on Ubisoft’s Xbox/PS2 game.” On Cingular’s website, the description for *Scarface: The Rise of Tony Montana*

reads, “Rule the Miami streets as a brutal crime lord! Rub out your enemies and climb to the top through driving and shooting missions. Bury those cockroaches [sic] in Shooting Mode with a shotgun, chainsaw, M16 or Uzi!” Games that were available for purchase at more than one of the mobile phone websites had identical descriptions on these sites. Sprint’s site provided users with demos of some of its games, including *SOCOM: U.S. Navy Seals*, which involved shooting and killing opponents.

179. Verizon.com promoted *Def Jam Fight for NY* (T-rated). Cingular.com and Sprint.com promoted *The Sims 2* (T-rated).
180. See *Wireless Content Guidelines* and *Wireless Content Guidelines Classification Criteria* at www.ctia.org.
181. A description of the system is set forth in a PowerPoint presentation by Mark Desautels, Vice President - Wireless Internet Development, CTIA *CTIA’s Wireless Internet Caucus, FTC Briefing, The State of Mobile Content* (Oct. 26, 2005) (on file with Commission staff). Unedited or complete versions of content with the following ratings are restricted content: MPAA-R, MPAA-NC 17, Movies Unrated, TV-MA, TV-Adult or Unrated Adult, ESRB-M, ESRB-AO. Any material that has been edited from content previously rated by the MPAA, TV networks, or ESRB – or material previously unrated by these same entities – is generally considered restricted content if it contains any of the following “Restricted Content Identifiers”: intense profanity, intense violence, graphic sexual activity or sexual behaviors, nudity, hate speech, graphic depiction of illegal drug use. Any applications or services offering activities that are restricted by law to those 18 years of age and older, such as gambling and lotteries, are restricted content. Any applications or services offering adult-oriented, text-based entertainment services are restricted content.
182. See *id.* Any content from material with the following ratings is generally accessible content: TV-Y, TV-Y7, TV-G, TV-PG, TV-14, Edited TV-MA (without Restricted Content Identifiers) MOVIE-G, MOVIE-PG, MOVIE-PG13 with no nudity, Edited Movie-R (without Restricted Content Identifiers), ESRB-EC, ESRB-E, ESRB-10+, ESRB-T, ESRB-M (without Restricted Content Identifiers). Any material that has been edited from content previously rated by the MPAA, TV networks, or ESRB – or material previously unrated by these same entities – is generally accessible content if it does not contain any of the following Restricted Content Identifiers: Intense profanity, Intense violence, Graphic sexual activity or sexual behaviors, Nudity, Hate speech, Graphic depiction of illegal drug use.
183. See Email from Mark Desautels, Vice President, Wireless Internet Development, CTIA, to Keith R. Fentonmiller, Staff Attorney, Federal Trade Commission (Oct. 19, 2006) (on file with Commission staff).
184. A practice of playing through the entire game likely would not have prevented the ESRB from re-rating *Grand Theft Auto: San Andreas* due to the undisclosed “Hot Coffee” content on the game disc. See *supra* note 139. That content was rendered playable only by downloading and installing a program developed and disseminated by a hacker after the game’s rating and release. See *id.* In general, software modifications or “mods” add content to a game, 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 mods would likely be of little concern to parents, but others add nudity or enhance the violence or depictions of blood in a game. The “Hot Coffee” program was atypical for a mod because it unlocked content already on the game disc, rather than importing content from outside the game software. In light of the easy availability of “mods,” and their potential to change significantly the game play experience, 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. See FTC Consumer Alert: Video Games: Reading the Ratings on Games People Play (July 2005), available at www.ftc.gov/bcp/online/pubs/alerts/videoalrt.htm.
185. See 2000 Report, Appendix F, *supra* note 3. Appendix F also contains a detailed discussion of the underlying methodology and findings.
186. For information on the two most recent ESRB awareness and use studies, see ESRB Press Release, *Awareness, Use and Trust of ESRB Video Game Ratings Reach Historical High-Point Among Parents* (Mar. 29, 2006), available at www.esrb.org/about/news/03292006.jsp (last visited Mar. 27, 2007); ESRB Press Release, *Majority of Parents Say They Limit Children’s Access to Mature-Rated Video Games* (May 5, 2005), available at www.esrb.org/about/news/awareness_use_5_5_05.pdf (last visited Mar. 27, 2007).
187. For additional information about some of the prior studies, see ESRB Press Release, *New Study Shows Parents Overwhelmingly Agree with ESRB Video Game Ratings* (Nov. 14, 2005), available at www.esrb.org/about/news/validity_study_1105.pdf (last visited Mar. 27, 2007); ESRB Press Release, *New Study Shows Parents Overwhelmingly Agree with Video Game Ratings* (Nov. 22, 2004), available at www.esrb.org/about/news/downloads/validity_study_11_22_04.pdf (last visited Mar. 27, 2007); ESRB Press Release, *Study Shows Parents Approve of Game Ratings* (Dec. 5, 2003) (on file with Commission staff). The validity studies involved a mall-intercept of 400 parents at ten locations nationwide; the parents had children 3 to 17 years old who play video games. After parents were shown one- to

two-minute video game clips from 8 out of 80 randomly selected games, they assigned what they believed would be appropriate ESRB ratings to the games. Those ratings were compared to the actual ESRB ratings, and parents were then asked whether the actual ratings were “about right,” “too strict,” or “too lenient.” See, e.g., Nov. 14, 2005 ESRB Press Release, *supra*. The brevity of these clips may limit the probative value of the results because many games can take numerous hours to complete. Moreover, it is unknown whether the content selected for these brief video clips fully represented the range and frequency of content that caused the ESRB raters – whose raters view about forty-five minutes of game play before assigning the game a particular rating – to assign the particular rating.

188. Seventy-one percent of surveyed parents had children currently living at home, with an unknown percentage of children who played video games.
189. The ESRB has argued that the NIMF’s analysis was unscientific because it compared so few games from each era and because the games that were compared were “completely different.” ESRB Press Release, *ESRB Flunks National Institute for Media and the Family for Its Disservice to Parents and Their Children* (Dec. 6, 2005), available at www.esrb.org/about/news/12062005.jsp (last visited Oct. 26, 2006).
190. The ESRB disagrees that it has been reluctant to issue AO ratings. According to the ESRB, “[t]he reality is that publishers understand that retailers largely choose not to stock AO-rated games, and so in the interests of producing marketable games, publishers will oftentimes revise and resubmit a game that was initially assigned an AO by raters in an effort to produce an M-rated game.” ESRB Press Release, *ESRB Statement Regarding Mediawise Video Game Report Card* at 2 (Nov. 29, 2005), available at www.esrb.org/about/news/11292005.jsp (last visited Mar. 27, 2007). The ESRB also pointed out that the number of M-ratings has continued to increase each year, as have the assignment of content descriptors for violence, sexual content, and language. ESRB Press Release (Dec. 6, 2005), *supra* note 189. Last, ESRB asserted that NIMF’s game ratings have agreed with ESRB ratings 80% of the time. *Id.*
191. The National Institute on Media and the Family, *11th Annual Video Game Report Card* at 6 (Nov. 28, 2006), available at www.mediafamily.org/research/2006_Video_Game_Report_Card.pdf (last visited Dec. 1, 2006).
192. The first survey was a school-based survey of over 1,200 seventh and eighth graders; the second was a mail-in survey of 500 parents and adolescents.
193. In the past few years, Congress, state legislatures, and consumer groups have increasingly raised concerns about children’s access to certain violent video games. As games become more realistic, so can the violent and sexual content in those games get more explicit. Six state legislatures have passed laws attempting to restrict the sale of violent video games to minors (all have been enjoined as unconstitutional). See Appendix A. Some consumer advocates have called for a complete overhaul in the ESRB system, while others have called for greater transparency in the rating process. Legislation has been introduced in Congress that would change the rating process. See *id.*
194. Among those parents who said they are aware of and at least slightly familiar with the rating system, 84% said the rating system provides the age group for which the game may be appropriate, and 86% said the system provides a description of the content that may be of concern (“content descriptors”). Overall, 75% of parents familiar with the system correctly indicated that the system provides both an age rating and content descriptors.
195. With aided recall, 45% of parents familiar with the system claimed to have heard of the AO (“Adults Only”) rating, 93% had heard of the M (“Mature”) rating, 88% had heard of the T (“Teen”) rating, 89% had heard of the E (“Everyone”) rating, 31% had heard of the EC (“Early Childhood”) rating, 32% had heard of the E10+ (“Everyone 10 and Older”) rating, and 28% had heard of the RP (“Rating Pending”) rating. The relatively low familiarity with the E10+ rating was not surprising, given that the ESRB recently added this rating. See ESRB Press Release (Mar. 2, 2005), *supra* note 131.
196. When asked, unaided, where content descriptors are found, only 43% of parents claiming at least slight familiarity with content descriptors indicated that the descriptors are found “on the back,” “on the back of the box,” or “on the back of the game.” Another 26% said that the descriptors could be found on the game package, but did not indicate the front or the back.
197. Parents offered several explanations why they use the ESRB ratings either sometimes, rarely, or never. Some said they do not use the rating because they preview the game themselves or monitor the child’s play. Others said that they focus on the content of the game, looking for whether the game contains violent content. Still others said that the rating is not an issue given the small number of games they buy or rent, their child’s preferences, or because they trust their child to exercise his or her own judgment in selecting appropriate games. A very small number (8 parents) indicated that they had no faith in the rating system.
198. In 2000, fifty-five out of 252 parents claimed to be familiar with the ESRB system and use the rating most or all the time when their child wants to play a game.

199. Parents gave several reasons for using the content descriptors only sometimes or rarely, or never, such as that they preview the game or monitor their children's game play, they rely on the game rating, the child plays games that are not violent, and the parent trusts the child to choose appropriate games.
200. Parents who sometimes allow their children to play M-rated games report using the ESRB system far more (82%) than parents who generally allow their children to play such games (36%). Likewise, parents who sometimes allow their children to play T-rated games report using the system more (91%) than parents who generally allow their children to play such games (76%).
201. The base for the reported data are parents whose children play video games.
202. When asked to identify the last video game parents told them they could not play, 48% of children of restrictive parents reported an M-rated game, with 24% identifying a title from the *Grand Theft Auto* series. Parents reported similar data. Of the parents who reported they restrict their child's game play, 64% said that they had told their child that he or she could not play a particular video game. Thirty-five percent of parents identified an M-rated game, with 19% identifying the game as a *Grand Theft Auto* title. According to the children, reasons for their parents' most recent refusal to let them play a particular video game included, in descending order of emphasis, violence (41%), profanity (23%), killing (19%), blood and gore (17%), and sexual content (14%). Parents most frequently identified violence as the basis for their most recent refusal (56%), followed by profanity, sexual content, age inappropriateness, and killing.
203. More than half (65%) of these parents stated that they have encountered an M-rated game that they will not let their child play because they believe it has content that only adults should play. Forty-four percent of those parents were able to identify the M-rated game by name; eight out of ten of the M-rated games identified were a title from the *Grand Theft Auto* series. Forty-four percent of those parents could not name the game. Ten percent of the game titles could not definitively be assigned to a particular rating, and 1% of these parents named a T-rated game. The "adult content" that parents identified included violence, sexual content, profanity, blood and gore, misogynistic content, and criminal content.
204. Despite many parents' flexible attitude toward M-rated games, only 7% of all parents named an M-rated game as one of their child's favorites; 16% of parents who allow their child to play M-rated games named an M-rated game as a favorite. Overall, 29% of the boys and 10% of the girls identified at least one M-rated game as a favorite. Over four in ten (42%) children ages 14 to 16 named an M-rated game as a favorite, compared to 24% of the children ages 11 to 13.
205. Not surprisingly, parents' attitudes were more liberal toward T-rated games than M-rated games. Although only 16% of all parents identified a T-rated game as one of their child's favorites, nearly eight out of ten (79%) parents familiar with the ESRB system either sometimes or generally permit their child to play T-rated games. In particular, 58% of parents familiar with the ESRB system and also have a child between 8 and 10 years old reported that they sometimes or generally permit their child to play T-rated games. Children familiar with the rating system reported an even higher level of parental permissiveness toward T-rated games (92% sometimes or generally permitted to play). Moreover, 79% of children familiar with the system and between the ages of 8 and 10 reported that their parents sometimes or generally allow them to play T-rated games.
206. Unless otherwise specified, the bases for the reported data are parents whose children play video games and children who reported playing video games in the last year.
207. Of children who named a favorite game.
208. Of parents who claimed to be familiar with the video game rating system.
209. Of children who claimed to be aware of the video game rating system.
210. Five percent of parents generally allow, and 41% sometimes allow, their children to play M-rated games.
211. When asked where they look or go for information about a video game to help them decide whether their child can play the game, parents pointed to a variety of sources, including testing the game by renting it before buying it, watching or playing the game with the child, and reading newspaper or online reviews.
212. The extent to which parents play a watchdog role in the selection and purchase of video games relates to the age of the child. Fifty-seven percent of children age 14 or older said that they alone decide which games to buy or rent, versus only 16% of children under age 14. An increased likelihood of parental involvement based on younger age was evident in the parent survey as well. Twenty-five percent of parents of older children claimed to let them decide which games to play, versus 8% of parents of younger children; most parents of older children also claimed to be familiar (74%) and satisfied (85%) with the ESRB system.

213. Note, however, that parents may have more control over children's purchases or rentals at retail stores than other ways that children obtain games. While 88% of children say they buy games at the store and 27% say they rent games, 34% borrow games and 21% buy, play, or download games online.
214. The bases for the reported data are parents whose children play video games and children who reported playing video games in the last year.
215. A recent Los Angeles Times/Bloomberg poll reported that 63% of 12- to 17-year-olds said that their parents know the contents of the video games they play, including 83% of young teenage boys, 72% of older teenage boys, 58% of young teenage girls, and 41% of older teenage girls. See Los Angeles Times/Bloomberg, *Computers, Cell Phones and Multitasking: A Look Inside the Entertainment Life of 12-24 Year Olds* at 3 (Summer 2006), available at www.latimes.com/media/acrobat/2006-08/24767411.pdf (last visited Mar. 27, 2007).
216. Thirty-one percent (102 out of 329) of parents who generally or sometimes allow their children between ages 14 and 16 to play T-rated games (which the rating indicates may have content suitable for ages 13 and older) claimed that they had encountered a T-rated game that they would not allow their child to play until he or she was older. Although this result could be interpreted to suggest that many parents have encountered a T-rated game that they believe the ESRB should have rated more restrictively, it is unclear whether parents reliably recalled the ratings of the games upon which their responses were based. Sixty-seven percent of those parents could not identify the T-rated game by name, whereas only 7% did. Another 11% identified an M-rated game by name, and another 16% provided titles that could not definitively be assigned to a particular rating category.
217. Similarly, more parents of younger children (68%) stated that they agree with ESRB ratings at least most of the time, compared to parents of older children (57%).
218. The bases for the reported data are parents whose children play video games and who are at least slightly familiar with the video game rating system.
219. See, e.g., 2002 Report, *supra* note 7, at 30.
220. The electronic game industry has questioned the practicality of a guideline that relies on multiple factors to limit ad placements for M-rated games. Nevertheless, the ESRB has adopted a multi-factorial approach in evaluating target marketing for T-rated games. See *supra* note 154 and accompanying text. Given that all three industries continue to place ads for violent entertainment products in media popular with teens, additional thought and discussion by the industries about how to lessen these placements would be constructive.

Appendix A: The First Amendment and Government Efforts to Regulate Entertainment Media Products with Violent Content

Appendix C of the 2000 Report¹ broadly analyzed the First Amendment issues relevant to any government efforts to regulate the marketing to children of entertainment media products with violent content. Since 2000, several federal courts have struck down, on constitutional grounds, legislative efforts to restrict the access of minors to violent video games or to impose mandatory rating or labeling systems for these products.

A. Restriction on Access to Violent Video Games

State and local legislative efforts to restrict the access of minors to certain video games with violent content have been struck down by two circuits² and six district courts.³ In *American Amusement Machine Ass'n v. Kendrick*, for example, the U.S. Court of Appeals for the Seventh Circuit enjoined enforcement of an Indianapolis ordinance that prohibited operators of video game arcades from allowing access by minors – unaccompanied by a parent or guardian – to machines offering games deemed “harmful to minors” by virtue of “graphic violence” or “strong sexual content.”⁴ Only the “graphic violence” aspect of the ordinance was at issue because the plaintiffs did not manufacture or exhibit in public places video games with “strong sexual content.”⁵ The court, noting that the ordinance attempted to “squeeze the provision on violence into a familiar legal pigeonhole, that of obscenity, which is . . . not protected by the First Amendment,”⁶ concluded that while graphic images of sexual conduct historically have been placed outside the bounds of First Amendment protection, graphic images of violence have not. In fact, said the court, such images are part of a literary tradition that has been accorded full protection⁷ and are fully consistent with the general prevalence of violence in children’s literature.⁸

The *Kendrick* court found an essential difference between obscenity and speech containing violent images or descriptions. The proscription against obscenity is based upon “proof that it violates community norms regarding the permissible scope of depictions of sexual or sex-related activity” not upon “proof that it is likely to affect anyone’s conduct.”⁹ The basis for the Indianapolis ordinance, on the other hand, was “belief that violent video games cause temporal harm by engendering aggressive attitudes and behavior, which might lead to violence.”¹⁰ The limited social science evidence in the record, however, failed to provide compelling evidence of harm either to children viewing the games or to potential victims of aggressive behavior.¹¹ As a basis for enacting the ordinance, the city had relied primarily upon “a pair of empirical studies by psychologists which found that playing a violent video game tends to make young persons more aggressive in their attitudes and behavior.”¹² The court concluded that the studies did 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.¹³

The court noted the under-inclusive nature of the ordinance: “Violent video games played in public places are a tiny fraction of the media violence to which modern American children are exposed. Tiny – and judging from the record of this case not very violent compared to what is available to children on television and in movie theaters today.”¹⁴ The court did not, however, completely foreclose the possibility that a more narrowly drawn ordinance, or one based on compelling evidence of harm, could survive constitutional scrutiny.¹⁵

Other courts have followed the Seventh Circuit’s reasoning in *Kendrick*, declining to treat violence like obscenity and thereby declining to take it out of the realm of constitutionally protected speech to permit increased regulation.¹⁶ Instead, they have subjected content-based efforts to restrict minors’ access to violent video games to strict constitutional scrutiny,¹⁷ and none has survived.¹⁸ The evidence of harm stemming from these games has not been found to be compelling by any court that has examined it.

In *Entertainment Software Ass’n v. Blagojevich*,¹⁹ for example, the U.S. District Court for the Northern District of Illinois carefully assessed all of the underlying evidence offered in support of the conclusion that violent video games cause an increase in aggressive thoughts and behavior in minors who play them. The court concluded that the research²⁰ did not establish “a solid causal link between violent video game exposure and aggressive behavior” and that researchers had not eliminated “the most obvious alternative explanation: aggressive individuals may themselves be attracted to violent video games.”²¹ Moreover, the court concluded, “[e]ven if one were to accept the proposition that playing violent video games increases aggressive thoughts or behavior, there is no evidence that this effect is at all significant.”²² In addition, the evidence did not show “that the purported relationship between violent video game exposure and aggressive thoughts or behavior is any greater than with other types of media violence, such as television or movies, or other factors that contribute to aggression, such as poverty.”²³ The court also expressed concern that the legislative record did not indicate that the legislature had considered any of the contrary evidence, i.e., evidence that “showed no relationship or a negative relationship between violent video game play and increases in aggressive thoughts and behavior.”²⁴ With respect to another type of research proffered at trial – use of neuroimaging techniques to measure blood flow to various parts of the brain in children and adolescents either with behavior disorders or high media violence exposure – the court found the criticisms of the studies more credible than the study results themselves; hence, the legislature could not reasonably conclude that minors who play violent video games are likely to experience reduced activity in the parts of the brain responsible for controlling behavior.²⁵ Other courts have looked at the same body of evidence and drawn the same conclusions as the *Blagojevich* court.²⁶ As noted by one constitutional law scholar, however, research in this area is

ongoing.²⁷ It is unknown whether in the future the evidence will reach the level necessary to satisfy a strict scrutiny constitutional test.

B. Mandatory Rating or Labeling Systems

Some of the legislative efforts to restrict the dissemination of violent video games have imposed a particular rating or labeling system on such products or otherwise required the dissemination of certain information about voluntary rating systems. Such laws – which require a private party to express or endorse a particular message – raise the additional First Amendment issue of “compelled speech.”²⁸

The *Blagojevich* court struck down requirements in the Illinois Violent Video Games Law (“VVGL”) and Sexually Explicit Video Games Law (“SEVGL”) that a two-inch label stating “18” be affixed to all such games. The SEVGL further required that video game retailers post 18- by 24- inch signs, within five feet of every video game display or point of sale or rental, providing information about the Entertainment Software Rating Board (“ESRB”) voluntary rating system, as well as make brochures about the ESRB system available to customers.²⁹ The court held that these requirements constituted “compelled speech subject to strict scrutiny.”³⁰ The court declined to apply “the lower ‘commercial speech’ standard for disclosures, disclaimers, and warnings.”³¹ Applying the strict scrutiny test, the court struck down the labeling and disclosure provisions. With regard to the “18” label, the court stated that the requirement would force retailers “to affix a label that may obscure their own message about the content of the game (i.e., the ESRB ratings) and contradict their own opinion about the content of the game (e.g., putting the ‘18’ label on [a] T-rated game considered appropriate for thirteen-year olds).”³² With regard to the sign and brochure requirements, the court found that these provisions impermissibly required the retailers to present their own message – the ESRB rating system – in a manner mandated by the state.³³

C. Conclusion

To date, state and local government efforts to restrict minors’ access to violent video games, or to impose mandatory rating or labeling systems on these products, have not survived strict constitutional scrutiny. Uniformly, the courts have found the content of the games to be protected by the First Amendment and the asserted government interest of protecting minors not supported by compelling evidence of harm. Until the courts are presented with compelling evidence of harm linked to minors’ viewing of violent images – harm either to minors themselves or to potential victims of aggressive impulses – it appears unlikely that content-based restrictions of violent video games will survive constitutional challenge.

Endnotes

1. See Appendix C, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*, Report of the Federal Trade Commission (Sept. 2000), available at www.ftc.gov/reports/violence/appendicesviorpt.pdf.
2. See *Interactive Digital Software Ass'n v. St. Louis County, Missouri*, 329 F.3d 954 (8th Cir. 2003) and *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).
3. See *Entm't Software Ass'n v. Foti*, 451 F. Supp. 2d 823 (M.D. La. 2006); *Entm't Software Ass'n v. Hatch*, 443 F. Supp. 2d 1065 (D. Minn. 2006); *Entm't Software Ass'n v. Granholm*, 426 F. Supp. 2d 646 (E.D. Mich. 2006); *Entm't 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). See also *Entm't Merch. Ass'n v. Henry*, 2006 U.S. Dist. LEXIS 74186 (W.D. Okla. Oct. 11, 2006) (preliminary injunction issued against enforcement of statute criminalizing dissemination to minors of material containing "inappropriate violence," pending full First Amendment analysis in connection with consideration of motion for summary judgment).
4. The ordinance defined "harmful to minors" to mean:

"an amusement machine that predominantly appeals to minors' morbid interest in violence or minors' prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for persons under the age of eighteen (18) years, lacks serious literary, artistic, political or scientific value as a whole for persons under" that age, and contains either "graphic violence" or "strong sexual content." "Graphic violence," . . . is defined to mean "an amusement machine's visual depiction or representation of realistic serious injury to a human or human-like being where such serious injury includes amputation, decapitation, dismemberment, bloodshed, mutilation, maiming or disfigurement [disfigurement]."

Kendrick, 244 F.3d at 573.
5. *Id.*
6. *Id.* at 574.
7. *Id.* at 575-76 ("Classic literature and art, and not merely today's popular culture, are saturated with graphic scenes of violence, whether narrated or pictorial. The notion of forbidding not violence itself, but pictures of violence is a novelty, whereas concern with pictures of graphic sexual conduct is of the essence of the traditional concern with obscenity."). Judge Posner, writing for the court, analogized the ordinance to a law forbidding children to read, without the presence of an adult, *The Odyssey*, *The Divine Comedy*, *War and Peace*, or the stories of Edgar Allen Poe, or from viewing horror movies based on classic novels, such as *Frankenstein* and *Dracula*. *Id.* at 577.
8. *Id.* at 577, 578 ("Violence has always been and remains a central interest of humankind and a recurrent, even obsessive theme of culture both high and low. It engages the interest of children from an early age, as anyone familiar with the classic fairy tales collected by Grimm, Andersen, and Perrault are aware. . . . These games with their cartoon characters and stylized mayhem are continuous with an age-old children's literature on violent themes.").
9. *Id.* at 574 (citing *Miller v. California*, 413 U.S. 15 (1973); the *Miller* test for obscenity has three prongs: "(a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." 413 U.S. at 24 (citations omitted)). See also *Interactive Digital Software Ass'n*, 329 F.3d at 958 ("Simply put, depictions of violence cannot fall within the legal definition of obscenity for either minors or adults.").
10. *Kendrick*, 244 F.3d at 575.
11. *Id.* at 575, 578-79.
12. *Id.* at 574, 578. These studies are reported in Craig A. Anderson & Karen E. Dill, *Personality Processes and Individual Differences – Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life*, 78 J. Personality & Soc. Psych. 772 (2000). *Kendrick*, 244 F. 3d at 578.
13. *Id.* at 578-79. See also *Interactive Digital Software Ass'n*, 329 F.3d at 958-59 ("The County's 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. It is true that a psychologist appearing on behalf of the County stated that a

recent study that he conducted indicates that playing violent video games ‘does in fact lead to aggressive behavior in the immediate situation . . . that more aggressive thoughts are reported and there is frequently more aggressive behavior.’ But this vague generality falls far short of a showing that video games are psychologically deleterious.”).

14. *Id.* at 579.
15. *Id.* at 579-80 (“Common sense says that the City’s claim of harm to its citizens from these games is implausible, at best wildly speculative. Common sense is sometimes another word for prejudice, and the common sense reaction to the Indianapolis ordinance could be overcome by social scientific evidence, but has not been. . . . We have emphasized the ‘literary’ character of the games in the record and the unrealistic appearance of their ‘graphic’ violence. If the games used actors and simulated real death and mutilation convincingly, or if the games lacked any story line and were merely animated shooting galleries (as several of the games in the record appear to be), a more narrowly drawn ordinance might survive a constitutional challenge.”). *Cf. What’s in a Game? State Regulation of Violent Video Games and the First Amendment: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Property Rights of the S. Comm. on the Judiciary*, Mar. 29, 2006 (Statement of Prof. Kevin Saunders, Michigan State Univ. Coll. of Law) (There is an “overwhelming consensus of the health and science community that media violence causes real world violence. . . . A conclusion by an earlier court that the science fails to establish the danger perceived by the public and the legislature is only a conclusion that the science at that time was lacking. It does not establish the conclusion that the science at the time of any future legislation or litigation is also lacking. Each time the issue arises, the courts must consider the science anew.”).
16. *Kendrick*, 244 F.3d at 574-77 (citing *Winters v. New York*, 333 U.S. 507, 510 (1948) (refusing to treat magazines containing violent crime and detective stories as obscene under statute banning obscenity; the Court stated that although it could see “nothing of any possible value to society in these magazines, they are as much entitled to the protection of free speech as the best of literature.”)); *see also Interactive Digital Software Ass’n*, 329 F.3d at 958-59; *Eclipse Enters., Inc. v. Gulotta*, 134 F.3d 63, 67–68 (2d Cir. 1997) (striking down statute prohibiting sale to minors of trading cards depicting violent crimes); *Video Software Dealers Ass’n v. Webster*, 968 F.2d 684, 688 (8th Cir. 1992) (striking down statute that prohibited sale or rental to minors of videos containing violent content; statutory test for violence was patterned after *Miller* definition of obscenity); *Blagojevich*, 404 F. Supp. 2d at 1075-76. Nonetheless, some First Amendment scholars continue to argue for an expansion of the rationale of *Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (“It is . . . fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such material to adults.”) to define obscenity as to minors to include extreme violence as well as sexual content. *See* Kevin Saunders, *Saving Our Children from the First Amendment*, 146-63 (2003).
17. Strict scrutiny analysis requires the government to show that: (1) the regulation serves a compelling government interest; (2) the means chosen to achieve that interest are narrowly tailored; and (3) the regulation is the least restrictive means of accomplishing the objective. *See e.g., Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989); *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 231 (1987).
18. *See Interactive Digital Software Ass’n*, 329 F.3d 954 (reversed district court decision upholding constitutionality of county ordinance making it unlawful to sell, rent, or make available graphically violent video games to minors, or to permit their free play of such games, without parental consent; ordinance cannot survive strict scrutiny under the First Amendment); *Foti*, 451 F. Supp. 2d 823 (preliminarily enjoined enforcement of Louisiana statute prohibiting sale or rental to minors of video or computer games that “appeal to a minor’s morbid interest in violence,” on both First Amendment and vagueness grounds); *Hatch*, 443 F. Supp. 2d 1065 (permanently enjoined enforcement of Minnesota statute prohibiting individuals under age 17 from renting or purchasing video games rated AO or M by the ESRB, on First Amendment grounds and because use of ESRB rating system as legal standard constituted improper delegation of governmental authority); *Granholt*, 426 F. Supp. 2d 646 (permanently enjoined enforcement of Michigan statute imposing civil and criminal penalties for knowing dissemination to a minor of “an ultra-violent explicit video game that is harmful to minors,” as violation of First Amendment and unconstitutionally vague); *Blagojevich*, 404 F. Supp. 2d 1051 (permanently enjoined enforcement of Illinois law establishing criminal penalties for selling or renting violent or sexually explicit video games to minors and failing to label such games with two-inch label stating “18,” on First Amendment and vagueness grounds; the definition of “sexually explicit video games” included only the first two prongs of the *Miller* test for obscenity, but not the third, and hence was not subject to the deferential standard for juveniles as set forth in *Ginsberg*; compelled speech in required labels, signs, and brochures also violated First Amendment) (the decision with respect to sexually explicit video games was appealed and affirmed, *Entm’t Software Ass’n v. Blagojevich*, 469 F.3d 641 (7th Cir. 2006)); *Schwarzenegger*, 401 F. Supp. 2d 1034 (preliminarily enjoined enforcement of California statute restricting sale or rental of violent video games to minors and requiring label stating “18” on such games, on First Amendment grounds); *Maleng*, 325 F. Supp. 2d 1180 (permanently enjoined enforcement of Washington statute

creating penalties for distribution to minors of violent computer and video games, on First Amendment and vagueness grounds).

19. 404 F. Supp. 2d 1051.
20. Much of the research involved experiments with college students who were exposed to either violent or non-violent video games and then asked to complete certain tasks or engage in competitive behavior. One longitudinal study of minors attempted to correlate exposure to violent video games over time with the propensity to engage in fights.
21. *Blagojevich*, 404 F. Supp. 2d at 1063.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* at 1067.
26. *Hatch*, 443 F. Supp. 2d at 1069-70; *Granholt*, 426 F. Supp. 2d at 653-54; *Schwarzenegger*, 401 F. Supp. 2d at 1046.
27. *Hearing Before the Subcomm. on the Constitution, Civil Rights, and Property Rights of the S. Comm. on the Judiciary*, Mar. 29, 2006 (Statement of Prof. Kevin Saunders), note 15 *supra*.
28. *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 795-98 (1988). In *Riley*, the Supreme Court found that charitable solicitations involved a mixture of commercial and non-commercial speech and hence applied the strict scrutiny standard to compelled disclosure requirements. Citing *Zauderer v. Office of Disciplinary Counsel of the Sup. Ct. of Ohio*, 471 U.S. 626 (1985), however, the Court noted that “[p]urely commercial speech is more susceptible to compelled disclosure requirements.” 487 U.S. at 796 n.9.
29. *Blagojevich*, 404 F. Supp. 2d at 1057.
30. *Id.* at 1082, *aff'd* 469 F.3d at 652.
31. 404 F. Supp. 2d at 1081-82 (citing *Zauderer*, 471 U.S. at 651-52). In *Zauderer*, the Supreme Court, citing the test for commercial speech regulation first set forth in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561 (1980), stated that “in virtually all our commercial speech decisions to date, we have emphasized that because disclosure requirements trench much more narrowly on an advertiser’s interests than do flat prohibitions on speech, ‘[warnings] or [disclaimers] might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception.’” *Zauderer*, 471 U.S. at 651 (citations omitted). The *Central Hudson* test asks: (1) whether the speech at issue concerns lawful activity and is not misleading; (2) whether the asserted government interest is substantial; and, if so, (3) whether the regulation directly advances the governmental interest asserted; and (4) whether it is not more extensive than is necessary to serve that interest. 447 U.S. at 566. The *Blagojevich* court declined to apply the *Central Hudson* test for two reasons: (1) the “18” sticker contained no factual information about game content, created “the appearance that minors under eighteen are prohibited from playing such games,” and required a “subjective evaluation [of content] left to the discretion of the retailer”; and (2) with regard to all of the disclosure provisions, the state had offered no evidence of “actual confusion or deception of parents or children about the ESRB rating system or the content of the games” that would necessitate such measures. 404 F. Supp. 2d at 1081-82. In dicta, the court stated, however, that even under the commercial speech standard, “these provisions would be unconstitutional because they are ‘unjustified or unduly burdensome requirements’ that ‘offend the *First Amendment* by chilling protected commercial speech.’” *Id.* at 1082 n.12 (citing *Zauderer*, 471 U.S. at 651). The court noted that the labeling provision would require retailers “to play thousands of hours of video games in order to determine whether they must be labeled” and that the signage provisions would require “all video game retailers – even those who do not sell violent or sexually explicit games – to post large signs in multiple places about the ESRB rating system.” *Id.* at 1082 n.12. Affirming the lower court decision with respect to the SEVGL, the U.S. Court of Appeals for the 7th Circuit stated that these disclosure requirements, involving “a subjective and highly controversial message,” were not comparable to constitutionally permissible forms of commercial speech regulation, such as nutrition information on food labels, health warnings on cigarettes, or disclosure that a product contains mercury. 469 F.3d at 651-53.
32. 404 F. Supp. at 1082, *aff'd* 469 F.3d at 652. *Cf. Schwarzenegger*, 401 F. Supp. 2d at 1047 (requirement that a two-inch label stating “18” be affixed to the front of packages of “violent” video games not unconstitutional merely because it conflicts with industry’s voluntary rating system, but likely to violate the First Amendment under strict scrutiny standard set forth in *Riley*).
33. *Blagojevich*, 404 F. Supp. 2d at 1082, *aff'd* 469 F.3d at 653. *See also Hatch*, 443 F. Supp. 2d at 1071-72.

Appendix B: Mystery Shopper Survey

This Appendix reports on the fourth nationwide undercover or “mystery shopper” survey, which the Commission conducted in the spring of 2006, to determine the extent to which the entertainment industries restrict children’s access to R-rated movies, explicit-content labeled music recordings, and M-rated games at the retail level. The Commission first conducted an undercover “mystery shopper” survey for its 2000 Report to determine whether unaccompanied 13- to 16-year-olds could purchase tickets to R-rated movies, explicit-content labeled recordings, and M-rated games.¹ Follow-up surveys were published in the December 2001 and 2004 Reports.² For the 2004 Report, the Commission also surveyed practices at stores selling R-rated movies on DVD. For this report, the Commission added to the survey unrated or director’s cuts of movies that were rated R when they first played in theaters, and did additional video game shops in December 2005.

A. Industry Self-Regulatory Policies for Limiting Access

It is the retailers who implement any sales restrictions included in the self-regulatory rating and labeling programs. For movies, in response to the 2000 Report, the National Association of Theatre Owners (“NATO”) adopted a twelve-point initiative that, among other things, reaffirmed its existing ID-check policy for R and NC-17 films and promised to take steps to encourage theaters to enforce the rating system. In addition, NATO members appointed compliance officers to strengthen enforcement of the program. The Video Software Dealers Association (“VSDA”) (a trade group representing the interests of retailers who sell or rent movie videos and DVDs) has merged with the Interactive Entertainment Merchants Association (“IEMA”) (a trade group representing retailers of video games) to form a new group, the Entertainment Merchants Association (“EMA”).³ The EMA is seeking to adopt a uniform policy among its members on sales to children of R-rated videos and DVDs.⁴ As the survey results that follow indicate, this program is clearly not yet in place, given the ability of the mystery shoppers to purchase R-rated and unrated movie DVDs.

In the case of video games, the Entertainment Software Association (“ESA”), formerly the International Digital Software Association (“IDSA”), continues to encourage retailers to adopt a program not to sell M-rated games to persons under 17, and most major retailers of video games have now adopted express policies restricting sales to those under 17.⁵ In addition, the ESRB recently created a retail council composed of some of the major sellers of video games. Members of this council not only have pledged to have in place policies to restrict sales of M-rated games, but also have agreed to allow and help fund unannounced undercover shops of their stores at least twice a year to check on their compliance with this policy. The first undercover shop of council members was to have occurred in September 2006.

As noted in the report, the music recording industry’s labeling program provides no age-based guidance. According to the National Association of Recording Merchandisers (“NARM”), some music

retailers choose not to carry explicit-content labeled recordings or stock only edited versions, while others restrict sales to children. Still other retailers leave it to the parent to make the decision.⁶

B. The Mystery Shopper Surveys

The 2006 mystery shopper survey followed substantially the same methodology as the previous surveys. For each, the Commission, through a contractor,⁷ recruited 13- to 16-year-olds across the country to attempt to purchase movie tickets, music, or electronic games. Each teenage shopper visited one retail location for one or more of the entertainment products.⁸ Shoppers attempted to purchase either a ticket to an R-rated movie, an R-rated movie DVD, an “unrated/director’s cut” of what had been released in theaters as an R-rated movie, an explicit-content labeled CD, or an M-rated electronic game. Parents transported the children to the store or theater but were instructed not to accompany the children during the transaction. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of a receipt.⁹ In each survey, the panel was divided almost exactly between boys and girls and between younger and older shoppers (13 or 14 versus 15 or 16).¹⁰

After attempting a purchase, the shopper completed a questionnaire on the contractor’s proprietary website.¹¹ In each survey, the questionnaire asked three questions:

1. Was there a sign, poster, or other information to inform customers of the rating/advisory system or the store/theater’s policy on rating/advisory enforcement?
2. Was the child able to buy the product or admission ticket?
3. Did the cashier or clerk ask the child’s age before purchase?

C. The 2006 Mystery Shopper Survey

In the 2006 survey, shoppers from 46 states attempted to purchase movie tickets, DVD movies, music recordings, and electronic games at 1509 theaters and stores. Sample size varied by the product shopped, with approximately 250 shops each of movie theaters and of music and R-rated movie DVD retailers, and 100 shops of retailers selling unrated movie DVDs. All of the shops for movie tickets, movies, and music recordings occurred in June and July 2006. The survey for M-rated video games used 657 shoppers, with 407 shoppers in December 2005, and an additional 250 shoppers in June and July 2006. The results of the survey are reported in Table 1, and combine the results of the two video game shops.¹²

Table 1
Total Percentages of Yes and No Responses to 2006 Survey Questions

Product		R-rated Movies at the Theater (in percent of 250 shoppers)	R-rated Movies on DVD (in percent of 252 shoppers)	Unrated Movies on DVD (in percent of 101 shoppers)	Music (in percent of 249 shoppers)	Games (in percent of 657 shoppers)
Question 1 - Was Rating Information Posted?	NO	44	81	79	83	59
	YES	56	19	21	17	41
Question 2 - Was the Child Able to Make a Purchase?	NO	61	29	29	24	58
	YES	39	71	71	76	42
Question 3 - Did an Employee Ask the Child's Age?	NO	44	72	72	79	49
	YES	56	28	28	21	51

Key Findings

The most striking finding for this survey was the major improvement in retailers' performance in restricting children's access to M-rated video games. Overall, video game retailers allowed 42% of the children to purchase a game, with national retailers doing even better (38%). This result indicates that national video game retailers, as a group, are attempting to live up to the promise they made after the Commission's workshop in 2003 to have in place by the end of 2004 a program to limit such sales.¹³ Even with those positive results, however, there is still room for improvement. Although the survey also found slight progress in limiting the sale of R-rated movie DVDs and music (as shown in Table 2), the results still show that a large majority of shoppers were able to buy these products. There was a non-statistically significant slippage in connection with movie theater admissions. Nonetheless, as a group, movie theaters still did the best of any seller of these products. Unrated DVDs – the one new product shopped for this survey – showed essentially the same poor results as R-rated movie DVDs, with 71% able to purchase the DVD.

Table 2
Was the child able to buy the product or admission ticket? (Percent "Yes")

Entertainment Product Type	2000 Survey	2001 Survey	2003 Survey	2006 Survey
R-rated Movie Theater Ticket	46%	48%	36%*	39%
R-rated Movie on DVD	n/a	n/a	81%	71%*
Unrated Movie on DVD	n/a	n/a	n/a	71%
Music Recording	85%	90%	83%	76%*
Electronic Game	85%	78%*	69%*	42%*

* Denotes a statistically significant difference from a prior survey. Data for comparison were not available for unrated DVD retailers.

For most types of entertainment product, more shoppers noted that rating information was posted, and reported that the retail clerk or cashier had asked the shoppers' age. Although these changes were not always statistically significant, as shown in Table 3, they were in the same positive direction for each industry, with one exception (the extent to which the music shoppers saw rating information slipped somewhat from 2003).

Table 3
Results on Availability of Rating Information/"Ask Age" Questions

Entertainment Product Type	Does the venue provide information about ratings or ratings enforcement? (Percent "Yes")			Did the cashier or clerk ask the child's age? (Percent "Yes")		
	2001	2003	2006	2001	2003	2006
Movie Theater Ticket	59%	62%	56%	39%	48%*	56%
R-rated Movie on DVD	n/a	26%	19%	n/a	19%	28%*
Unrated Movie on DVD	n/a	n/a	21%	n/a	n/a	28%
Music Recording	12%	21%*	17%	10%	13%	21%*
Electronic Game	26%	27%	41%*	21%	24%	51%*

* Denotes a statistically significant difference from a prior survey. Data for comparison were not available for unrated DVD retailers.

As in the previous surveys, theaters displayed rating information, asked young shoppers their ages, and restricted purchases more consistently than other entertainment retailers. Music retailers again were the least likely to provide information about the parental advisory, check shoppers' ages, or restrict purchases. DVD retailers' practices were approximately comparable to the music retailers' results for each measure, with slightly more DVD retailers posting rating information, asking age, and restricting purchase.

Major Chain Comparisons

A comparison of major¹⁴ chains in each industry, with one principal exception, showed that the largest theater circuits, DVD retailers, and music retailers were no more likely to display signs, posters, or other information about the rating system, ask age, or restrict sales to minors than non-majors. There were, however, substantial and statistically significant differences between major and non-major video game retailers, with national retailers more often posting information about the rating system (47% vs. 20%), restricting sales (62% vs. 37%), and asking age (55% vs. 34%). Still, even at the major retailers, nearly four out of ten teen shoppers (37%) were able to purchase an M-rated game.

In addition, results varied from retailer to retailer and, at times, from product to product. For example, with regard to whether shoppers were turned away, Wal-Mart did the best of the major retailers shopped, turning away 85% of the video game shoppers and just over 75% of shoppers of R-rated and unrated movie DVDs (Wal-Mart does not sell explicit-content labeled CDs). In the case of explicit-content labeled music, Kmart did the best, turning away music shoppers 61% of the time. Most of the

game (51%) and R-rated movie (64%) shoppers were also unable to buy at the Kmart's shopped. In contrast, the results for other major retailers varied by the product shopped. For example, at Best Buy, 67% of shoppers were unable to buy a video game, yet much smaller percentages of shoppers were turned away in their efforts to buy R-rated (13%) and unrated (11%) movie DVDs and explicit-content labeled music (11%).

Table 4
Results of National Retailers - Was the Child Able to Make the Purchase?
(ranked in order of percentage refusing the purchase)

Movie Theater Tickets

	Yes		No	
	Frequency	Percent	Frequency	Percent
other*	8	32	17	68
AMC	14	34	27	66
Cinemark	6	35	11	65
Showcase	5	38	8	62
Carmike	6	40	9	60
Regal	16	41	23	59
Century	8	53	7	47

* Groups national theaters that were shopped less than 10 times

DVD-R

	Yes		No	
	Frequency	Percent	Frequency	Percent
Wal-Mart	6	23	20	77
Kmart	4	36	7	64
Circuit City	12	52	11	48
Hollywood Video	8	80	2	20
Blockbuster	43	81	10	19
other	28	82	6	18
Best Buy	20	87	3	13
Target	30	94	2	6

* Groups movie DVD retailers that were shopped less than 10 times

DVD-Unrated

	Yes		No	
	Frequency	Percent	Frequency	Percent
Wal-Mart	4	24	13	76
other	19	73	7	27
Blockbuster	20	80	5	20
Target	11	85	2	15
Best Buy	17	89	2	11

* Groups movie DVD retailers that were shopped less than 10 times

Video Games

	Yes		No	
	Frequency	Percent	Frequency	Percent
Wal-Mart	15	15	88	85
Best Buy	25	33	50	67
Game Stop	20	34	39	66
Toys R Us	16	37	27	63
Target	37	37	62	63
KB Toys	4	40	6	60
EB Games	18	44	23	56
Kmart	17	49	18	51
Circuit City	21	64	12	36
Blockbuster	12	75	4	25
other*	9	75	3	25

* Groups video game retailers that were shopped less than 10 times

Music

	Yes		No	
	Frequency	Percent	Frequency	Percent
Kmart	15	39	23	61
Circuit City	18	55	15	45
other*	17	77	5	23
FYE	22	88	3	12
Best Buy	31	89	4	11
Target	36	90	4	10
Borders	11	100	0	0

* Groups music retailers that were shopped less than 10 times

Comments on the Undercover Shops

As part of the mystery shopper survey, the parents of the shoppers were asked to provide one or two sentences of commentary about the purchase attempt and describe any interaction that occurred between the child and the employees at the store or theater. The comments shed light on industry practices in a way that numbers alone do not. Many of the comments reflect that the cashier sold the product without a second thought or any question about the child's age. For others, the cashiers asked if the child's parent was around in an effort to complete the sale, or asked to see the child's ID. In one case, a stranger claimed to be the child's parent so that the child could purchase the product. Selected verbatim comments follow:¹⁵

The child was not able to buy the video. He was asked for his birthdate. When he said he was 16, the child was told he needed a parent with him. He bought a Pepsi instead. He did not see signage indicating the rating system or the policy on rating enforcement. (DVD, age 16)

The employee denied the sale after asking the child for her age. The employee stated they were not allowed to sell this particular DVD to a child of her age. (DVD, age 13)

The employee asked for the child's ID. The child told her she did not have it with her. The employee apologized and told her she would have to come back with her ID because of the rating on the game. (video game, age 13)

The employee asked the child if his mom was with him. He replied, "No." The employee replied, "Then I can't let you buy this." (video game, age 13)

When the child approached the register with his purchase, he was immediately asked for his ID. When he complied, he was informed he was not old enough to complete the purchase. (video game, age 16)

There was a wall chart about video game ratings posted on a pillar near the video game cabinets. The employee did not ask the child's age but did ask if he had a parent with him. When he said no, she told him the game was rated M, and she could not sell it. (video game, age 15)

The employee asked the child, "Do you have a drivers license?" He said, "No. Do I need one?" The employee asked, "Do you have a parent around?" My son said he did not. The employee said, "It's mature rated. I can't let you buy it." (video game, age 13)

The cashier asked how old my daughter was and if she had ID. Without proof of age, she said she could not sell the item. My daughter bought gum instead. (CD, child)

When my child requested the ticket, the employee asked for an ID. When my child said he didn't have one, a customer behind him said, "It's okay. I'm his Dad." The employee asked, "Will you be seeing the same movie? Because they'll be checking again inside." (movie ticket, age 14)

The child asked for one ticket to V for Vendetta. The employee asked, "How old are you?" When the child said she was 16, the employee said, "Oh, I'm not supposed to sell that to you then." (movie ticket, age 16)

The child asked for the specific M-rated game, and bought it with no questions asked. Signs, posters, or other information to inform customers of the rating system or the store's policy on rating enforcement were not posted. (video game, age 15)

When the child approached the counter, the employee did not even glance at the rating of the DVD, but instead, rang it up as a normal sale. (DVD, age 16)

The employee never asked the child her age but he did ask for her telephone number. Signs, posters, or other information to inform customers of the rating system or the store's policy on rating enforcement were not posted. (movie ticket, age 14)

The child requested a student ticket. The employee told him to enjoy the show. Signs, posters, or other information to inform customers of the rating system or the store's policy on rating enforcement were not posted. (movie ticket, age 16)

The only question the child was asked was, "Did you find everything okay?" Signs, posters, or other information to inform customers of the rating system or the store's policy on rating enforcement were not posted. (CD, age 14)

The employee said, “Hi. What movie would you like to see?” The child replied, “United 93.” The employee handed her the ticket and asked for \$7.75. The child gave her the money, received the change, and was thanked. She then turned around and left. (movie ticket, age 14)

The employee asked the child how he was doing. Nothing was said about age or ID. The child was able to buy the CD. (CD, age 13)

My son walked up to the counter, and the employee asked, “Will that be all for you today?” My son was asked if he wanted a Barnes and Noble membership card that would save him 10% that day. He declined, and the employee sold him the CD. (CD, age 14)

The front of the CD had the Parental Advisory sticker on the front. The CD was in the used bin but also was shrink wrapped and labeled with appropriate labels. The employee did not ask my child for ID or his age. He sold him the CD. (CD, age 14)

There was a sign stating that no sales would be made to anyone under the age of 17 of M-rated video games. The child went to the register in the electronics department. The employee asked if this was all the child wanted and then rang up the sale. (video game, age 14)

The employee did not ask the child any questions about her age. She rang up the item and announced the cost. Signs, posters, or other information to inform customers of the rating system or the store’s policy on rating enforcement were not posted. (video game, age 13)

Tables of Mystery Shopper Survey Data

1. Tables of Mystery Shopper Results by Age of Shopper

Was the shopper able to make the purchase?

a. Movie Theaters

	13 years old	14 years old	15 years old	16 years old	Total
No	41 65%	41 66%	40 70%	30 44%	152 61%
Yes	22 35%	21 34%	17 30%	38 56%	98 39%
Total	63	62	57	68	250

b. Music Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	21 34%	13 21%	13 25%	14 19%	61 24%
Yes	41 66%	49 79%	40 75%	58 81%	188 76%
Total	62	62	53	72	249

c. *Electronic Game Stores*

	13 years old	14 years old	15 years old	16 years old	Total
No	125 63%	89 62%	85 56%	83 51%	382 58 %
Yes	73 37%	55 38%	67 44%	80 49%	275 42 %
Total	198	144	152	163	657

d. *R-rated DVD Movie Stores*

	13 years old	14 years old	15 years old	16 years old	Total
No	22 37%	10 17%	16 25%	24 36%	72 29%
Yes	39 64%	50 83%	49 75%	42 64%	180 71%
Total	61	60	65	66	252

Was the shopper asked his/her age?

a. *Movie Theaters*

	13 years old	14 years old	15 years old	16 years old	Total
No	30 48%	25 40%	17 30%	38 56%	110 44%
Yes	33 52%	37 60%	40 70%	30 44%	140 56%
Total	63	62	57	68	250

b. *Music Stores*

	13 years old	14 years old	15 years old	16 years old	Total
No	51 82%	51 82%	37 70%	58 81%	197 79%
Yes	11 18%	11 18%	16 30%	14 19%	52 21%
Total	62	62	53	72	249

c. *Electronic Game Stores*

	13 years old	14 years old	15 years old	16 years old	Total
No	101 51%	67 47%	79 52%	76 46%	323 49%
Yes	97 49%	77 53%	73 48%	87 53%	334 51%
Total	198	144	152	163	657

d. R-rated DVD Movie Stores

	13 years old	14 years old	15 years old	16 years old	Total
No	40 66%	51 85%	48 74%	42 64%	181 72%
Yes	21 34%	9 15%	17 26%	24 36%	71 28%
Total	61	60	65	66	252

2. Tables of Purchase Behavior by “Major” Chain vs. Non-“Major” Chain

Did the shopper see any sign, poster, or other information to inform customers of the rating/advisory system or the store/theater’s policy on rating/advisory enforcement? (Percentage of “YES” Responses)

Type of Store or Theater	Movies	Music	Games	R-rated DVDs
Non-Major	46%	18%	20%	13%
Major Chain	61%	17%	47%	20%

Was the shopper able to purchase the item? (Percentage of “YES” Responses)

Type of Store or Theater	Movies	Music	Games	R-rated DVDs
Non-Major	41%	84%	62%	73%
Major Chain	38%	74%	37%	71%

Was the shopper asked his/her age? (Percentage of “YES” Responses)

Type of Store or Theater	Movies	Music	Games	R-rated DVDs
Non-Major	59%	20%	34%	30%
Major Chain	55%	21%	55%	28%

Endnotes

1. See Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries, Appendix F (“2000 Report”), available at www.ftc.gov/reports/violence/appendicesviorpt.pdf.
The September 2000 survey comprised 1,158 theaters and stores.
2. See Marketing Violent Entertainment to Children: A One-Year Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries, Appendix B (“December 2001 Report”), available at www.ftc.gov/os/2001/12/violencereport1.pdf. The 2001 Mystery Shopper Survey comprised 900 theaters and stores. See Marketing Violent Entertainment to Children: A Fourth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries, Appendix B (“July 2004 Report”), available at www.ftc.gov/os/2004/07/040708kidsviolencerpt.pdf. The 2003 Mystery Shopper Survey comprised 899 theaters and stores.
3. See *Entertainment Merchants Association Is Created by Merger of IEMA and VSDA*, May 23, 2006, available at www.marketwire.com/mw/release_html_b1?release_id=130780 (last visited Oct. 11, 2006).
4. See *Summary of Proceedings*, EMA Video Board of Directors Meeting, July 10, 2006. “By a unanimous vote, the Board directed staff to develop a model code for ratings education, enforcement, and advertising that could be applied consistently to motion picture videos and computer and video games by all EMA members,” available at www.entertainmentmerchantsassociation.org (last visited Oct. 17, 2006).
5. See Statement of Hal Halpin, then President, Interactive Entertainment Merchants Association, FTC Workshop on Industry Self-Regulation (Oct. 29, 2003), available at www.ftc.gov/bcp/workshops/violence/transcript.pdf, p. 181. Mr. Halpin recently formed a new group, the Entertainment Consumer Association (“ECA”), whose mission is “to give game consumers a voice and to ensure that elected officials hear their concerns and appreciate the growing influence of the gamer demographic.” See *ECA Overview*, available at www.theeca.com/about_eca.htm (last visited Oct. 25, 2006).
6. NARM indicates that many retailers will accept returns if a parent concludes that a recording is inappropriate for his or her child. See *NARM, Parental Advisory: A Message to Parents About Children and Music*, available at www.narm.com/Content/NavigationMenu/RatingsLabeling/ParentalAdvisoryMaterials/A_Message_To_Parents.htm (last visited Oct. 4, 2006).
7. Second to None was the contractor for each of the mystery shops.
8. No shopper visited more than one location for each type of entertainment product.
9. If they were not able to make a purchase, the shoppers were to buy another item at the store or a ticket to another movie to get a receipt, except in cases where the shopper went to a movie theater showing only one R-rated movie.
10. Slightly more shoppers were female (756 vs. 753), and about half (747) were younger shoppers (13 or 14 years old).
11. Parents completed the questionnaire on the website after getting the information from the child (e.g., whether the child was able to purchase the product).
12. When looked at separately, the results of the two video game shops are almost identical. For example, in both the December 2005 shop and June and July 2006 shops, 42% of shoppers were able to purchase an M-rated game.
13. See “*Major Retailers Announce New Campaign to Enforce Video Game Rating System*,” at releases.usnewswire.com/GetRelease.asp?id=121-12082003 (last visited Oct. 25, 2006).
14. For purposes of this appendix, so-called “major” chains include only the very largest theater circuits and retailers in each industry. The “non-major” category includes independent stores as well as chains – including some large chains – that are not among the nation’s very largest sellers of that category of product.
15. Note that these comments are not necessarily representative of the shoppers’ experiences as a group. The shopper’s age is provided in the parenthetical following each comment.

Appendix C: The Commission's Survey of Parents and Children Regarding Video Games and the ESRB System

I. Overview Of Methodology

A. Sampling Frame

The sampling frame consisted of all blocks of telephone numbers with at least one listed residential telephone number. A block of telephone numbers consisted of 100 numbers having the same first eight digits. The survey employed the GENESYS sampling system that includes the database. GENESYS randomly generates representative single-stage samples of telephone numbers. It generates each telephone number by randomly selecting a block known to contain at least one listed residential telephone number and then randomly generating the two final digits to complete the number. The resulting sample of telephone numbers represents all U.S. households with telephones, both listed and unlisted, without bias and with the efficiency of a single-stage sample. The sampling frame was stratified to meet the goals of the sampling plan. The strata were constructed such that the resulting sample would provide a nationally representative statistical sample of U.S. households in the 50 states and the District of Columbia.

B. Questionnaire Design

The questionnaires were designed by the Commission staff in consultation with Dr. Manoj Hastak, a consultant to the FTC, and Synovate. To ensure that all aspects of the survey instruments and protocol were working as designed, pilot testing involved trained interviewers and the fully developed survey instruments programmed into the Computer Assisted Telephone Interviewing (CATI) system. The instruments were pilot tested early in the field period with a limited number of interviewers dialing households. The survey was deemed to be working as intended from a substantive and technical perspective and the fieldwork continued. Copies of the final questionnaires appear in Section II of this Appendix.

C. Telephone Data Collection

Interviewing began on July 25, 2006 and continued through September 10, 2006. Interviews were conducted between 9 a.m. and 9 p.m. Monday through Friday, between 9 a.m. and 8 p.m. on Saturdays, and between 11 a.m. and 8 p.m. on Sundays (all times local). Synovate's CATI system was used for data collection. Questionnaires were programmed into the system, and telephone interviewers read questions as they were logically fed in predetermined order from the computer to a viewing screen.

D. Respondent Eligibility

To be eligible to participate in the study, the following criteria had to be met:

- the interviewee had to be a head of household
- a child between the ages of 8 and 16 must have been living in the household at least half of the time
- that child must have played video games in the past month
- the head of household must have made at least half of the purchase decisions on behalf of that child

Potential respondents were screened early in the questionnaire for qualification. Where multiple qualified children were present in the household, one child was randomly selected (the child with the most recent birthday) and the interview was focused on the behaviors related only to that one child.

After the interview with the head of household was completed, he or she was asked for permission to interview the child on whom the head of household interview centered. Of 1,342 parents interviewed, 543 gave permission to interview the child, and 354 children were interviewed.

E. Non-Response Follow-up Results

All non-respondents were re-contacted by telephone one to two weeks following the initial contact in order to secure their cooperation. Those respondents who requested they not be contacted again were omitted from these dialing efforts. The contact was made by more experienced interviewers, specially trained in refusal avoidance techniques.

In order to assess the extent of any bias due to non-response, a random subset of those who refused for a second time during the conversion attempt answered a few key questions. This procedure allowed detection of any differences between respondents and those who chose not to participate.

F. Final Sample Dispositions and Response Rates

The classification of each sample piece from the entire random digit dial (RDD) sample generated by GENESYS was based on the most significant attempt. For example, if a respondent was not available on the first attempt and subsequent attempts resulted in a no answer, the final disposition was Respondent Not Available. If a respondent quit during the first phase of dialing, and the number was found to be an answering machine on a subsequent conversion attempt, it was categorized as a Quit. Completed interviews obtained during the conversion phase of the study were included in the calculation of the final response rates. A response rate of 35% was computed using the AAPOR Outcome Rate Calculator Version 2.1, formula AAPOR RR3.

II. Survey Instruments Annotated With Results

Screeners

ASK PARENTS ONLY

INTRODUCTION: Hello, my name is _____ and I am calling from Synovate on behalf of the Federal Trade Commission, a government agency that protects consumers. We are conducting a survey of parents and children across America for research purposes. Please be assured this is not a sales call and that your participation is voluntary. Also, please know that I will not ask for any personally identifying information. I would like to speak to someone age 18 or older. (REINTRODUCE IF NECESSARY)

We are looking to speak to people in households that have both adults and children in them. First, can you tell me ... **[PROG: PUT ON SAME SCREEN AS S1]**

S1 Are there any children between the ages of 8 and 16 who live in this household at least one-half of the time? (n=1334)

INTERVIEWER: IF RESPONDENT VOLUNTEERS THAT HE/SHE DOES NOT HAVE CHILDREN, ATTEMPT TO CONFIRM WITH S1. IF RESPONDENT HANGS UP AFTER THIS AND YOU ARE UNABLE TO CONFIRM, ENTER "NO" IN S1 AND TERMINATE.

1	Yes	100%
2	No (THANK AND TERMINATE)	- ¹
7	DK (ASK TO SPEAK TO SOMEONE ELSE)	-
8	NA/Refused (THANK AND TERMINATE)	-

S2 Are you the parent or guardian in your household who makes at least one-half of the decisions about the child/children's activities and the products they buy? (n=1334)

1	Yes (GO TO S4)	100%
2	No (GO TO S3)	-
7	DK//NA/Refused (GO TO S3)	-

S3. May I please speak to the person who is?

1	Yes (GO TO INTRODUCTION, THEN GO TO S4)	-
2	No (THANK AND TERMINATE)	-

S4. How many children aged 8-16 are living in your household? (n=1334)

(RECORD THE NUMBER OF CHILDREN)

1	50%
2	34%
3	12%
4	3%
5+	1%

S4a. In the past month [IF S4 = 1 (has this child) / IF S4 IS MORE THAN 1 – (have any of these children)] played video games on a personal computer or on video game equipment such as a Playstation, Xbox, or Gamecube? (n=1334)

Yes – CONTINUE WITH S5	100%
No – THANK AND TERMINATE	-
DK – THANK AND TERMINATE	-
REF – THANK AND TERMINATE	-

S5 IF S4 GT 1: In this survey, we want to focus mainly on just one child. To make sure we get a random sample, could you please tell me the age and gender of the child age 8 - 16 who has had the most recent birthday and who plays video games?

S5a Child's Age (n=1334)

(RECORD THE AGE OF THE CHILD. RANGE = 8- 16.)

1 8	11%
2 9	13%
3 10	12%
4 11	10%
5 12	11%
6 13	11%
7 14	11%
8 15	10%
9 16	11%
97 DON'T KNOW (THANK AND TERMINATE)	-
98 REFUSED (THANK AND TERMINATE)	-

IF S4 = 1, READ - Could you please tell me the age and gender of your 8 – 16 year old child?

S5b Child's Gender (n=1334)

- | | | |
|---|------|-----|
| 1 | Boy | 68% |
| 2 | Girl | 32% |

S6 And would you mind telling me the first name or initials of this child? It will just make it easier for me to go through the rest of the survey.

(RECORD THE NAME OF THE CHILD)

IF REFUSES TO GIVE NAME, FILL "your X year old child" FOR NAME

Please remember that while we are interviewing you the questions we will ask are about (CHILD FROM Q. S6).

Parent Questionnaire

Before we start, please note that under federal law we can't conduct, and you don't have to respond to, a survey that does not have a valid OMB control number. For this survey, that number is 3084 - 0120.

Remember that while I am interviewing you we are talking about your (INSERT AGE OF CHILD CHOSEN IN Q. S5a.) child, (IF APPLICABLE, INSERT THE CHILD'S NAME FROM Q. S6). I would like to ask you some questions about the video games that your child plays. When I say "video games," I mean computer games that are played on a PC, hand-held games that are played on a Gameboy, or console games that are played on a Sony PlayStation, a Microsoft Xbox, or a Nintendo Gamecube. I am not talking about coin-operated games played in the arcade. There are no right or wrong answers to any of the questions; I just want your opinions.

1. In the past year, on average, about how often does (CHILD) play video games each week? Would you say (READ CODES 1-5): (n=1334)

1	Never,	1%
2	Less than five hours,	49%
3	Five to ten hours,	32%
4	Eleven to fifteen hours, or	9%
5	More than fifteen hours,	8%
7	DON'T KNOW	*2
8	REFUSED	*

IF "NEVER"/ "DON'T KNOW"/"REFUSED" TO Q1, GO TO DEMOGRAPHIC QUESTIONS

2a. For the video games that (CHILD) plays, who usually decides which games to buy or rent? Is it usually (READ CODES 1 - 3): (n=1311)

1	The child,	13%
2	An adult, or	17%
3	An adult and the child together	69%
7	DON'T KNOW	1%
8	REFUSED	*

2b. For the video games that (CHILD) plays, who usually purchases or rents the games? Is it usually **(READ CODES 1 - 3)**: (n=1311)

1	The child,	9%
2	An adult, or	40%
3	An adult and the child together	49%
7	DON'T KNOW	1%
8	REFUSED	1%

2bb. In the past year, about how many different video games have been purchased or rented either by or for (CHILD)? (NOTE: VERIFY ANY NUMBER OVER 20) (n=1311)

1	1	6%
2	2	11%
3	3	13%
4	4	10%
5	5	13%
6	6-10	22%
7	11-19	8%
8	20-29	8%
9	30+	5%
98	DON'T KNOW (DO NOT READ)	3%
99	REFUSED (DO NOT READ)	1%

2c. What is (CHILD)'s current favorite video game? (n=1311)

7 DON'T KNOW (DO NOT READ)
8 REFUSED (DO NOT READ)

3a. Do you or don't you restrict which video games (CHILD) can play? (n=1311)

1	YES (DO RESTRICT) (GO TO Q. 3b)	85%
2	NO (DON'T RESTRICT) (GO TO Q. 4a)	14%
7	DON'T KNOW (DO NOT READ) (GO TO Q. 4a)	*
8	REFUSED (DO NOT READ) (GO TO Q. 4a)	-

3b. What are the restrictions? (n=1118)

7 DON'T KNOW (DO NOT READ)
8 REFUSED (DO NOT READ)

3c. Where do you look or go for information about a video game to help you decide whether (CHILD) can or cannot play that game? (n=1118)

PROBE: Anywhere else?

PROBE AGAIN: Anywhere else?

7 DON'T KNOW (DO NOT READ)

8 REFUSED (DO NOT READ)

3d. In the past year, have you told (CHILD) that he/she cannot play a particular video game? (n=1118)

1 YES (GO TO Q. 3e)	64%
2 NO (GO TO Q. 4a)	35%
7 DON'T KNOW (DO NOT READ) (GO TO Q. 4a)	1%
8 REFUSED (DO NOT READ) (GO TO Q. 4a)	-

3e. If you recall, what was the name of the last video game that you told (CHILD) not to play? (n=717)

7 DON'T KNOW (DO NOT READ) (GO TO Q. 4a)

8 REFUSED (DO NOT READ) (GO TO Q. 4a)

3f. Why didn't you want (CHILD) to play that video game? (n=415)

7 DON'T KNOW (DO NOT READ)

8 REFUSED (DO NOT READ)

4a. Are you aware whether there is a rating system to help parents decide what video games they do and do not want their children to play? (n=1311)

1	YES (GO TO Q. 4b)	87%
2	NO (GO TO Q. 8)	12%
7	DON'T KNOW (DO NOT READ) (GO TO Q. 8)	1%
8	REFUSED (DO NOT READ) (GO TO Q. 8)	-

4b. How familiar would you say you are with the rating system for video games? **(READ CODES 1 - 4)** (n=1144)

1	Very familiar,	31%
2	Moderately familiar,	43%
3	Slightly familiar, or	22%
4	Not at all familiar (GO TO Q. 8)	4%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-

4c. Does the rating system provide you **(READ CODES 1 – 2, RECORD YES/NO/DON'T KNOW/REFUSED FOR EACH)**:

1. The age group for which the game may be appropriate? (n=1098)

Yes	84%
No	12%
Don't know	4%
Refused	-

A description of the content of the game that may be of concern? (n=1098)

Yes	86%
No	11%
Don't know	3%
Refused	*

4d. In thinking about video game ratings, please tell me all the video game ratings you can think of. **(RECORD ALL THAT ARE MENTIONED. DO NOT READ.)** (n=1098)

PROBE: Any other ratings? _____

PROBE AGAIN: Any other ratings? _____

1	AO or Adults Only	10%
2	M or Mature	52%
3	T or Teen	53%
4	E or Everyone	49%
5	EC or Early Childhood	2%
6	E10+ or Everyone 10 and Older	2%
7	RP or Rating Pending	1%
8	PG/PG-13	3%
9	G/G for General	3%
10	V/V for violence/Violent content	2%
11	R/R for restricted	2%
12	Y/Y for youth	2%
13	17+/NC17/17 and older	1%
14	MA/MA for mature	1%
15	A/A for adult	1%
16	X/X rated	1%
17	Y-7	1%
18	Y-14/T-14	1%
95	OTHER MENTIONS (ACCEPT NO MORE THAN 3)	6%
97	DON'T KNOW	19%
98	REFUSED	*

IF ALL RATINGS ARE NAMED, SKIP TO Q. 5a. OTHERWISE, ASK THIS FOLLOW-UP QUESTION FOR EACH OF THE RATINGS NOT NAMED:

(i) Have you heard of the rating (INSERT NAME OF FIRST RATING NOT NAMED)?

1 AO or Adults only (n=1098)

1	Yes	45%
2	No	55%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-

2	M or Mature (n=1098)	
1	Yes	93%
2	No	6%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-
3	T or Teen (n=1098)	
1	Yes	88%
2	No	12%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-
4	E or Everyone (n=1098)	
1	Yes	89%
2	No	10%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-
5	EC or Early Childhood (n=1098)	
1	Yes	31%
2	No	69%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-
6	E10+ or Everyone 10 and Older (n=1098)	
1	Yes	32%
2	No	67%
7	DON'T KNOW (DO NOT READ)	1%
8	REFUSED (DO NOT READ)	*
7	RP or Rating Pending (n=1098)	
1	Yes	28%
2	No	72%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	-

REPEAT FOLLOW-UP QUESTION FOR ANY OTHER RATINGS NOT NAMED.

5a. How often do you use the video game's rating when (CHILD) wants to buy, rent, or play a game for the first time (**READ CODES 1 - 5**): (n=1098)

1	All or nearly all of the time, (GO TO Q. 5c)	57%
2	Most of the time, (GO TO Q. 5c)	16%
3	Some of the time, (GO TO Q. 5b(i))	10%
4	Rarely, or (GO TO Q. 5b(ii))	9%
5	Never (GO TO Q. 5b(iii))	8%
7	DON'T KNOW (GO TO Q. 5c)	*
8	REFUSED (GO TO Q. 5c)	-

5b. (i) Can you tell me why you use the video game's rating only some of the time? (n=111)

8 REFUSED

GO TO Q. 5c.

5b. (ii) Can you tell me why you rarely use the video game's rating? (n=94)

8 REFUSED

GO TO Q. 5c.

5b. (iii) Can you tell me why you never use the video game's rating? (n=89)

8 REFUSED

5c. Along with a rating symbol, like the letter “T” for Teen or “M” for Mature, the video game rating system provides words or short phrases called “content descriptors,” such as “Blood and Gore” and “Strong Language.” How familiar are you with content descriptors that are assigned by the video game rating system? **(READ CODES 1 - 4)** (n=1098)

1	Very familiar,	17%
2	Moderately familiar,	38%
3	Slightly familiar, or	31%
4	Not at all familiar (GO TO Q. 6a)	14%
7	DON'T KNOW (GO TO Q. 6a)	*
8	REFUSED (GO TO Q. 6a)	-

5d. Where do you find content descriptors? (n=948)

PROBE: Anywhere else?

PROBE AGAIN: Anywhere else?

5e. How often do you use the video game’s content descriptors when (CHILD) wants to buy, rent, or play a game for the first time **(READ CODES 1 - 5)**: (n=948)

1	All or nearly all of the time, (GO TO Q. 6a)	57%
2	Most of the time, (GO TO Q. 6a)	18%
3	Some of the time, (GO TO Q. 5f(i))	11%
4	Rarely, or (GO TO Q. 5f(ii))	8%
5	Never (GO TO Q. 5f(iii))	6%
7	DON'T KNOW (GO TO Q. 6a)	1%
8	REFUSED (TO Q. 6a)	-

5f (i) Can you tell me why you use the video game's content descriptors only some of the time? (n=100)

GO TO Q. 6a

5f. (ii) Can you tell me why you rarely use the video game's content descriptors? (n=77)

GO TO Q. 6a

5f. (iii) Can you tell me why you never use the video game's content descriptors? (n=59)

6a. In general, how often do video game ratings match your personal view of whether or not a game may be suitable for children in the age group indicated by the game's rating? Would you say the ratings for video games match your personal views (**READ CODES 1 - 5**): (n=1098)

1	All or nearly all of the time,	21%
2	Most of the time,	43%
3	Some of the time,	24%
4	Rarely,	6%
5	Never	3%
7	DON'T KNOW	3%
8	REFUSED	-

6b. Now I'm going to ask you some questions about specific game ratings based on your personal experience with buying, renting, playing, or watching video games with (CHILD). If you don't know the answer, just tell me, "Don't know." Again, your answers should be based on your direct, personal experience with purchasing, playing, or viewing video games with (CHILD).

The first question involves games rated **T for Teen**, which the rating system says may be suitable for children ages 13 and older. Which one of the following statements best describes your attitude toward games rated **T for Teen**? (**RANDOMLY READ CODES 1 - 3 OR 3 - 1**) (n=1098)

- | | |
|---|-----|
| 1. I generally allow (CHILD) to play games that are rated T for Teen. | 36% |
| 2. I sometimes allow (CHILD) to play games that are rated T for Teen. | 43% |
| 3. I never allow (CHILD) to play games that are rated T for Teen. | 18% |
| 7 DON'T KNOW | 3% |
| 8 REFUSED | * |

IF RESPONSE IS 3, GO TO Q. 6b(i). IF RESPONSE IS 1 OR 2, GO TO Q. 6b(ii). IF RESPONSE IS 7 OR 8, GO TO Q. 6c.

(i) Why do you never allow (CHILD) to play **T-rated** games? (n=203)

- 7 DON'T KNOW (DO NOT READ)
- 8 REFUSED (DO NOT READ)

GO TO Q. 6c

(ii) Have you ever come across a game rated **T for Teen** that you will not allow (CHILD) to play until he/she is older? (n=858)

- | | |
|--|-----|
| 1 Yes | 40% |
| 2 No (GO TO Q. 6c) | 57% |
| 7 DON'T KNOW (DO NOT READ) (GO TO Q. 6c) | 3% |
| 8 REFUSED (DO NOT READ) (GO TO Q. 6c) | * |

(iii) What is the name of one of these games? (n=347)

- 7 DON'T KNOW (DO NOT READ) GO TO Q. 6c
8 REFUSED (DO NOT READ) GO TO Q. 6c

(iv) Why will you not allow (CHILD) to play this game until he/she is older? (n=124)

- 7 DON'T KNOW (DO NOT READ)
8 REFUSED (DO NOT READ)

(v) How old will (CHILD) have to be before he/she may play this game? (**DO NOT READ CODES**) (n=124)

1	21 or older	7%
2	20	-
3	19	2%
4	18	27%
5	17	4%
6	16	15%
7	15	5%
8	14	7%
9	13	13%
10	12	6%
11	11	1%
12	10	1%
13	9	3%
98	DON'T KNOW (DO NOT READ)	6%
99	REFUSED (DO NOT READ)	2%

6c. The next question involves games rated **M for Mature**, which the rating system says may be suitable for persons ages 17 and older. When it comes to (CHILD), which one of the following statements best describes your attitude toward games rated **M for Mature**? (**RANDOMLY READ CODES 1 - 3 OR 3 - 1**) (n=1098)

- | | |
|--|-----|
| 1. I generally allow (CHILD) to play games that are rated M for Mature. | 6% |
| 2. I take it on a case-by-case basis, and I sometimes allow (CHILD) to play games that are rated M for Mature. | 34% |
| 3. I never allow (CHILD) to play games that are rated M for Mature. | 59% |
| 7 DON'T KNOW | 1% |
| 8 REFUSED | * |

IF RESPONSE IS 3, GO TO Q. 6c(i). IF RESPONSE IS 1 OR 2, GO TO Q. 6c(ii). IF RESPONSE IS 7 or 8 GO TO Q. 7a

(i) Why do you never allow (CHILD) to play **M-rated** games? (n=653)

- 7 DON'T KNOW (DO NOT READ)
 8 REFUSED (DO NOT READ)

GO TO Q. 7a

(ii) Have you ever come across a game rated **M for Mature** that you will not allow (CHILD) to play because you believe it has content that only adults should play? (n=431)

- | | |
|--|-----|
| 1 Yes | 65% |
| 2 No (GO TO Q. 7a) | 32% |
| 7 DON'T KNOW (DO NOT READ) (GO TO Q. 7a) | 2% |
| 8 REFUSED (DO NOT READ) (GO TO Q. 7a) | * |

(iii) What is the name of one of these games? (n=282)

- | | |
|----------------------------|-------------|
| 7 DON'T KNOW (DO NOT READ) | GO TO Q. 7a |
| 8 REFUSED (DO NOT READ) | GO TO Q. 7a |

(iv) What adult content in the game do you not want (CHILD) to play? (n=156)

7 DON'T KNOW (DO NOT READ)

8 REFUSED (DO NOT READ)

7a. When deciding whether (CHILD) should or should not play a video game, would you say that the video game ratings are (READ CODES 1 - 4): (n=1098)

1 Very easy to understand, 53%

2 Moderately easy to understand, 40%

3 Not very easy to understand, or 4%

4 Not at all easy to understand 1%

7 DON'T KNOW 1%

8 REFUSED -

7b. Overall, how satisfied are you with the video game rating system in providing you with information about the video games that (CHILD) wants to play? Are you (READ CODES 1 - 4): (n=1098)

1 Very satisfied with the rating system, 36%

2 Somewhat satisfied with the rating system, 51%

3 Somewhat dissatisfied with the rating system, or 9%

4 Very dissatisfied with the rating system 3%

7 DON'T KNOW 1%

8 REFUSED *

8. Parents differ in their opinions about the content of video games that their children may be exposed to. For the following types of content, please tell me whether you are very concerned, moderately concerned, slightly concerned, or not at all concerned about your children being exposed to: **(RANDOMIZE A – C)**

a. Violent content **(READ CODES 1 - 4) (READ IF NECESSARY: How concerned are you about your children being exposed to violent content in video games? Would you say...(READ CODES 1 – 4))** (n=1311)

1	Very concerned	65%
2	Moderately concerned	24%
3	Slightly concerned	6%
4	Not at all concerned	4%
7	DON'T KNOW	*
8	REFUSED	-

b. Sexual content **(READ CODES 1 - 4) (READ IF NECESSARY: How concerned are you about your children being exposed to sexual content in video games? Would you say...(READ CODES 1 – 4))** (n=1311)

1	Very concerned	83%
2	Moderately concerned	11%
3	Slightly concerned	3%
4	Not at all concerned	3%
7	DON'T KNOW	-
8	REFUSED	-

c. Adult language **(READ CODES 1 - 4) (READ IF NECESSARY: How concerned are you about your children being exposed to adult language in video games? Would you say...(READ CODES 1 – 4))** (n=1311)

1	Very concerned	58%
2	Moderately concerned	29%
3	Slightly concerned	7%
4	Not at all concerned	6%
7	DON'T KNOW	*
8	REFUSED	-

IF RESPONDENT SELECTED 2, 7, OR 8 FOR Q. 4a OR 4 FOR Q. 4b, GO TO Q. 10a.

9. For the following types of content, please tell me whether the video game ratings system does an excellent, good, fair, or poor job in informing you about the level of that content in video games?
(RANDOMIZE A – C)

a. Violence **(READ CODES 1 - 4) (READ IF NECESSARY: How well does the video games rating system do informing you about the level of violence in video games? Would you say... (READ CODES 1 – 4))** (n=1098)

1	Excellent	17%
2	Good	43%
3	Fair	28%
4	Poor	8%
7	DON'T KNOW	4%
8	REFUSED	-

b. Sexual content **(READ CODES 1 - 4) (READ IF NECESSARY: How well does the video games rating system do informing you about the level of sexual content in video games? Would you say...(READ CODES 1 – 4))** (n=1098)

1	Excellent	16%
2	Good	39%
3	Fair	29%
4	Poor	10%
7	DON'T KNOW	7%
8	REFUSED	-

c. Adult language **(READ CODES 1 - 4) (READ IF NECESSARY: How well does the video games rating system do informing you about the level of adult language in video games? Would you say...(READ CODES 1 – 4))** (n=1098)

1	Excellent	16%
2	Good	42%
3	Fair	28%
4	Poor	9%
7	DON'T KNOW	6%
8	REFUSED	-

Now I'm going to ask you three questions about your experience with video games.

10a. In thinking about the last game that was purchased by or for (CHILD), have you watched or played (**READ CODES 1 - 4**): (n=1311)

1	The entire game at least once,	17%
2	Most of the game at least once,	22%
3	Some of the game at least once,	37%
4	None of the game	24%
7	DON'T KNOW	*
8	REFUSED	*

10b. In the past year, how often have you played video games each week on average? (**READ CODES 1 - 3**) (n=1311)

1	Never,	46%
2	Less than five hours,	46%
3	Five or more hours	7%
7	DON'T KNOW	-
8	REFUSED	-

IF RESPONSE IS 1, GO TO DEMOGRAPHIC QUESTIONS

10c. In the past year, about how many different video games have you played? (n=704)
PROBE ANY RESPONSE OVER 20.

ENTER NUMBER RANGE 0 – 97

1	0 games	3%
2	1	9%
3	2	18%
4	3	18%
5	4	10%
6	5	10%
7	6-10	18%
8	11+	13%
98	DK	1%
99	REF	-

Demographics

ASK PARENTS ONLY

So that I may classify the information you have given me, I would like to ask you some questions about you and your household.

D1. What is your age? (**READ CODES 1 - 6**) (n=1334)

1	18 – 24	1%
2	25 – 34	17%
3	35 – 44	46%
4	45 – 54	29%
5	55 – 64	5%
6	65 or older	1%
97	DON'T KNOW	*
98	REFUSED	1%

D2. What is the highest grade in school or year of college that you have completed? (**READ CODES 1 - 6**) (n=1334)

1	Less than 12 years	3%
2	12 years/High School Graduate/GED	22%
3	1 or 2 years of college/junior college/Associate's Degree/ 3 or more years of college but no degree	36%
4	Trade School	3%
5	Bachelor's Degree (for example. B.A., A.B., B.S.)	22%
6	Advanced Degree (for example, Master's, Ph.D., M.D., J.D.)	13%
7	DON'T KNOW	*
8	REFUSED	*

D3. Are you currently: (**READ CODES 1 - 5**) (n=1334)

1	Married	76%
2	Separated	4%
3	Divorced	11%
4	Widowed	1%
5	Or have you never been married?	7%
8	REFUSED	*

- D4. Are you of Spanish/Latino origin or descent? (n=1334)
- | | | |
|---|--------------------------|-----|
| 1 | Yes | 8% |
| 2 | No | 91% |
| 7 | DON'T KNOW (DO NOT READ) | - |
| 8 | REFUSED (DO NOT READ) | 1% |
- D5. I am going to read a list of racial categories. Please choose one or more categories that best indicate your race. Are you: **(READ AND RANDOMIZE 1 – 5. ENTER YES/NO FOR EACH. IF PERSON REFUSES TO ANSWER ON FIRST TWO RACES READ, CODE “REFUSED” ON REMAINING RACES AND SKIP TO QD8)** (n=1334)
- | | | |
|----|---|-----|
| 1. | White | 78% |
| 2. | Black or African American | 13% |
| 3. | American Indian or Alaska Native | 7% |
| 4. | Asian | 3% |
| 5. | Native Hawaiian or Other Pacific Islander | 2% |
| 6. | Some other race (ASK ONLY IF NO OR DK OR REF TO ALL PARTS 1 - 5) | 4% |
| 7. | Don't Know | - |
| 8. | Refused | 2% |
- D6. Thinking of the income that your household earned or received from all sources in 2005, was the total amount, before taxes and other deductions, \$35,000 or more? **(READ CODES 1 - 2)** (n=1334)
- | | | |
|---|-----------------------------------|-----|
| 1 | Yes, \$35,000 or more (GO TO D7) | 72% |
| 2 | No, less than \$35,000 (GO TO D8) | 16% |
| 7 | DON'T KNOW (TO D9) | 2% |
| 8 | REFUSED (GO TO D9) | 10% |

IF “YES” ON D6, ASK D7

- D7. Please stop me when I read the category that your household income falls into. Is it . . . ? **(READ CODES 1 – 4)** (n=1334)
- | | | |
|----|---|-----|
| 1, | \$35,000 to less than \$50,000 (GO TO D9) | 15% |
| 2 | \$50,000 to less than \$60,000 (GO TO D9) | 11% |
| 3 | \$60,000 to less than \$75,000 (GO TO D9) | 12% |
| 4 | \$75,000 or more (GO TO D9) | 33% |

IF “NO” ON D6, ASK D8

D8. Please stop me when I read the category that your household income falls into. Is it . . . ? (READ CODES 1 - 4) (n=1334)

1	Less than \$15,000	3%
2	\$15,000 to less than \$20,000	3%
3	\$20,000 to less than \$25,000	4%
4	\$25,000 to less than \$35,000	7%

ASK ALL PARENTS

D9. How would you describe the area in which you live? Would you describe it as (READ CODES 1 - 3): (n=1334)

1	A city,	28%
2	A suburb near a city,	32%
3	A small town or rural area	40%
5	OTHER (SPECIFY)	*
7	DON'T KNOW	*
8	REFUSED	1%

D10. Are there any other residential telephone lines for use in this household? Please do not include phone numbers used for computers, faxes, or cell phones. (n=1334)

1	Yes (CONTINUE)	12%
2	No (GO TO D11)	87%
7	DON'T KNOW (DO NOT READ) (GO TO D11)	*
8	REFUSED (DO NOT READ) (GO TO D11)	*

D10a. How many other phone lines are there? (n=165)

1	1	64%
2	2	25%
3	3	7%
4	4	2%
5	5	1%
7	DON'T KNOW (DO NOT READ)	1%
8	REFUSED (DO NOT READ)	1%

D11. Do you have Internet access at home? (n=1334)

1	Yes	84%
2	No	15%
7	DON'T KNOW (DO NOT READ)	*
8	REFUSED (DO NOT READ)	*

D.12. INTERVIEWER RECORD GENDER. (n=1334)

1	Male	33%
2	Female	67%

Parental Permission for Child Survey

P.1 Could I have permission to interview (CHILD) – the questions will be similar to those I asked you and will take about 10 minutes? (n=1334)

1	Yes	28%
2	No	59%
3	Yes, but the child is not available	13%

IF “YES,” GO TO CHILD QUESTIONNAIRE.

IF “NO,” THANK AND TERMINATE.

IF “YES, BUT THE CHILD IS NOT AVAILABLE,” ASK THE PARENT PERMISSION TO SET UP A CALLBACK WITH THE CHILD AND SET NEW TIME.

AUTHOR NOTE: IF THE CHILD IS PUT INTO CALLBACK (Q. P1=3), WE WILL ATTEMPT TO CALL CHILD BACK. IF WE GET CHILD, THEN WE GO DIRECTLY TO THE CHILD’S INTERVIEW.

Child Questionnaire

INTRODUCTION: Hello, my name is _____ and I am calling from Synovate on behalf of the Federal Trade Commission, a government agency that protects consumers. We are conducting a survey of parents and children across America for research purposes.

1. You have been selected for this voluntary survey, and I have a few questions about video games - is that OK? (n=373)
- | | | |
|---|--|-----|
| 1 | Yes | 99% |
| 2 | No (THANK AND TERMINATE) | 1% |
| 7 | DON'T KNOW (DO NOT READ) (THANK AND TERMINATE) | - |
| 8 | REFUSED (DO NOT READ) (THANK AND TERMINATE) | - |

Before we start, please note that under federal law we can't conduct, and you don't have to respond to, a survey that does not have a valid OMB control number. For this survey, that number is 3084 - 0120. Also know that I will not ask for any personally identifying information.

Okay, let's begin. I would like to ask you some questions about video games that you play. When I say "video games," I mean computer games you play on your PC, hand-held games like you play on a Gameboy, or console games like you play on a Sony PlayStation, a Microsoft Xbox, or a Nintendo Gamecube. I am not talking about coin-operated games you play in the arcade. There are no right or wrong answers to any of the questions; I just want your opinions.

- 1a. In the past year, on average, about how often do you play video games per week? Would you say **(READ CODES 1 - 5)**: (n=369)
- | | | |
|---|-----------------------------|-----|
| 1 | Never, | 4% |
| 2 | Less than five hours, | 47% |
| 3 | Five to ten hours, | 27% |
| 4 | Eleven to fifteen hours, | 11% |
| 5 | More than fifteen hours, or | 11% |
| 7 | DON'T KNOW | 1% |
| 8 | REFUSED | - |

IF NEVER/DON'T KNOW/REFUSED TO Q1.a, GO TO CLOSE

1b. In the past year, on average, about how often do you play video games on an Internet gaming website per week? **(READ CODES 1 - 5)** (n=354)

1	Never,	36%
2	Less than five hours,	42%
3	Five to ten hours,	13%
4	Eleven to fifteen hours,	4%
5	More than fifteen hours, or	5%
7	DON'T KNOW	-
8	REFUSED	-

1c. Can you tell me all of the ways that you usually get the video games you play? Do you: **(READ CODES 1 - 4 IN ORDER, AND THEN READ CODE 5. RECORD ALL THAT APPLY):** (n=354)

1	Buy them at a store,	88%
2	Rent them at a store,	27%
3	Borrow them from a friend,	34%
4	Buy, play, or download them online	21%
5	Get them as gifts	4%
6	ANY OTHER? _____	4%
7	DON'T KNOW	-
8	REFUSED	-

2a. For video games you play, who usually decides which video games to buy or rent? **(READ CODES 1 - 3)** (n=354)

1	You,	29%
2	Your parents, or	10%
3	You and your parents together	61%
7	DON'T KNOW	1%
8	REFUSED	-

2b. For video games you play, who usually buys or rents the video games? (READ CODES 1 - 3)
(n=354)

1	You,	16%
2	Your parents, or	35%
3	You and your parents together	47%
7	DON'T KNOW	1%
8	REFUSED	*

2c. In the past year, about how many different video games have you or your parents bought or rented for you to play? (n=354)

1	0	3%
2	1	3%
3	2	8%
4	3	10%
5	4	7%
6	5	15%
7	6	7%
8	7	4%
9	8	1%
10	9	1%
11	10	14%
12	11-19	10%
13	20-29	8%
14	30-39	4%
15	40+	4%
98	Don't Know	-
99	Refused	1%

2d. Which three video games are currently your favorites? (n=354)

- 1) _____
- 2) _____
- 3) _____
- 8 REFUSED

3a. Do your parents restrict the video games you can play? (n=354)

- | | | |
|---|--|-----|
| 1 | Yes (GO TO Q. 3b) | 65% |
| 2 | No (GO TO Q. 4a) | 34% |
| 7 | DON'T KNOW (DO NOT READ) (GO TO Q. 4a) | 1% |
| 8 | REFUSED (DO NOT READ) (GO TO Q. 4a) | - |

3b. What are the restrictions? (n=229)

PROBE: Anything else? _____

8 REFUSED

3c. In the past year, have your parents told you that you cannot play a particular video game? (n=229)

- | | | |
|---|---------------------|-----|
| 1 | Yes (GO TO Q. 3e) | 54% |
| 2 | No (GO TO Q. 4a) | 46% |
| 8 | REFUSED (TO Q. 4a) | - |

3d. If you recall, what was the name of the last video game that you were told you cannot play? (n=124)

7 DON'T KNOW

8 REFUSED

3e. Why did your parents not want you to play that video game? (n=124)

7 DON'T KNOW (DO NOT READ)

8 REFUSED (DO NOT READ)

4a. Are you aware whether there is a rating system to help parents decide what video games they do and do not want children to play? (n=354)

- | | | |
|---|--|-----|
| 1 | Yes | 75% |
| 2 | No (GO TO Q. 6a) | 24% |
| 7 | DON'T KNOW (DO NOT READ) (GO TO Q. 6a) | 1% |
| 8 | REFUSED (DO NOT READ) (GO TO Q. 6a) | - |

4b. How familiar are you with the rating system for video games? **(READ CODES 1 - 4)** (n=265)

1	Very familiar,	51%
2	Moderately familiar,	29%
3	Slightly familiar, or	15%
4	Not at all familiar (GO TO Q. 6a)	5%
7	DON'T KNOW (GO TO Q. 6a)	*
8	REFUSED (GO TO Q. 6a)	-
9	NOT ASKED QUESTION (CHILD QUIT)	*

5a. Some children pay attention to video game ratings and others do not. How often do you pay attention to the video game's rating when deciding which games you want to play? Would you say **(READ CODES 1 - 5)**: (n=252)

1	All or almost all the time, (GO TO Q. 5c)	33%
2	Most of the time, (GO TO Q. 5c)	30%
3	Some of the time, (GO TO Q. 5b(i))	17%
4	Rarely, or (GO TO Q. 5b(ii))	12%
5	Never (GO TO Q. 5b(iii))	7%
7	DON'T KNOW (GO TO Q. 5c)	-
8	REFUSED (GO TO Q. 5c)	-

5b.

(i) Can you tell me why you pay attention to the video game's rating only some of the time? (n=44)

8 REFUSED

GO TO Q. 5c.

(ii) Can you tell me why you rarely pay attention to the video game's rating? (n=31)

8 REFUSED

GO TO Q. 5c.

(iii) Can you tell me why you never pay attention to the video game's rating? (n=18)

8 REFUSED

5c. How does the video game's rating affect your choice of what game to play? (n=252)

7 DON'T KNOW (DO NOT READ)

8 REFUSED (DO NOT READ)

5d. Which one of the following statements best describes your parents' attitude toward games rated **T for Teen**? (**RANDOMLY READ CODES 1 - 3 OR 3 - 1**) (n=252)

- | | |
|--|-----|
| 1. I am generally allowed to play games that are rated T for Teen. | 62% |
| 2. I am sometimes allow to play games that are rated T for Teen. | 30% |
| 3. I am never allowed to play games that are rated T for Teen. | 8% |
| 7 DON'T KNOW | 1% |
| 8 REFUSED | - |

5e. Which one of the following statements best describes your parents' attitude toward games rated **M for Mature**? **(RANDOMLY READ CODES 1 - 3 OR 3 - 1)** (n=252)

- | | |
|--|-----|
| 1. I am generally allowed to play games that are rated M for Mature. | 21% |
| 2. I am sometimes allow to play games that are rated M for Mature. | 36% |
| 3. I am never allowed to play games that are rated M for Mature. | 42% |
| 7 DON'T KNOW | 1 |
| 8 REFUSED | - |

6a. In the past year, have you visited a store without a parent or other adult and tried to buy or rent an M or Mature-rated video game? (n=353)

- | | |
|--|-----|
| 1 Yes | 8% |
| 2 No (GO TO Q. 6f) | 92% |
| 7 DON'T KNOW (DO NOT READ) (GO TO Q. 6f) | * |
| 8 REFUSED (DO NOT READ) (GO TO Q. 6f) | - |
| 9 NOT ASKED QUESTION (CHILD QUIT) | * |

6b. What was the name of the last M or Mature-rated video game you tried to buy or rent without a parent or other adult? (n=28)

- | | |
|----------------------------|--|
| 7 DON'T KNOW (DO NOT READ) | |
| 8 REFUSED (DO NOT READ) | |

6c. Did you have your parent's or other adult's permission to buy or rent that game? (n=28)

- | | |
|--|-----|
| 1 Yes | 54% |
| 2 No (GO TO Q. 6e) | 46% |
| 7 DON'T KNOW (DO NOT READ) (GO TO Q. 6e) | - |
| 8 REFUSED (DO NOT READ) (GO TO Q. 6e) | - |

6d. Did your parent or other adult know that the game was M or Mature-rated? (n=15)

- | | |
|----------------------------|-----|
| 1 Yes | 73% |
| 2 No | 27% |
| 7 DON'T KNOW (DO NOT READ) | - |
| 8 REFUSED (DO NOT READ) | - |

6e.	Were you able to buy the game? (n=28)	
	1 Yes	68%
	2 No	32%
	7 DON'T KNOW (DO NOT READ)	-
	8 REFUSED (DO NOT READ)	-
6f.	In the past year, have you asked someone to buy or rent a game for you because you were concerned the cashier would not sell or rent it to you because of your age? (n=352)	
	1 Yes	12%
	2 No	88%
	7 DON'T KNOW (DO NOT READ)	-
	8 REFUSED (DO NOT READ)	-
	9 NOT ASKED QUESTION (CHILD QUIT)	1%
6g.	In the past year, have you played an M or Mature-rated game on an Internet gaming website <u>without</u> your parent's permission? (n=352)	
	1 Yes	8%
	2 No	92%
	7 DON'T KNOW (DO NOT READ)	1%
	8 REFUSED (DO NOT READ)	-
	9 NOT ASKED QUESTION (CHILD QUIT)	1%
6h.	In the past year, have you tried to buy an M or Mature-rated video game on the Internet <u>without</u> your parent's permission? (n=352)	
	1 Yes	2%
	2 No (GO TO Q. 6j)	98%
	7 DON'T KNOW (DO NOT READ) (GO TO Q. 6j)	-
	8 REFUSED (DO NOT READ) (GO TO Q. 6j)	-
	9 NOT ASKED QUESTION (CHILD QUIT)	1%
6i.	Were you able to buy the game? (n=6)	
	1 Yes	33%
	2 No	67%
	7 DON'T KNOW (DO NOT READ)	-
	8 REFUSED (DO NOT READ)	-

6j. Do you have your own cell phone? (n=352)

1	Yes	34%
2	No (GO TO END)	66%
7	DON'T KNOW (DO NOT READ) (GO TO END)	-
8	REFUSED (DO NOT READ) (GO TO END)	-
9	NOT ASKED QUESTION (CHILD QUIT)	1%

6k. In the past year, have you downloaded or installed video games on your cell phone? (n=121)

1	Yes	21%
2	No	79%
7	DON'T KNOW (DO NOT READ)	-
8	REFUSED (DO NOT READ)	-

Those are all the questions I have. Thank you very much for your help.

NOTE TO QUESTIONER: RECORD WHETHER THE PARENT WAS ON THE LINE WITH THE CHILD FOR THE ENTIRE CALL, NEARBY FOR AT LEAST PART OF THE CALL, OR PARENT DID NOT APPEAR TO BE CLOSE BY.

Endnotes

1. The “-” symbol indicates that no respondents gave this particular response. Due to rounding, the total percentages for all responses to a particular question may be 99 or 101.
2. The “*” symbol indicates that less than 0.5% respondents gave this particular response. Due to rounding, the total percentages for all responses to a particular question may be 99 or 101.

Appendix D: Internet Surveys

This Appendix sets forth, for the motion picture, music recording, and electronic game industries, the results of the Internet website surveys conducted by the Commission during the summer and fall of 2006.

I. Motion Picture Industry

A. Studio Websites

For its July 2004 Report, the Commission's review of twenty official movie websites showed that all sites displayed the film's rating symbol and rating reasons, and linked to at least two of three rating information sites (MPAA.org, filmratings.com, parentalguide.org).¹ For this Report, the Commission again reviewed the rating information practices of twenty official movie websites.² The Commission's review indicated that the studios are substantially complying with the Commission's recommendations in this area.³ Nearly all of the sites displayed the R-rating symbol and rating reasons somewhere on the site, and displayed the rating and reasons on either the teaser page or home page. However, less than half of the sites had the rating and reasons visible without scrolling down to the bottom of the web page.

Table 1: Studio Website Review Results

	Summaries by Sites		Percentage Yes
	Yes	No	
Does the site display the movie’s rating?	18	2	90%
On the home page or teaser page?	18	0	100%
Is the word “Restricted” readable?	15	3	83%
Is the rating visible without scrolling?	8	10	44%
Does the site display the movie’s rating reason(s)?	16	4	80%
On the home page or teaser page?	16	0	100%
Are the reason(s) readable?	14	2	88%
Are the reason(s) visible without scrolling?	6	10	38%
Can a visitor view a trailer for the movie at the site?	20	0	100%
Does the site provide a link to:			
MPAA.org? ⁴	9	11	45%
filmratings.com?	14	6	70%
parentalguide.org?	12	8	60%
Can a visitor purchase tickets to the movie at the site?	6	14	30%
Does the site display the rating during the purchase process?	6	0	100%
Does the site display the rating reasons during the purchase process?	5	1	83%
Does the site at any point ask the visitor to disclose his/her age?⁵	2	18	10%
Does the movie have a profile page on MySpace?	9	11	45%
Is the movie’s rating displayed anywhere on the page?	4	5	44%
Are the movie’s rating reasons displayed anywhere on the page?	3	6	33%

B. Theater and Movie Ticket Websites

The Commission examined the practices of twelve motion picture theater chain websites in September 2006 – AMC, Carmike, Century Theatres, Cinemark, Clearview Cinemas, Goodrich Quality Theaters, Kerasotes Theatres, Landmark Theatres, Marcus Theatres, National Amusement, Regal Entertainment Group,⁶ and Wallace/Hollywood Theaters⁷ – with respect to five violent R-rated movies that were among the top box office films since July 15, 2006 and were in theaters at that time.⁸ With the exception of Clearview Cinemas, Landmark Theatres, and Wallace/Hollywood Theaters, these theater chains are all members of the National Association of Theater Owners (“NATO”).⁹ The Commission also examined the sites for two online movie ticket sellers – fandango.com and movietickets.com. All of the theater sites where the movies were playing displayed the movies’ ratings and the rating reasons.

Table 2: Theater and Ticket Seller Website Review Results

Does the site display the films' MPAA ratings?¹⁰	11 of 12	92%
Does the site display or provide a link to films' rating reason(s)?	5 of 12	42%
Does the site provide information about the MPAA rating system?	8 of 12	67%
Does the site link to rating information at MPAA.org, parentalguide.org, or filmratings.com?	8 of 12	67%
Does the site sell tickets, either directly or through a third-party website?	12 of 12	100%
Does the site at any point ask the visitor to disclose his/her age?	0 of 12	0%

The Commission's review of two movie ticket sites (Fandango.com and Movietickets.com) with respect to the same five movies yielded comparable results, with both websites displaying the films' official ratings and rating reasons. Although neither online ticket seller asked the visitor to disclose his or her age, NATO notes that there is no completely reliable way to verify age through online purchases, although an online purchase cannot be made without a credit card.¹¹ Also, online purchasers typically must pick up their physical tickets at the movie theater, where ordinary age identification policies at the box office apply.¹² Although for some locations it is possible to print tickets at home, NATO reports that these tickets are physically distinguishable from tickets purchased at the box office, and that this distinction alerts the ticket-taker at the theater of the possible need to verify age.

Table 3: Online Movie Ticket Seller Website Review Results

	Fandango.com	Movietickets.com
Does the site display the films' MPAA ratings?	5 of 5	5 of 5
Does the site display or provide a link to films' rating reason(s)?	5 of 5	5 of 5
Does the site link to rating information at MPAA.org, parentalguide.org, or filmratings.com?	0 of 5	0 of 5
Does the site provide information about the MPAA rating system?	0 of 5	0 of 5
Does the site at any point ask the visitor to disclose his/her age?	0 of 5	0 of 5

C. Home Video/DVD Retailer Websites

The Commission surveyed five online movie retailers' sites to determine their rating information practices with respect to five movies rated R for violence.¹³ All of the sites, except for TowerRecords.com, provided each movie's correct MPAA rating with the rating being visible on the computer screen without scrolling down the web page. Only Amazon.com and BestBuy.com provided the official rating reasons for each of the five films examined. None of the sites linked to film rating

information sites, although BestBuy.com and TowerRecords.com provided information on their sites about the movie rating system. The Commission also examined the practices of these online retailers with respect to five violent unrated movies that also have an MPAA R-rated version: *Alexander*, *Bloodrayne*, *Crash*, *Basic Instinct*, and *The Yards*. See Section II.C of the Report for discussion of the results of this website review.

Table 4: Motion Picture DVD Retailer Website Review Results for R-rated Movies

	Amazon	Best Buy	Circuit City	Sam Goody	Tower Records
Does the site display the movies' ratings?	5 of 5	5 of 5	4 of 5	4 of 5	0 of 5
Is it the correct rating?	5 of 5	5 of 5	4 of 4	4 of 4	n/a
Is the rating visible without scrolling?	5 of 5	5 of 5	5 of 5	4 of 4	n/a
Does the site display the movie's rating reasons?	5 of 5	5 of 5	0 of 5	0 of 5	0 of 5
Are they the official MPAA reasons?	5 of 5	0 of 5	n/a	n/a	n/a
Are the reasons visible without scrolling?	0 of 5	n/a	n/a	n/a	n/a
Does the site provide a link to MPAA.org, filmratings.com, or parentalguide.org?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5
Does the site provide any information about the rating system?	No	No	No	No	No
Does the site at any point ask the visitor to disclose his/her age?	No	No	No	No	No

Table 5: Motion Picture DVD Retailer Website Review Results for Unrated Movies

	Amazon	Best Buy	Circuit City	Sam Goody	Tower Records
Is the assigned unrated movie for sale on the site?	4 of 5	2 of 5	1 of 5	4 of 5	4 of 5
Is there any indication that this movie also comes in a version that is rated?	4 of 4	2 of 2	1 of 1	3 of 4	0 of 4
Does the site use any particular language or nomenclature to indicate that the movie is unrated?	4 of 4	2 of 2	1 of 1	4 of 4	2 of 4
Does the site use any particular language to indicate why the film is unrated?	4 of 4	0 of 2	1 of 1	4 of 4	3 of 4
Does the site contain any other warning or cautionary statement(s) relating to the content of the movie, including something equivalent to rating reasons?	3 of 4	0 of 2	1 of 1	4 of 4	0 of 4
Does the site at any point ask the visitor to disclose his/her age?	0 of 4	0 of 2	0 of 1	0 of 4	1 of 4

D. DVD Rental Websites

The Commission reviewed the practices of five websites that allow consumers to rent movies via the Internet.¹⁴ Four of the sites allowed users to rent films online that were then mailed to their homes,¹⁵ while one of the sites allowed users to download movies for viewing on the computer.¹⁶ All five of these sites displayed the movies’ official ratings, and three of the five also displayed the films’ rating reasons.¹⁷

Table 6: DVD Rental Website Review Results

	Blockbuster	GameZnFlix	Movielink	Netflix	Qwikfliks
Does the site display the movie’s correct MPAA rating?	5 of 5	5 of 5	4 of 4	5 of 5	2 of 2
Is the rating visible without scrolling?	5 of 5	5 of 5	4 of 4	5 of 5	2 of 2
Does the site display the movie’s official rating reasons?	5 of 5	0 of 5	4 of 4	5 of 5	0 of 2
Are the reasons visible without scrolling?	5 of 5	n/a	4 of 4	5 of 5	n/a
Does the site provide a link to MPAA.org, filmratings.com, or parentalguide.org?	No	No	No	No	No
Does the site provide any information about the MPAA rating system?	Yes	No	No	Yes	No
Does the site at any point ask the visitor to disclose his/her age?	No	No	No	No	No

II. Music Industry

A. Artist or Recording Company Websites

As with the 2004 Report, despite the extension of the RIAA guidelines to include the online distribution and promotion of explicit-content labeled recordings on the Internet, the recording industry’s performance in this area showed little, if any, improvement. For this Report, the Commission examined twenty official artist and recording company websites.¹⁸ Fifty-five percent (11 of 20) of the sites displayed the Parental Advisory Label (“PAL”), compared to 60% (12 of 20) in the 2004 Report.¹⁹ Eight of those eleven sites (about 73%) displayed the PAL logo on the home page and/or teaser page, compared to 67% (8 of 12) in the 2004 Report.²⁰ In addition, the percentage of sites that provided a legible PAL logo decreased slightly from 67% (8 of 12) in 2004²¹ to 55% (6 of 11) in this review.

Ninety percent (18 of 20) of the music company and artist websites examined offered the opportunity to purchase the explicit-content labeled recording, either from an official recording company website or through a link to a third-party online retailer. The PAL logo or other advisory language about the explicit content of the recording was visible some time during the search or purchase process for about 89% (16 of 18) of the sites, an improvement from 2004.²²

All of the artists had a MySpace page promoting their music albums either by providing album information or the ability to view a video or download a track from the album. Only 35% (7 of 20) of these pages had the album’s parental advisory label displayed anywhere on the page, and in those instances, the PAL was very difficult to read.

Table 1: Artist and Recording Company Website Review Results

	YES		NO	
	#	%	#	%
Does the site display the album’s parental advisory label?	11	55%	9	45%
On the home page or teaser page? (of 11)	8	73%	3	27%
Are the words in the advisory readable? (of 11)	6	55%	5	45%
Is the label visible without scrolling? (of 11)	6	55%	5	45%
Can a visitor purchase the album at the site or, through a link, at a third-party site?	18	90%	2	10%
Is the album’s PAL or other advisory language displayed on any page that must be visited during the purchase process? (of 18)	16	89%	2	11%
Can a visitor play all/part of a music video at the site?²³	16	80%	4	20%
Can a visitor play all/part of the album at the site?	20	100%	0	0%
Does the site provide a link to RIAA.org or parentalguide.org?	2	10%	18	90%
Does the site provide any detailed information about the Parental Advisory Label system?	0	0%	20	100%
Does the site provide lyrics?²⁴	1	5%	19	95%
Does the site at any point ask the visitor to disclose his/her age?	0	0%	20	100%
Does the artist have a MySpace page?	20	100%	0	0%
Does the artist’s MySpace page promote the albums?	20	100%	0	0%
Is the album’s parental advisory label displayed anywhere on the page?	7	35%	13	65%

B. Retailer Websites

The review of the five major online retailers’ websites showed results somewhat similar to those found in past surveys.²⁵ All of the music retailer websites indicated, either through a PAL logo or

by other language, that the albums surveyed had explicit content.²⁶ In many of these cases, the PAL logo was difficult to read, although at Amazon.com one could click on the album image to enlarge the picture and make the PAL logo readable. Nearly two thirds of the time (in 15 of 25 instances), the visitor, regardless of age, could play audio or video clips from the explicit album. Only one of the sites provided any detailed information about the PAL system.²⁷ BestBuy.com, SamGoody.com, and TowerRecords.com consistently provided advisory language throughout the purchase process. Many of the websites also provided non-explicit, *i.e.*, “edited” or “clean” versions of the albums sold.

Table 2: Music Retailer Website Review Results

	Amazon	Best Buy	Circuit City	Sam Goody	Tower Records
Does the site indicate, either through a Parental Advisory Label or by other language, that the album has explicit content?	5 of 5	5 of 5	5 of 5	5 of 5	5 of 5
Can visitors play at the site audio or video clips from explicit albums?	0 of 5	0 of 5	5 of 5	5 of 5	5 of 5
Does the site provide a link to parentalguide.org?	No	No	No	No	No
Does the site otherwise provide any detailed information about the Parental Advisory Label system?²⁸	No	Yes	No	No	No
Does the site at any point ask the visitor to disclose his/her age?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5

C. Music Download Websites

The Commission reviewed five popular online music download websites: iTunes, MusicMatch, Napster, RealNetworks’ RealOne Rhapsody, and AOL Music for their disclosure practices regarding five tracks from albums bearing a Parental Advisory Label.²⁹ Nearly all of the music download websites had the music track’s PAL logo displayed somewhere on their websites, although the logo was readable on less than half of those sites. Two of the six sites offered some kind of parental controls to limit children’s access to explicit content.

Table 3: Online Music Download Website Review Results

	iTunes	MusicMatch	Napster	RealOne Rhapsody	AOL Music
Is the track’s parental advisory label displayed anywhere on the site, including next to the name of the track?	4 of 5	5 of 5	5 of 5	5 of 5	4 of 5
Are the words in the parental advisory label readable?	0 of 4	5 of 5	5 of 5	0 of 5	0 of 4
Is the parental advisory label visible on the screen without scrolling?	4 of 4	5 of 5	5 of 5	5 of 5	4 of 4
Does the site offer any kind of parental controls to limit children’s access to explicit content?	Yes	Yes	No	No	No
Does the site at any point link to any websites that provide additional information on the parental advisory label?	No	No	No	No	No
Does the site at any point ask the visitor to disclose his/her age?	No	No	No	No	No

III. Electronic Game Industry

A. Game Publisher Websites

Twenty game websites were surfed to determine their compliance with certain of the Entertainment Software Rating Board (“ESRB”) disclosure requirements.³⁰ All of the websites displayed the ESRB rating and icon somewhere on the site, and also displayed the game’s content descriptors without requiring the visitor to hold the cursor over the rating icon, a notable improvement from 2004.³¹ However, 75% (15 of 20) required the visitor to scroll down the screen to view the rating, as did 80% (16 of 20) for the descriptor. Thirteen of the sites provided a demo (a small portion of the game for the visitor to play) or a trailer (non-interactive video clips of game play), but only 54% (7 of 13) of the demos or trailers displayed the rating, and only 31% (4 of 13) displayed the content descriptors.³²

Sixty-five percent (13 of 20) of the game sites asked the visitor to disclose his/her age before viewing the site. Of those thirteen sites, all of them prevented the visitor from viewing the site if the visitor entered an age under 17. However, four of those sites allowed the user to access the site if the visitor hit the “back” key on the browser and then entered age 19.³³ Fourteen of the sites allowed the visitor to purchase the game, either at the site or through a third-party site. All of the games that could

be purchased displayed a rating on a page that the visitor had to view at some point during the purchase process of the game, and all but two displayed content descriptors on a page that the visitor had to view during the purchase process.³⁴

Table 1: Electronic Game Website Review Results

Electronic Game Publisher Questions	Summaries by Sites		Percentage Yes
	Yes	No	
Does the site display the ESRB rating icon?³⁵	20	0	100%
On the home page or teaser page?	20	0	100%
Is the rating icon correct?	20	0	100%
Is the word "Mature" readable?	19	1	95%
Is the rating icon visible without scrolling?	5	15	25%
Does the site display the game's content descriptors?	20	0	100%
Are the descriptors readable?	16	4	80%
Are the descriptors readable without scrolling?	4	16	20%
Is the visitor required to hold the cursor over the rating icon to view the descriptors?	0	20	0%
Can a visitor play or view at the site a demo for the game?	13	7	65%
Is the rating icon displayed adjacent to name of game? ³⁶	7	6	54%
Are the game's content descriptors displayed adjacent to the name of the game?	4	9	31%
Does the site provide a link to:			
ESRB.org?	17	3	85%
parentalguide.org?	0	20	0%
Does the site provide any information about the ESRB rating system?	7	13	35%
Can a visitor purchase the game at the site?	14	6	70%
Is the game's rating displayed on any page that must be visited during the purchase process?	14	0	100%
Are the game's content descriptors displayed on any page that must be visited during the purchase process?	12	2	86%
Does the site ask the visitor to disclose his/her age before viewing the site?	13	7	65%
If the visitor enters an age under 17, is the visitor prevented from viewing the site?	13	0	100%
Does the game have a profile page on MySpace?	0	20	0%

B. Retailer Websites

For this Report, the Commission reviewed five retailer sites – Amazon.com, BestBuy.com, CircuitCity.com, EBGames.com, and GameStop.com – to see if they included rating information for five M-rated games.³⁷ The survey found that the rating usually was prominently placed near the box art. The retailers also linked from the web page to information on the ESRB rating system and also linked to the ESRB’s website, a dramatic improvement from 2004, when only Circuit City’s site did. Some of the sites also provided additional information, such as reviews or descriptions of the game, that may give more details about game play and content.

Table 2: Electronic Game Retailer Website Review Results

Electronic Game Retailer	Amazon	Best Buy	Circuit City	EB38 Games	Game Stop
Does the site provide the game’s ESRB rating in either icon or written form?	5 of 5	5 of 5	5 of 5	4 of 4	5 of 5
Is it the correct rating?	5 of 5	5 of 5	5 of 5	4 of 4	5 of 5
Is the word “Mature” readable?	5 of 5	5 of 5	2 of 5	3 of 4	5 of 5
Is the rating visible without scrolling?	5 of 5	5 of 5	5 of 5	4 of 4	5 of 5
Does the site display the game’s content descriptor?	1 of 5	5 of 5	2 of 5	3 of 4	4 of 5
Is the game’s content descriptor(s) readable?	0 of 1	5 of 5	2 of 2	3 of 3	4 of 4
Is the game’s rating displayed on the page(s) where you can purchase the game, or on any page that you must visit in the course of the purchase process?	5 of 5	5 of 5	5 of 5	4 of 4	5 of 5
Is the game’s content descriptor(s) displayed on the page(s) where you can purchase the game, or on any page that you must visit in the course of the purchase process?	2 of 5	5 of 5	3 of 5	3 of 4	4 of 5
Does the site link to ESRB.org or to other information about the rating system?	Yes	Yes	Yes	Yes	Yes
Does the site at any point ask the visitor to disclose his/her age?	No	No	Yes	No	No

Endnotes

1. See Marketing Violent Entertainment to Children: A Fourth Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (July 2004) (hereafter “2004 Report”) at 8, *available at* www.ftc.gov/os/2004/07/040708kidsviolencrpt.pdf.
 2. The Commission examined the official websites promoting the following twenty motion pictures in September 2006: *10th and Wolf*, *A Scanner Darkly*, *Children of Men*, *Crank*, *District B13*, *Feast*, *Haven*, *Idlewild*, *Miami Vice*, *Saw III*, *Snakes on a Plane*, *The Black Dahlia*, *The Departed*, *The Descent*, *The Fountain*, *The Omen*, *The Protector*, *The Quiet*, *The Texas Chainsaw Massacre: The Beginning*, and *Waist Deep*. The movies were selected based on the following criteria: they had or have a release date between June 1, 2006 and December 25, 2006, received an R-rating, and had a rating reason that involved violence. The studios that released these films included MPAA members as well as non-MPAA members.
 3. See Appendix D for more detailed results of the survey.
 4. Although the movie *10th and Wolf*'s website noted to go to mpaa.org for ratings information, the site did not provide a direct link to MPAA's website.
 5. According to MPAA advertising guidelines, if a movie producer or distributor creates an adult site to advertise an R- or NC-17-rated movie, the site “must be accessible only through a suitable age-verification system that blocks access by children.” MPAA Advertising Handbook at 35 (2006) (on file with Commission staff). Universal Pictures informed the Commission that it acquired age verification technology from a third party, enabling it to restrict certain designated content on the website for *Miami Vice* to adult users (18 and over) for clips and other materials. See Letter from Carolyn A. Hampton, Vice President - Legal Affairs, Universal Pictures Business and Legal Affairs, to Keith R. Fentonmiller, Staff Attorney, Federal Trade Commission, at 1 (Sept. 18, 2006) (on file with Commission staff) (for the *Miami Vice* website); Telephone Conversation with Carolyn A. Hampton, Vice President - Legal Affairs, Universal Pictures Business and Legal Affairs (Oct. 17, 2006). To access certain content, users were advised that they must be over 18 years old to proceed, and instructed to input their names, birth dates, and zip codes. The web page stated that the information would be checked against government records. The information then was sent directly to Verification Integrity Financial Assurance Corporation (“Verifac”), a company that specializes in providing age verification services; this information reportedly was not stored after the verification process. After a successful verification process, the visitor was allowed into the restricted site, which at the time included movie clips containing violence and profanity.
 6. In the 2004 Report, United Artists Theatres was used in the motion picture theater sites surf. Since then, United Artists has joined the Regal Cinemas Entertainment Group.
 7. Since the 2004 Report, Wallace Theater Corp has merged with Hollywood Theaters and is now known as Wallace/Hollywood Theaters.
 8. The movies examined at these sites included *Crank*, *Miami Vice*, *Snakes on a Plane*, *The Descent*, and *The Protector*.
 9. NATO has disseminated to its members a “Web Site Movie Ratings Checklist” that details specific recommendations for theater company websites and movie ticketing websites. The checklist states that:
 - Ratings should be prominently displayed in conjunction with all movies referenced on the site;
 - Rating reasons should be prominently displayed in conjunction with the rating for all movies referenced on the site;
 - The site should provide detailed general descriptive information about the MPAA/NATO movie ratings system;
 - The site should link to rating information available on other sites, such as parentalguide.org, filmratings.com, or [MPAA.org](http://mpaa.org); and
 - The site should include additional warnings related to the admittance of people under age 17 to R-rated movies, or people under age 18 to NC-17-rated movies.
- See Revised Response by The National Association of Theatre Owners (NATO) to the Federal Trade Commission Regarding the Commission's 2006 Study of the Marketing of Violent Entertainment to Children* at 11-12 (Oct. 6, 2006) (hereafter “NATO Letter”).
10. Regal Cinema's website links to Fandango.com for movie information.
 11. See NATO Letter, *supra* note 9, at 13.

12. When trying to purchase tickets at Fandango.com for an R-rated movie, one could select a child's priced ticket to see the film, but under "Purchase Policy" there was a note to "Be Prepared to Present Your Credit Card and Your Picture ID" at the movie theater. (www.fandango.com/PurchasePolicy.aspx?source=foot_policies, last visited on Oct. 2, 2006).
13. The Commission examined the following retailer websites in September 2006: Amazon.com, BestBuy.com, CircuitCity.com, SamGoody.com, and TowerRecords.com. The Commission surveyed these same sites in connection with its 2004 Report. See 2004 Report, *supra* note 1, at 8-9. In this instance, the Commission reviewed the sites' rating information practices pertaining to the following movies rated R at least in part for violence: *Beowulf and Grendel*, *Inside Man*, *Lucky Number Slevin*, *United 93*, and *V for Vendetta*. See Appendix D for more detailed results of the survey.
14. The rental sites were Blockbuster.com, GameZnFlix.com, Movielink.com, Netflix.com, and Qwikfliks.com. The Commission reviewed practices pertaining to five movie rentals that were the top-five R-rated movie rentals from imdb.com for the week ending September 9, 2006: *Final Destination 3*, *Inside Man*, *Silent Hill*, *United 93*, and *V for Vendetta*.
15. These sites are Blockbuster.com, GameZnFlix.com, Netflix.com, and Qwikfliks.com. Upon signing up for these services and paying a monthly membership fee, consumers can rent a number of DVDs at one time.
16. This site is Movielink.com, a joint venture by major motion picture studios Metro-Goldwyn-Mayer Studios, Paramount Pictures, Sony Pictures Entertainment, Universal Studios, and Warner Brothers Studios. Once a film is downloaded from Movielink, a user has twenty-four hours to view it.
17. None of the sites linked to any of the rating information sites, although two sites (Blockbuster.com and Netflix.com) did provide information about the MPAA rating system on their own websites. Blockbuster.com also has parental controls on a user's account, so a parent can restrict what movies their minor child can rent. Blockbuster's policy is to refuse rental or sale of R-rated movies to youths under the age of 17 unless parental consent is given. See www.blockbuster.com (last visited on Sept. 29, 2006). Netflix.com tells users that they "must be 18 years of age or older to subscribe to the Netflix service. While individuals under the age of 18 may utilize the service, they may do so only with the involvement of a parent or legal guardian." See www.netflix.com/TermsOfUse#limitations (last visited on Sept. 29, 2006).
18. The websites reviewed were: www.beenieman.net, www.buckcherry.com, www.bustarhymes.com, www.dmx-official.com, www.e-40.com, www.icecube.com, www.kelisonline.com, www.lamb-of-god.com/sacrament, www.method-man.com, www.obietrice.com, www.pharrellwilliams.com, www6.defjam.com/site/artist_home.php?artist_id=607, www.shallowbay.com, www.slayer.net, www.stonesour.com, www.trapmuzik.com, www.theroots.com, www.tooshortworld.com, www.young-dro.com, and www.yungjoc.com.
19. See 2004 Report, *supra* note 1, at 15-16.
20. *Id.*
21. *Id.*
22. For the 2004 Report, the PAL logo or other advisory language about the explicit content of the recording was visible sometime during the search or purchase process for about 67% (10 of 15) of the sites.
23. The number of sites that allowed the visitor to listen to audio samples and play video clips stayed about the same since the 2004 Report. All of the sites allowed the visitor to play all or part of the album at the site, while 80% allowed visitors to play music video clips. In 2004, 95% of the sites surveyed allowed visitors to listen to music, and 90% provided music video clips. See 2004 Report at 15-16.
24. The number of websites providing lyrics appears to have decreased, since only one website provided lyrics for the explicit-content labeled recordings as compared to five websites in the 2004 Report. In the 2004 Report, 15% of the sites (3 of 20) linked to RIAA.org or parentalguide.org, while in this report 10% of the sites (2 of 20) linked to these same sites. See 2004 Report, *supra* note 1, at D-4.
25. The Commission reviewed five music retailer sites: Amazon.com, BestBuy.com, CircuitCity.com, Samgoody.com, and TowerRecords.com. The recordings examined at these retailers' websites were *Future Sex/Love Sounds* by Justin Timberlake, *Game Theory* by The Roots, *Extreme Behavior* by Hinder, *Dutchess* by Fergie, and *Phobia* by Breaking Benjamin. These recordings were the top five albums with a Parental Advisory Label on Amazon.com as of September 14, 2006.
26. Language used by the websites included: "Explicit Lyrics," "Parental Advisory," and "Explicit Content."

27. BestBuy.com noted on the album's product information page whether or not an album had a Parental Advisory. If it did, it would say "Yes" next to the words "Parental Advisory." If one clicked on the words, it would direct the user to a pop-up box with more information regarding the PAL system.
28. Bestbuy.com provided detailed information about the Parental Advisory Label system when the visitor clicked on the words "Parental Advisory." Also, Amazon.com provided an "Explicit Lyrics" link in the "Product Details" section. The link led to a page containing a definition stating, "The 'Explicit Lyrics' tag is equivalent to the 'Parental Advisory' slug that appears on the cover of certain CDs. The slug is a label provided by the Recording Industry Association of America that denotes the presence of strong language or depictions of sex, violence, or substance abuse. The decision to label specific CDs is made by recording companies in conjunction with the artists."
29. The music tracks examined at these online music download websites were *SexyBack* by Justin Timberlake, *London Bridge* by Fergie, *Lips Of An Angel* by Hinder, *Pullin' Me Back* by Chingy Featuring Tyrese, and *Money Maker* by Ludacris Featuring Pharrell.
30. The Commission examined the following twenty electronic game websites: *50 Cent: Bulletproof*, *Brothers in Arms: Road to Hill 30*, *Condemned: Criminal Origins*, *Darkwatch*, *Dead Rising*, *Devil May Cry 3: Special Edition Greatest Hits*, *Elder Scrolls IV Oblivion*, *Far Cry Instincts Predator*, *Final Fight: Streetwise*, *God of War*, *Godfather*, *Hitman Blood Money*, *Mortal Kombat: Shaolin Monks*, *Onimusha: Dawn of Dreams*, *Outfit*, *Prey*, *Resident Evil 4*, *Saint's Row*, *Scarface*, and *Tom Clancy's Splinter Cell Chaos Theory*. Each of these games was released in 2006 with an M-rating and a violence descriptor.
31. In the 2004 Report, 75% of the websites displayed the ESRB rating and icon somewhere on the site.
32. The websites for *50 Cent: Bulletproof*, *Condemned: Criminal Origins*, *Elder Scrolls IV Oblivion*, and *Final Fight: Streetwise* all provided demos with both the rating icon and descriptor.
33. In the context of implementing and enforcing the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6508, and the related Rule, 16 C.F.R. Part 312, the Commission has recommended that website operators prevent children from using the back key to input a different age in order to circumvent the age verification process. See FTC, Frequently Asked Questions about the Children's Online Privacy Protection Rule, Vol. 1, No. 39 (advising websites targeting teens to "ask age in such a way as not to invite falsification" and suggesting the use of "a session cookie to prevent children from back clicking to change their age once they realize that parental consent is required to collect their information for the activity"), available at www.ftc.gov/privacy/coppafaqs.htm.
34. In the 2004 Report, eleven of the games that could be purchased displayed a rating on a page that the visitor had to view at some point during the purchasing process, but only three displayed content descriptors on a page that the visitor had to view during the purchase process. See 2004 Report, *supra* note 1, at 25-26.
35. If the publisher is selling the game online, both the rating icon and content descriptors must appear on any page where a game can be purchased. *Principles and Guidelines for Responsible Advertising Practices and Advertising Code of Conduct for the Entertainment Software Industry* ("Ad Code") (as amended April 1, 2006) at 43 (on file with Commission staff). Because a game often can be purchased from several different pages, the Ad Code would appear to require disclosures on multiple pages. For purposes of this review, however, the Commission deemed a site compliant with the Ad Code so long as the appropriate rating information was displayed on a page that a visitor must click through to make a purchase.
36. For game "demos," the rating icon and content descriptors or text of rating information (e.g., "ESRB Rating: EVERYONE with COMIC MISCHIEF") must be displayed adjacent to the name of the title on the page where the demo is accessed or on the page prior to download. *Id.* at 44. The Commission's review showed that a visitor might navigate through several pages after requesting a download. Accordingly, as in prior reports, the Commission deemed a site compliant with the Ad Code's demo disclosure requirement, so long as the appropriate rating information was disclosed adjacent to the title of the game and either (a) in close proximity to the link that initiated the download, or (b) on any subsequent page through which a visitor must navigate during the download process.
37. The games surveyed at these five sites were *Condemned Criminal Origins*, *Dead Rising*, *God of War*, *Halo 2*, and *Saint's Row*. These games were the top-five selling M-rated console games (Xbox, PS2, Gamecube) on Amazon.com as of September 14, 2006.
38. *Condemned Criminal Origins* was not for sale at this site.

Appendix E: Data Collection Methodology and Television and Print Demographics

In this Report, the Commission examined whether violent R-rated films, explicit-content labeled music, and M-rated video games continue to be marketed to children under the age designated in the rating (or, in the case of labeled music, to children under 17), and also whether rating information is included in advertisements for these products. The Commission examined numerous media sources, including media popular with teens in terms of total teen audience or percentage of viewers under 18. This Appendix describes these sources and the media monitoring the Commission undertook to gather data for this Report, and sets forth demographic data for the audiences for the television programs, websites, and publications discussed in the Report.

I. Popular Television Shows Among Teenagers

The Commission examined advertising that aired in 2006 on network and cable television, including programs in syndication, principally using information from Nielsen Media Research as well as a database maintained by the Parents Television Council of ads placed in broadcast media. The Commission contracted with Nielsen to obtain lists of favorite television shows of children 17 and under. Using those lists, the Commission asked Nielsen to provide a copy and listing of ads for music, video games, and movies appearing on certain shows for which children aged 2 to 17 made up at least 20% of the live viewing audience. The television audience data reported in the tables below is for audiences aged 2 to 17, as indicated. Given that R-rated movies and M-rated electronic games are restricted only for children under 17, data for audiences under 17 would be most relevant; however, the age breakdowns set forth in the tables are the standard categories used for television audience measurement.

As noted in the Report, there were numerous ad placements for R-rated films, R-rated and unrated movie DVDs, and explicit-content labeled recordings on those shows. There were several ads for M-rated electronic games found on the monitored programs.

Table 1: Network, Syndicated, and Cable Television Shows Monitored

Program	Average¹ Audience Age 2 to 17 (thousands)	Average Total Audience (thousands)	Audience Under 18 (%)	Network
7 th Heaven	1254	5854	21%	Syn
106 th & Park	578	1193	48%	BET
American Dad	1808	6935	26%	Fox
America's Next Top Model	1106	4890	23%	UPN
The Bernie Mac Show	666	3031	22%	Syn
Everybody Hates Chris	1076	3715	29%	UPN
Family Guy	1827	7183	25%	Fox
Fear Factor	362	1652	22%	Syn
Fresh Prince	864	1320	65%	Nick at Nite
Full House	1411	1999	71%	Nick at Nite
King of the Hill	1029	3931	26%	Syn
Malcolm in the Middle	1157	3801	30%	Syn
My Wife and Kids	823	3128	26%	BV
Pimp My Ride	187	281	67%	MTV2
Rap City	226	543	42%	BET
The Simpsons	1946	7988	24%	FOX
Smallville	507	2542	20%	Syn
South Park (8:30 pm)	479	2061	23%	TEC
That's So Raven	962	2111	46%	ABC
Top 25 Countdown	231	508	45%	BET
Total Request Live	214	440	46%	MTV

II. PRINT MEDIA

A. Magazines Reviewed to Assess Ad Placement

From June 2002 through October 2003, the Commission reviewed magazines with majority or substantial youth audiences including game enthusiast magazines, skateboarding magazines, music publications, wrestling magazines, and general interest teen magazines. Many of these magazines had been previously identified in the marketing plans reviewed for the 2000 Report as magazines used when the industries' target audience included children under 17. Table 2 provides the names of the publications, the particular issues reviewed, and the demographics of readers (updated from the Commission's December 2001 Report, unless otherwise noted).

Table 2: Youth-Oriented Print Publications Reviewed

Magazine	Issues Reviewed	Age Demographics
Cosmo Girl	9/05, 10/05, 12-1/05-06, 2/06, 3/06, 4/06, 5/06, 6-7/06	Target Range: 12-17 (***Same as Seventeen)
Electronic Gaming Monthly	9/05, 10/05, 11/05, 12/05, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06	16 and under: 29% Mean: 23
Game Pro	9/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 8/06	Under 17: 44%
Nintendo Power	9/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06	6 to 11: 13.9% 12 to 14: 35.4% 15 to 17: 21.8% 12 and under: 26.1%
Seventeen	8/05, 9/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06	Target Range: 12-17
Thrasher	9/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06, Summer 06 Special Edition	Average: 15 Median: 19
XBOX	9/05, 10/05, 11/05, Holiday 05, 12/05, 1/06, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06	Under 17: 22.1%

Table 3: Other Publications Reviewed for Rating Information

Magazine	Issues Reviewed
Computer Gaming World	9/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 6/06, 7/06, 8/06
Ebony	11/05, 12/05, 1/06, 4/06
PC Gamer	9/05, 10/05, 11/05, 12/05, Holiday 2005, 2/06, 3/06, 4/06, 5/06, 7/06, 8/06, 9/06
Rolling Stone	7/28/05, 8/11/05, 8/25/05, 9/8/05, 9/22/05, 10/6/05, 10/20/05, 11/3/05, 11/17/05, 12/1/05, 1/26/06, 2/9/06, 2/23/06, 2/26/06, 3/9/06, 3/23/06, 4/6/06, 4/20/06, 5/4/06, 6/15/06, 5/18-6/1/06, 7/20/06

Spin	8/05, 10/05, 11/05, 12/05, 1/06, 2/06, 3/06, 4/06, 5/06, 6/06, 7/06, 8/06
TV Guide	7/31-8/6/05, 8/7-13/05, 8/14-20/05, 8/28-9/3/05, 9/4-10/05, 9/11-17/05, 9/18-24/05, 9/25-10/1/05, 10/2-8/05, 10/9-16/05, 10/17-23/05, 10/24-30/05, 10/31-11/6/05, 11/7-13/05, 11/14-20/05, 11/21-27/05, 11/28-12/4/05, 12/5-11/05, 12/19-25/05, 1/16-22/06, 1/ 23-29/06, 2/13-19/06
Vibe	10/05, 12/05, 4/06, 6/06, 7/06

Table 4: Newspapers Reviewed

Newspapers	Issues Reviewed
New York Times	9/16/05, 9/23/05, 9/30/05, 10/7/05, 10/14/05, 10/21/05, 10/28/05, 11/4/05, 11/11/05, 12/2/05, 12/9/05, 7/7/06, 7/14/06, 7/21/06, 7/28/06
Washington Post	9/16/05, 9/23/05, 9/30/05, 10/7/05, 10/14/05, 10/21/05, 10/28/05, 11/4/05, 11/11/05, 12/2/05, 12/9/05
City Paper	9/16/05, 9/30/05, 10/7/05, 10/14/05, 10/21/05, 10/28/05, 11/4/05, 11/11/05, 12/2/05, 12/9/05

III. WEBSITE DEMOGRAPHICS

Table 5 below sets out a list of websites on which certain R-rated movies, M-rated games, and/or explicit-content labeled recordings were advertised, according to data obtained from Nielsen//NetRatings.² The table reports on the unique audience of 2- to 16-year-olds who visited these websites during four specific months between the fall of 2005 and the summer of 2006 (November 2005, February 2006, May 2006, and August 2006). Depending on the website, reliable demographic information is not necessarily available for all four of these months. Therefore, the table reports the average unique audience of those months for which reliable data are available. As noted above, for television programs, Nielsen reports demographic data for the 2 to17 age category, and not the more precise 2-16 category.

**Table 5: Average Website Audience Demographics (Age 2- to 16-year-olds)
for up to Four Selected Months between November 2005 and August 2006**

Website	Unique Audience Composition of Visitors Age 2 to 16 (%)
A-Z Lyrics Universe	43
AddictingGames.com	56
AOL.com Mobile	39
ARTISTdirect	40
atomFILMS	46
BlackPlanet.com	34
Bolt	42
Cartoon Network	54
Cheat Code Central	49
CheatCodes.com	60
Comedy Central	40
CompuServe	33
eBaum's World	33
eCRUSH	53
Family Education Network	36
Funbrain.com	52
GameFAQs	35
GameSpot	33
IGN/Gamespy	33
GameSpy Network (gamespy)	33
GamesRadar	57
GameWinners	48
IGN.com	34
LetsSingIt.com	45
Lyrics On Demand	44
Lyrics.com	43
MP3.com	45
MTV.com	31
Newgrounds	51
nickjr.com	36
Runescape	57
Shockwave	37
sing365.com	43
SparkNotes	40
UGO	38
Ultimate-Guitar.com	45
xanga.com	42

Source: Nielsen//NetRatings NetView (U.S. Home only)

Tables 6 and 7 set forth certain demographic targeting information on 2- to 16-year-olds and 18- to 24-year-olds for MySpace.com during three months of 2006. Table 8 sets forth demographic data on 2- to 16-year-olds for PureVolume.com during three months of 2006.

Table 6: Demographic Targeting Information on 2- to 16-Year-Olds for MySpace.com, July-September 2006

	Unique Audience Composition (%)	Web Page Views Composition (%)	Coverage (%)
July	24	42	34
August	24	45	34
September	25	41	34

Source: Nielsen//NetRatings NetView (U.S. Home only)

MySpace also is very popular with the 18- to 24-year-old demographic, but this older group views significantly fewer MySpace web pages than children under age 17 do.

Table 7: Demographic Targeting Information on 18- to 24-Year-Olds for MySpace.com, July-September 2006

	Unique Audience Composition (%)	Web Page Views Composition (%)	Coverage (%)
July	17	19	49
August	17	17	52
September	15	19	49

Source: Nielsen//NetRatings NetView (U.S. Home only)

Table 8: Demographic Targeting Information on 2- to 16-Year-Olds for PureVolume.com, July-September 2006

	Unique Audience Composition (%)	Web Page Views Composition (%)	Coverage (%)
July	34	28	1.3
August	43	29	1.6
September	53	72	1.5

Source: Nielsen//NetRatings NetView (U.S. Home only)

Endnotes

1. The audience numbers appearing in Table 1 came from data obtained from Nielsen Media Research for the 2005-2006 television season.
2. The Commission reviewed Nielsen//NetRatings data that was based on its panel of Internet users. Nielsen//NetRatings measures and reports Internet audience behavior based on data collected from home users in the United States.

