



# **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**

**FEDERAL TRADE COMMISSION  
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Federal Trade Commission

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## **EXECUTIVE SUMMARY**

In January 2001, the Senate Commerce Committee requested that the Federal Trade Commission prepare a report following up on its September 2000 Report, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*. The earlier Report concluded that the pervasive and aggressive marketing of violent movies, music, and electronic games to children undermines the credibility of the entertainment media industries' parental advisory ratings and labels and frustrates parents' attempts to make informed decisions about their children's

The Commission found that the music recording industry, unlike the motion picture and electronic game industries, has not visibly responded to the Commission's Report; nor has it implemented the reforms its trade association announced just before the Commission issued its Report. The Commission's review showed that advertising for explicit-content labeled music recordings routinely appeared on popular teen television programming. All five major recording companies placed advertising for explicit content music on television programs and in magazines with substantial under-17 audiences (in some cases more than 50 percent under 17). Furthermore, ads for explicit-content labeled music usually did not indicate that the recording was stickered with a parental advisory label. Only 25 percent of the print ads, 22 percent of the television ads, and about half of the 40 official recording company or artist Web sites reviewed showed the explicit content label or otherwise gave notice that the recording contained explicit content. Even when the parental advisory label was present, it frequently was so small that the words were illegible, and the ads never indicated why the album received the label. None of the recording company/artist Web sites the Commission reviewed linked to an educational Web site for information on the labeling system. The single positive note was that almost 40 percent of the Web sites included the music's lyrics, a step that can help parents screen recordings.

The Commission's review shows some improvement in the electronic game industry's advertising practices. The Commission found no ads for M-rated games on the popular teen television programs reviewed. The game company print ads nearly always included the game's rating icon (or the rating pending icon) and, in a large majority of instances, content descriptors. Television ads gave both audio and video disclosures of the game's rating, and more than 80 percent of the official game publisher Web sites displayed the game's rating. However, the electronic game industry has not stopped placing ads for M-rated games in magazines with a substantial under-17 audience; rather, the Commission found such ads placed at the same rate as before in gaming magazines with readerships of at least 40 percent under 17. (This may change in the future; in mid-March 2001, the industry adopted an advertising guideline prohibiting the placement of such ads in magazines with a 45 percent or more readership under 17.) The Commission also found that rating icons and descriptors in the print ads were often smaller than required by the industry code; television ads never included the content descriptors; only a little

more than half the Web sites reviewed displayed the rating clearly and conspicuously; and just 25 percent displayed the content descriptors anywhere on the site.

This review provides a snapshot of advertising practices by some industry members a few months after publication of the Commission's September 2000 Report. Thus, it cannot be statistically projected to industry advertising as a whole. In addition, because this review relies on advertising monitoring rather than internal industry documents, its results cannot be directly compared to the results of the review conducted for the September 2000 Report. Also, this review does not include information on children's access to these products at the retail level. The Senate Commerce Committee has requested a second, more comprehensive, report in the Fall of 2001, which will include information from individual industry members.

Because of First Amendment issues, the Commission continues to believe that vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children's exposure to entertainment media with violent content. The Commission is encouraged by the motion picture and electronic game industries' initial responses to its September 2000 Report, but it is disappointed by the almost complete failure of the music recording industry to institute any positive reforms.

More remains to be done by each industry. To avoid undermining the cautionary message in their ratings and labels, the industries should avoid advertising their products in the media most watched and read by children under 17. The challenge remains to make rating explanations as ubiquitous in advertisements as the rating itself and to present this important information clearly and conspicuously. The Commission urges individual industry members to keep the industry's own commitments and to go beyond those commitments to meet the recommendations the Commission made in its September 2000 Report.





## I. INTRODUCTION

### A. *September 2000 Report on Marketing Violent Entertainment to Children*

On September 11, 2000, the Federal Trade Commission issued a report entitled *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*.<sup>1</sup> The Report responded to a request from President Clinton, and similar Congressional requests, that the Commission study whether the motion picture, music recording, and computer and video game (“electronic game”) industries market products with violent content to youngsters. Specifically, the study’s goal was to determine whether the industries intentionally promote products that they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience.

The Commission’s study found that for all three segments of the entertainment industry, the answer was “yes.” The Commission found that although the motion picture, music recording, and electronic game industries had taken steps to identify products whose content may not be appropriate for children, companies in those industries routinely marketed such products to children under 17. The Commission also found that children under 17 were frequently able to buy tickets to R-rated movies and could easily purchase explicit-content labeled music recordings and Mature-rated (“M-rated”) electronic games without being accompanied by an adult. The Report concluded that the pervasive and aggressive marketing of violent movies, music, and electronic games to children undermines the credibility of the industries’ ratings and labels and frustrates parents’ attempts to make informed decisions about their children’s exposure to violent content.

In its Report, the Commission recommended that all three industries enhance their self-regulatory efforts by: 1) establishing or expanding codes that prohibit target marketing to children, for example by avoiding advertising in popular teen media, and impose sanctions for violations;<sup>2</sup> 2) increasing compliance at the retail level, for example by requiring identification or parental permission;<sup>3</sup> and 3) increasing parental understanding of the ratings and labels, for example by including the rating as well as the reasons for the rating in all advertising.<sup>4</sup>

***B. Industry Response to the September 2000 Report***

Following release of the Commission's Report, the Senate Committee on Commerce, Science, and Transportation conducted two hearings on the Commission's findings.<sup>5</sup> At the September 13 and 27, 2000 hearings, several members of Congress urged industry members to engage in more vigorous self-regulation. Industry members expressed their views of the Report and most indicated steps they would take in response to its findings.<sup>6</sup>

The Motion Picture Association of America ("MPAA") announced a 12-point initiative to address the suggestions in the Commission's Report. The MPAA's members promised to avoid running trailers for violent R-rated films before G-rated feature films, to review their policies regarding marketing violent R-rated movies to children, to avoid using children in research for R-rated films, to install compliance officers to review their marketing practices, to encourage movie theaters to enforce the R-rating restriction, and to take steps to include the reasons for ratings in print advertisements, on Web sites, and in home videos.<sup>7</sup> Individual studios made further commitments.<sup>8</sup>

The National Association of Theatre Owners ("NATO") also announced a 12-point initiative.<sup>9</sup> This initiative reaffirmed NATO's existing ID-check policy for R and NC-17 films and sought ways to improve compliance with that policy. NATO members agreed not to show trailers advertising R films before any G or PG film, and to only show those trailers before PG-13 films if the trailers are consistent in tone and content with the feature film. In addition, NATO members pledged to appoint an executive compliance officer and to seek ways to disseminate rating information, for example by including rating information in Web sites and on posters at theaters.

The Recording Industry Association of America ("RIAA") referenced its own recommended changes to the parental advisory labeling system that would take effect in October 2000, including the use of: 1) broad standards to make the labeling decision; and 2) guidelines for placing the advisory in advertising for explicit-content labeled recordings and on retail Web sites. In addition, the RIAA and representatives of two music recording companies, BMG Music and Artemis Records, indicated that they would consider making the lyrics of explicit content CDs available to help parents screen the recordings.<sup>10</sup>

The Interactive Digital Software Association (“IDSA”) created a task force of electronic game company marketing executives to discuss how the industry should address the concerns raised about target marketing.<sup>11</sup> As a result, the IDSA Board of Directors adopted on March 14, 2001 a series of guidelines to govern the marketing of M-rated games to children under 17. These guidelines place limits on ad placements in magazines, television shows and Internet sites popular with teens.<sup>12</sup> In addition, the Entertainment Software Rating Board (“ESRB”) said it would expand its self-regulatory program to monitor the disclosure of rating information in advertising by bringing on additional staff, creating more sophisticated and extensive ad monitoring and data collection systems, more aggressively challenging instances of noncompliance, and keeping better track of violators. It promised “meaningful sanctions” for serious or repeat violations of the ESRB code.<sup>13</sup>

### ***C. Congressional Request for Follow-up Reports***

In January 2001, Senator John McCain, Chairman of the Senate Commerce Committee, Ranking Member Ernest Hollings, and Senators Max Cleland and Sam Brownback requested that the Commission provide the Commerce Committee with two follow-up reports describing whether violent movies, explicit-content labeled music, and electronic games continue to be marketed to children under the age designated in the rating or label.<sup>14</sup> They requested that the first report examine two issues: 1) whether the industries continue to advertise violent R-rated movies, explicit-content labeled music, and M-rated electronic games in popular teen media; and 2) whether rating or label information is included in the teen media or other advertising. This report answers those two questions. The Senators further requested that the Commission provide a second report in the fall of 2001 that would examine the same issues, but would include more extensive information obtained from industry members.<sup>15</sup>

### ***D. Sources of Information for this Report***

To prepare this report, the Commission obtained information from four sources: television, magazine, and newspaper advertising; a review of movie trailer placement; official industry Internet Web sites; and industry trade associations.<sup>16</sup> To answer the Senate Commerce





The Commission’s monitoring of television advertising placement for this report reveals that studios continue to advertise R-rated movies at the times and on the programs that are most effective in delivering those ads to teen viewers. Studios advertised R-rated films on syndicated programs popular with under-17 audiences airing between 6 and 8 p.m. For example, *Dracula 2000*, *Hannibal*, *Proof of Life*, *Shadow of the Vampire*, *Snatch*, *The Gift*, *The Pledge*, *Traffic*, and *Valentine*<sup>30</sup> were advertised on *Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Mo’Nisha*, and *The Simpsons* — all programs that rank in the top ten weekday syndicated shows in terms of teen audience size.<sup>31</sup>

Although relatively few films rated R for violence were advertised during the prime-time (8 to 9 p.m.) programming reviewed,<sup>32</sup> in some instances, such placement appeared to run counter to at least the spirit of individual commitments made by studios in response to the September 2000 Report. For example, despite Disney’s pledge that its own ABC television network would “not accept advertisements for R-rated films in prime[-]time entertainment programming prior to 9 p.m.,” Dimension Films (a division of Disney-owned Miramax) aired ads for *Dracula 2000* on the Fox Broadcasting Network during prime-time entertainment programming airing between 8 and 9 p.m.: *That ‘70s Show*, *The Simpsons*, and *Titus*.<sup>33</sup> In addition, by airing ads for that film on these programs, Fox apparently breached its own promise not to accept ads for R-rated movies on “any family programming.”<sup>34</sup>

In an important improvement, only one ad for an R-rated movie (*Traffic*) was found on MTV’s *Total Request Live* — an afternoon program that had been frequently used to promote the R-rated films studied for the September 2000 Report.<sup>35</sup>

#### **b. Print ads**

For this report, the Commission monitored advertisements in the December 2000 to March 2001 issues of magazines with substantial youth audiences (*DC Comics*, *Electronic Gaming Monthly*, *GamePro*, *Metal Edge*, *Unofficial PlayStation Magazine*, *Right On!*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, *Tips and Tricks*, *Vibe*, *WWF Magazine*, and *YM*).<sup>36</sup> The Commission did not identify any advertisements for R-rated movies currently in theaters in any of these magazine issues,<sup>37</sup> a notable improvement over the advertising practices documented in the September 2000 Report.<sup>38</sup>

### c. In-theater trailers

As noted in the September 2000 Report, both studios and theaters jointly select the trailers shown before films in theaters.<sup>39</sup> Following the September 2000 Report, the MPAA indicated that member studios would not show trailers for movies rated R for violence before G-rated films in either theatrical release or on home video or DVD. All of the MPAA member studios, except Paramount, orally agreed at the September 27, 2000 Senate Commerce Committee hearing not to show trailers for R-rated films at PG-rated features.<sup>40</sup> The National Association of Theatre Owners (“NATO”), in its response to the FTC’s Report, made a further pledge: each member theater agreed not to show trailers advertising R films before any G or PG film, and to only show those trailers before PG-13 films if the trailers are consistent in tone and content with the feature film.<sup>41</sup>

To determine whether trailers for R-rated films were being shown before PG-13, PG and G features despite the MPAA and NATO pledges, the Commission contracted with a commercial trailer checking service to check trailers shown before the following features: *Monkey Bone* (PG-13), *See Spot Run* (PG), and *Recess: School’s Out* (G). The service surveyed trailers shown in 80 theaters in eight U.S. cities on March 2-3, 2001.<sup>42</sup>

This review found substantial compliance with the industry pledges regarding trailer placement. The few violations of the pledge not to run trailers for R-rated films before G- or PG-rated feature films appear to be the result of decisions by individual theater operators rather than the studios or the theater chains.<sup>43</sup> The review did find that trailers for R-rated films were frequently shown before the PG-13-rated *Monkeybone*,<sup>44</sup> but this practice does not violate MPAA’s commitment, which did not extend to PG-13 films. Based on the MPAA rating reasons, it would appear that a few NATO member theaters violated their commitment to show trailers for R films before PG-13 films only if the trailers are consistent in tone and content with the feature film when they showed trailers for films rated R for graphic violence before *Monkeybone* (“Rated PG-13 for crude humor and some nudity”).<sup>45</sup>

### 3. Analysis of industry’s practices since the September 2000 Report

These data suggest that movie studios continue to advertise R-rated films on television programs with substantial teen audiences. Although the industry’s commitment not to advertise

R-rated movies on programs with a substantial under-17 audience is a positive step, the 35% youth audience threshold adopted by some industry members will mean little practical change in the ways R-rated movies are advertised on television, with the notable exception of certain programming on cable television networks such as MTV and BET.<sup>46</sup>

By contrast, the studios have been effective in not placing ads in print media with substantial youth readership. Furthermore, the Commission's trailer check suggests general compliance with the industry's commitments regarding the placing of trailers for R-rated movies. The few violations identified suggest noncompliance on the part of a few individual theaters rather than a systemic failure to heed those commitments, and suggest the need for additional guidance to individual theater chains and theaters.

Moreover, anecdotal reports suggest that the studios' commitments not to target audiences under 17 are having some impact. For example, one press account describes steps taken to avoid marketing Miramax Films' *Dracula 2000*, MGM's *Hannibal*, Warner Bros.' *Valentine*, and Paramount Pictures' *Lucky Numbers* to audiences under 17.<sup>47</sup> The article reports that Miramax Films restricted *Dracula 2000*'s stars from appearing in venues popular with youth such as MTV's *Total Request Live* and teen magazines.<sup>48</sup> Paramount Pictures avoided putting *Lucky Numbers* star John Travolta on *Total Request Live*.<sup>49</sup> MGM indicated that it would not air ads for *Hannibal* on MTV before 9 p.m. or in some magazines with substantial youth readership, while Warner Bros. announced that it would advertise *Valentine* on MTV only after 11 p.m. and would not produce a music video for the soundtrack.<sup>50</sup>

**B. ~~Programming~~ programming on cable television networks such as MTV and BET to avoid**



MPAA committed to “seek ways to include” rating reasons in print ads and official Web sites (but not television ads) for movies rated R for violence.<sup>51</sup> The MPAA member studios also pledged to link their official movie Web sites to educational Web sites where parents may obtain information about the rating system and the reasons for film ratings.<sup>52</sup>

For this report, the Commission reviewed television and print ads and Internet sites in late 2000 and early 2001 to see if the Commission’s and the MPAA’s recommendations were being met.

## **2. Industry advertising practices since the September 2000 Report**

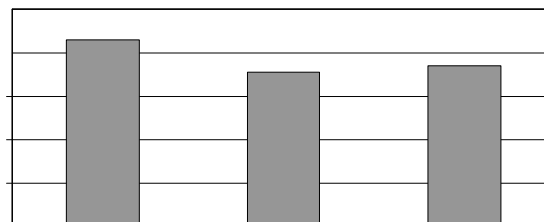
### **a. Television ads**

The Commission’s review of television ads reveals that while the motion picture studios include the letter rating in their commercials, and have generally incorporated the reasons for the rating as well, the reasons frequently are difficult or impossible to read.

The Commission found that ads for R- and PG-13-rated movies on the syndicated programs reviewed included the letter rating in every case.<sup>53</sup> In addition, rating reasons were provided in all but two of 60 ads for films rated R for violence. In more than half of the ads for R-rated movies, however, the rating reasons were either unreadable or difficult to read.<sup>54</sup> Of over 400 ads for PG-13 movies reviewed, over one-half either did not provide rating reasons, or provided rating reasons that were difficult to read.<sup>55</sup> Apart from small type size, many ads display the rating reason fleetingly, often with other information about the cast and production. Given these practices, even an alert viewer would have difficulty finding and then reading the rating reason.

Still, these numbers reflect an improvement over pre-Report practices, when rating reasons were not displayed at all. Moreover, the studios’ efforts to include rating reasons in television ads go beyond the requirements of the MPAA’s initiative, which committed its members to seek to include rating reasons in print and online ads but not television ads, and then only as to movies rated R for violence. It also should be noted that certain ads, such as for Warner Bros.’ *Miss Congeniality*, prominently displayed the rating reasons so an interested parent would be able to find and read the information before it disappeared from the screen. Nevertheless, in most cases the ads reviewed were not effective in providing parents with information about the reason for

**2001 Official Movie Web Site Review**



parentalguide.org, which are informational sites where parents may obtain information about the rating system and the reasons for film ratings.

To check current practices on the Internet, the Commission reviewed 35 official Web sites for movies rated PG-13 or R where the rating was assigned, at least in part, based on violent content.<sup>61</sup> The results show significant progress in the movie industry's online practices since the earlier review of official motion picture Web sites in December 1999: nearly all the sites checked still disclose the film's rating, and almost three quarters now provide the rating reason.<sup>62</sup>

The Commission noted a wide range of rating information practices on these official Web sites. Some sites went beyond the self-regulatory system requirements in highlighting the film's rating information.<sup>63</sup> Some sites did not provide any rating information whatsoever.<sup>64</sup> More common, however, were those sites that displayed the rating information in such a manner that a consumer might have difficulty locating it, by placing it well below the "screen break" or in small print that contrasted poorly with the site's background.

Three quarters of the sites (26 of 35) linked to at least one of the three rating information Web sites that the MPAA indicated its members would link to.<sup>65</sup> Two of the 35 sites contained a warning, in addition to the film's rating or content description, that children or younger visitors should not view the site.<sup>66</sup>

## **(2) Theater Web sites**

The Commission also examined the Web sites for eight major theater chains (AMC,

### Theater Web Site Review Results

	NATO Theater Chains	Non-NATO Theater Chains	Total
Site displays MPAA rating	6 of 6	2 of 2	8 of 8
Site displays MPAA rating reason	2 of 6	0 of 2	2 of 8
Site provides additional ratings information	5 of 6	1 of 2	6 of 8
Site links to MPAA.org, filmratings.com, or parentalguide.org	4 of 6	1 of 2	5 of 8
Site offers ticket sale	6 of 6	1 of 2	7 of 8
Site provides rating at point of purchase	6 of 6	0 of 1	6 of 7
Site provides rating reason at point of purchase	0 of 6	0 of 1	0 of 7
Site provides an additional warning or advisory	3 of 6	0 of 1	2 of 7

United Artists' Web site is noteworthy. The site provides rating information, as well as a statement of the company's policy on restricting access to R-rated films.<sup>-Atnists se</sup>

### **3. Analysis of industry's practices since the September 2000 Report**

Overall, the motion picture studios have clearly responded to the Commission's recommendation to include rating reasons in advertising so that parents can better judge the appropriateness of a film for their children, and the self-regulatory system is very effective in ensuring that advertisements show the rating. The remaining challenge is to make rating reasons as ubiquitous as the rating in advertising, and to present this important information clearly and conspicuously. Home video retailers, in contrast, are not providing the rating reason consistently in their advertisements, and most theater chains do not provide this information on their official Web sites.

## **III. MUSIC RECORDINGS**

### ***A. Marketing to Children: Ad Placement***

#### **1. Industry commitments following the September 2000 Report**

The September 2000 Report studied the marketing of 55 explicit content recordings and found that all of them were marketed to children under 17.<sup>72</sup> The Commission encouraged the music recording companies to cease such marketing efforts and to adopt an industry-wide anti-targeting code.<sup>73</sup>

Shortly before the Report's release, the Recording Industry Association of America ("RIAA") announced that advertising for explicit-content labeled recordings should not appear in publications, Web sites, or other commercial outlets whose primary (*i.e.*, 50% or more) market demographic is 16 years of age or younger.<sup>74</sup> Immediately after the Report's release, however, the RIAA withdrew this anti-targeting recommendation, later informing the Commission that the increased focus by Congress, the Commission, and several states on bringing law enforcement actions against the entertainment companies caused the withdrawal. The association stated that formally adopting such a provision would only increase the likelihood that its members would be the subject of law enforcement actions and penalties and would "discourage participation in the successful parental advisory program."<sup>75</sup> The RIAA's withdrawal of its anti-targeting recommendation represents a move away from measures adopted by the movie and electronic game industries to prevent the marketing of violent entertainment products to children.<sup>76</sup>

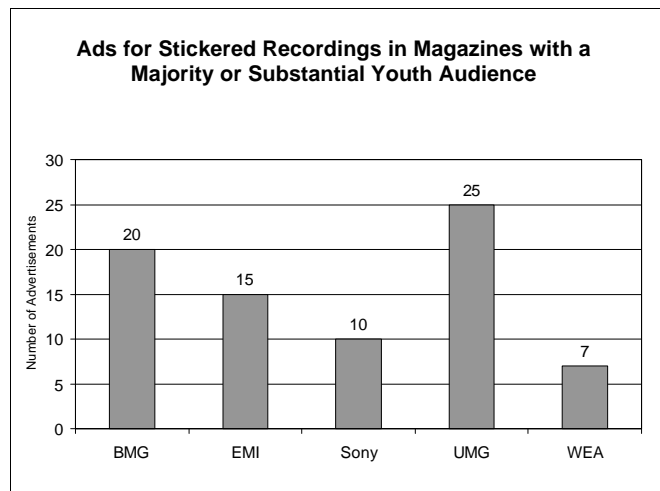
## 2. Industry advertising placement since the September 2000 Report

### a. Television ads

For this report, the Commission examined whether recording industry members placed ads for explicit content recordings during eight popular teen programs monitored.<sup>77</sup> The seven-week review found that advertising for explicit content recordings appeared regularly on MTV programs that aired during after-school and early evening hours. Universal Music Group Recordings (“UMG”) and Sony Music Entertainment (“Sony Music”) ran advertisements for explicit content recordings by Blink 182, Crazy Town, DMX, Ja Rule, Rage Against the Machine, SPM, Wu-Tang Clan, and Xzibit, as well as ads for the *Dracula 2000 Soundtrack* and *The Source Hip Hop Hits Volume 4*, on MTV’s *Total Request Live* and *WWF Heat*.<sup>78</sup> Advertisements for the *Dracula 2000 Soundtrack* and the *Up in Smoke Tour* music video also aired during *WWF Smackdown*. In addition, another review showed that all five music recording companies — BMG Entertainment (“BMG”), EMI Recorded Music, N.A. (“EMI”), Sony Music, UMG, and Warner Music Group (“WEA”) — advertised their explicit content recordings on popular teen shows such as MTV’s *Total Request Live*, BET’s *Top 10 Live*, and UPN’s *WWF Smackdown*.<sup>79</sup> The Commission’s spot review of MTV’s *Total Request Live* further found an advertisement for the *Dracula 2000 Soundtrack*.

### b. Print ads

For this Report, the Commission reviewed the December 2000 through March 2001 editions of six magazines with a majority or substantial readership under 18 to determine whether they contained advertising for explicit content recordings.<sup>80</sup> The Commission’s examination revealed that the five major recording companies placed advertisements for explicit content recordings in one or more of the following magazines: *Metal Edge*, *Right On!*, *Thrasher*, and *Vibe*.<sup>81</sup>





## **2. Industry advertising practices since the September 2000 Report**

### **a. Television ads**

As noted above, the RIAA has not adopted the FTC's recommendation that advisory labels be placed in television advertisements. The Commission's spot-check confirms that such television advertising rarely provides such disclosures: of the 23 ads for explicit content recordings that appeared on certain television programs with substantial teen audiences (referenced above), only five of the ads contained the parental advisory label (ads for *The Mark, Tom, and Travis Show* (two ads), the *Dracula 2000 Soundtrack* (two ads), and the *Source Hip Hop Hits Volume 4* (one ad)). Even when the labels displayed were visible, none was clearly readable.

### **b. Print ads**

To assess industry compliance with the FTC and RIAA recommendations, the Commission reviewed the December 2000 through March 2001 issues of music magazines: *Metal Edge*, *Right On*, *Rolling Stone*, *Seventeen*, *Spin*, *Teen People*, *Thrasher*, and *Vibe*.<sup>86</sup> This review shows that advertisements for explicit-content labeled recordings still rarely display a clear parental advisory. Only 45 of 147 (31%) print ads for labeled recordings displayed any parental advisory label; most of these advisories presented the advisory as a black and white blur, often too small or inconspicuously placed to be noticed or read. The Commission's review, however, did reveal eight instances of clear and conspicuous disclosures about an album's content, including ads for Shyne (BMG), Amen and Fatboy Slim (EMI), and Disturbed and Slimm Calhoun (WEA).

### **c. Internet ads**

To determine whether recording industry members were providing online disclosure of explicit content, the Commission conducted two Web site surfs: a surf of 40 artist/recording company sites and a surf of five major music retailer sites.

#### **(1) Recording company Web sites**

The review of official music Web sites shows that less than half of such sites provided notice of a recording's explicit content.<sup>87</sup> Of the 40 official music Web sites surfed,<sup>88</sup> 38 sites showed a picture of the CD cover, with the advisory label appearing on 15 of the 38 (39%) covers. Only two of these advisories were legible.<sup>89</sup> Many sites used other methods to



communicate the explicit nature of a recording, however. Eighteen of the 40 sites (45%) provided consumers with additional information, usually in the form of an enlarged parental advisory placed somewhere on the site or a text disclosure stating “explicit” placed near the picture of the CD on the purchase page (*e.g.*, the Nelly, Ludacris, Cypress Hill, and Crazy Town Web sites).<sup>90</sup> In addition, 15 of the 40 sites (38%) provided the lyrics for the explicit content recordings. None of the sites surfed linked either to [www.riaa.com](http://www.riaa.com) or to [www.parentalguide.org](http://www.parentalguide.org).<sup>91</sup>

## **(2) Retailer Web sites**

A review of the Web sites of five major music retailers showed that these sites more frequently provided some information about the explicit nature of the recording for sale than the recording company/artist sites did. Most of the retail sites made some disclosure about an album’s explicit content, but only one fully complied with the RIAA-recommended guidelines.<sup>92</sup>

The Commission reviewed [Amazon.com](http://Amazon.com), [Bestbuy.com](http://Bestbuy.com), [Cdnnow.com](http://Cdnnow.com), [Samgoody.com](http://Samgoody.com), and [Towerrecords.com](http://Towerrecords.com) to see how these sites promoted five top-selling explicit content albums.<sup>93</sup> Four of the five retailers provided some information, usually in a text disclosure that read “explicit lyrics,” “explicit,” or simply “PA” (presumably short for “parental advisory”), about the content of the recording. Only [Amazon.com](http://Amazon.com), however, fully complied with the RIAA-recommended disclosures by providing consumers with advisories that read “explicit lyrics” and that appeared in large easy-to-read print, prominently displayed, throughout the purchasing process. Best Buy, CD Now, and Tower Records provided some form of more limited disclosure, such as an “explicit” disclosure at one point on the site or the abbreviation “PA.”<sup>94</sup> [Samgoody.com](http://Samgoody.com) only used the disclosure “clean” next to the edited version, providing consumers with no information about the content of the explicit version.

### Music Retailer Web Site Surf

	Amazon	Best Buy	CdNow	Sam Goody	Tower Records
Does the advisory appear on the album cover art?	3 of 5	1 of 5	3 of 5	2 of 5	4 of 5
Is the advisory readable?	1 of 3	0 of 1	0 of 3	0 of 2	0 of 4
Is there other clear and conspicuous information about explicit content?	5 of 5	5 of 5	3 of 5	0 of 5	3 of 5
	"explicit lyrics"	"parental advisory"	"explicit" and "explicit version"	only "clean" version noted	"explicit"
Are the disclosures provided throughout purchasing process?	5 of 5	0 of 5	0 of 5	0 of 5	0 of 5

### 3. Analysis of industry's practices since the September 2000 Report

The Commission's review shows that most advertisements for explicit content recordings do not contain the clear disclosures recommended by the Commission. Of the three advertising media reviewed (television, print, and Internet), the Web sites were the most likely to provide some notice of a recording's explicit content, with retail sites often providing an advisory and record company/artist sites more frequently providing lyrics. The lack of clear and consistent disclosures points to the need for industry-wide guidelines recommending advisories in *all* advertising and increased efforts by individual industry members to provide such information.<sup>95</sup> In March 2001, the RIAA informed the Commission that it had begun discussions about whether *all* future advertising for explicit content recordings should clearly display an advisory.<sup>96</sup> Neither the RIAA nor any of its members, however, is willing to provide content descriptors in advertising or labeling.

## IV. ELECTRONIC GAMES

### A. Marketing to Children: Ad Placement

#### 1. Industry commitments following the September 2000 Report

In the September 2000 Report, the Commission noted that the electronic game industry has a comprehensive self-regulatory system that includes a prohibition on marketing games to

children under the age designated in the rating. However, the Commission found widespread violation of this anti-targeting provision, as evidenced by many instances of express targeting of violent M-rated games to underage children, in addition to advertising in magazines or on television shows with a majority or substantial under-17 audience.<sup>97</sup> The Commission recommended that the industry enforce its anti-targeting code provision.

In response, the Interactive Digital Software Association stated that “the IDSA does not condone or excuse the marketing of Mature rated products to persons under 17 and, indeed, we condemn it.” But it questioned whether magazines with a large or even majority under-17 readership, and other media popular with young teens, should be off-limits to industry members seeking to market M-rated games:

[W]e reject the FTC’s operating assumption that ads in publications that happen to have some noteworthy percentage of young readers, but a substantial and perhaps even dominant share of older readers and users, is inappropriate.<sup>98</sup>

In mid-March, the IDSA Board of Directors adopted guidelines that would limit the placement of advertisements for M-rated games in magazines where 45% or more of the readers are under 17, and on television shows where 35% or more of the viewers are under 17.<sup>99</sup>

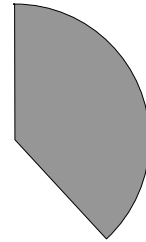
## **2. Industry advertising placement since the September 2000 Report**

### **a. Television ads**

In the September 2000 Report, the Commission found that game companies frequently targeted M-rated games to teen audiences by advertising on television programs popular with teens aged 12 to 17. For this report, the Commission examined whether ads for M-rated games continued to be shown during certain television programs popular with teen audiences.<sup>100</sup> The seven-week review of eight top teen network and cable programs (*Total Request Live*, *WWF Heat*, *The Simpsons*, *Malcolm in the Middle*, *That ‘70s Show*, *Titus*, *7<sup>th</sup> Heaven*, and *WWF Smackdown*) did not reveal a single instance of an ad for an M-rated game appearing during these broadcasts. Nor did the Commission’s spot check of syndicated programs favored by teens (*Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Moesha*, and *The Simpsons*) find ads for M-rated games. The spot check did identify numerous ads for Teen- and Everyone-rated games. These findings are encouraging; however, given the limited scope of the review, the

**Game Pro and Electronic Gaming Monthly Advertising  
Composition By Rating**

("Rating Pending" ads are grouped by the rating they later received.)



### **3. Analysis of industry's practices since the September 2000 Report**

The Commission's review of print and television ads for electronic games suggests that the electronic game industry may be limiting its advertising on popular teen television programs, while continuing to advertise in popular teen game enthusiast magazines. Although industry's new guidelines limiting print and TV ad placements are an improvement, they still sanction the advertising of M-rated games in gaming and other magazines with a substantial under-17 readership and permit ad placements on most of the teen-oriented television shows previously used by industry members to market M-rated games to children. Their continued allowance of such ad placement practices undercuts industry's commitment to avoid targeting children younger than the age designated in a game's rating.

#### ***B. Ratings and Reasons for Ratings in Ads***

##### **1. Industry commitments following the September 2000 Report**

In the September 2000 Report, the Commission noted that the electronic game industry requires the display of rating icons and, in most cases, content descriptors on packaging, in print ads, and online. The industry code also requires television ads to include a voice-over stating the game's rating (but not the content descriptor).<sup>110</sup> The Commission suggested that *all* advertising contain both the rating and the content descriptors, but the electronic game industry has not changed its advertising code ("Adcode") to require content descriptors in television or radio advertising.

##### **2. Industry advertising practices since the September 2000 Report**

###### **a. Print ads**

To check whether ratings and content descriptors are being clearly and conspicuously disclosed, for this report the Commission reviewed print ads appearing in four popular gaming enthusiast publications – *GamePro*, *PC Gamer*, *Computer Gaming World*, and *Electronic Gaming Monthly* – during a four-month period (December 2000-March 2001).<sup>111</sup> Overall, the review found that most of the time the ads contained the ratings and the content descriptors as specified by the ESRB. However, nearly half (47%) of the ads reviewed either failed to display

## Disclosure of Rating Information in Game Ads

**c. Internet ads**

**(1) Game publisher Web sites**

The Adcode has several specific disclosure requirements for game publisher Web sites. Web sites must include the rating icon and, on the purchase page, any applicable content descriptors issued by the ESRB for that title.<sup>120</sup> For game demos and trailers accessed online, the site must display the rating icon next to the name of the game on the Web page where the demo and/or trailer is accessed.<sup>121</sup>

For the September 2000 Report, the Commission found that three-quarters of the 40 game publisher Web sites<sup>122</sup>

would see them. For example, the content descriptors may appear only if the visitor happens to place the cursor over the rating icon.<sup>131</sup> A majority of the sites offered the visitor the opportunity to purchase the game. Of these sites, nearly all provided the game’s ESRB rating at the point of purchase; however, only four provided the game’s content descriptors on the purchase page.<sup>132</sup> Electronic Arts’ online store — EA.Com — was clearly the best, disclosing, clearly and prominently, both the rating and the descriptors on both the product information and ordering pages.<sup>133</sup>

**Web Site Adcode Issues**

	Summaries by Sites			Percentage Yes
	Yes	No	N/A	
<b>ESRB rating displayed?</b>	33	7		83%
<b>ESRB content descriptors displayed?</b>	10	30		25%
<b>Game clip available for downloading or viewing?</b>	23	17		58%



sales practices.<sup>135</sup> Most of the retailers surfed displayed a game's rating on the product information page,<sup>136</sup> but only a few provided descriptors for the games surveyed.<sup>137</sup> Two of the sites provided game trailers so that visitors could view excerpts of a game, but without any statement that the game had been rated as unsuitable for children under 17.

ToysRUs.com (currently run in conjunction with Amazon.com),<sup>138</sup> for example, displays the games' ratings clearly and conspicuously but rarely displays the games' content descriptors.<sup>139</sup> For all the games surfed on ToysRUs.com, the retailer displayed the statement "Content suitable for ages 17 or older" on the information page, and provided a link within the Amazon.com site to information about the ESRB ratings and content descriptors.<sup>140</sup>

### **3. Analysis of industry's practices since the September 2000 Report**

Overall, the review shows some improvement from the Commission's September 2000 Report<sup>141</sup> and likely reflects increased efforts by the ESRB to encourage greater adherence to the Adcode's requirements. Still, the industry should address the paucity of clear and conspicuous displays of rating icons and content descriptors on official Web sites and the absence of content descriptors in television commercials. Further, the industry should do more to encourage retailers of electronic games to provide parents with this important information.

## **V. CONCLUSION**

Six months after the Commission's September 2000 Report, it appears that the motion picture and electronic game industries have taken a number of significant steps to limit marketing violent R-rated films and M-rated games to children and to provide parents with more information regarding the content of their products. In contrast, the music recording industry has not taken any visible steps with respect to explicit-content labeled music.

The Senate Commerce Committee has requested, in addition to this report, another follow-up report in the Fall of 2001. The Committee requested that the second follow-up report include information from the industry members themselves. At that time, the Commission will be in a better position to assess the extent to which the entertainment media industries have taken steps to avoid targeting children under 17 in their marketing of violent R-rated movies, explicit-content labeled music, and M-rated electronic games.

Because of First Amendment issues, the Commission continues to believe that vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children's exposure to entertainment media with violent content. The Commission is encouraged by the motion picture and electronic game industries' initial responses to its Report, but more remains to be done, especially by the music recording industry. To avoid undermining the cautionary message in the industries' ratings and labels, the industry should avoid advertising their products in the media most watched and read by children under 17. And now that ads are including reasons for ratings, that information should be legible. The Commission urges individual industry members to keep the industry's own commitments and to go beyond those commitments to meet the suggestions the Commission made in its September 2000 Report.

## ENDNOTES

1. Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Sept. 2000) (“September 2000 Report”).

2. More specifically, the Commission recommended that all three industries institute codes of conduct that:

- < Prohibit placing advertising for R-rated/M-rated/explicit-labeled products in media or venues with a substantial under-17 audience.
- < Prohibit licensees from marketing action figures, toys, and other products associated with R movies and M games to under-age audiences and require a disclosure that the product is based on an entertainment product rated R or M.
- < Provide for no-buy lists of media outlets popular with under-17 audiences (including school venues, youth-oriented comic books, top teen TV shows, and younger teen magazines).
- < Encourage the auditing of ad placement to verify that advertisements are not reaching a substantial under-17 audience.
- < Encourage media screening of ads for consistency with these principles.
- < Provide for the associations to monitor and encourage member compliance with these policies, and to impose meaningful sanctions for noncompliance.

*Id.* at 54.

3. The Commission recommended that the industries encourage their members, as well as third-party retailers, to:

- < Check age or require parental permission before selling or renting R-rated/M-rated/advisory-labeled products.
- < Clearly and conspicuously display the ratings and advisories on packaging and in advertising, and avoid covering or obscuring them.
- < Avoid sales of R-rated/M-rated/advisory-labeled products on retail Internet sites unless they use a reliable system of age verification.
- < Develop guidelines for the electronic transfer of movies, music, and games.

*Id.* at 55.

4. The Commission recommended that the industries “expand their outreach programs to parents to facilitate informed choice and raise awareness and understanding of the ratings, content descriptors, and advisory labels.” The Commission suggested that the industries specifically should:

- < Clearly and conspicuously display the rating or advisory label and the descriptors in all advertising and product packaging.
- < Encourage the media to include rating and labeling information in reviews. This information often is included in movie reviews, but less frequently is included in game or music reviews.
- < Take additional steps to inform parents, especially by including rating and

labeling information in retail stores and on Web sites, where products can be sampled, downloaded, or purchased.

*Id.*

5. *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106<sup>th</sup> Cong. (Sept. 13, 2000); *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106<sup>th</sup> Cong. (Sept. 27, 2000). In addition, on September 20 and 21, 2000, the Senate Judiciary Committee held a hearing on whether the entertainment industries should be given an antitrust exemption to facilitate the development of industry-wide codes of conduct restricting the marketing and sale of violent entertainment products to children. *Antitrust Law and the Marketing of Violent Entertainment to Children: Hearing Before the Senate Comm. on the Judiciary*, 106<sup>th</sup> Cong. (Sept. 20 and 21, 2000).

6. Several members of Congress also questioned whether the Commission could take law enforcement action against the practice of target marketing to children products rated or labeled as inappropriate for children or with a parental advisory. In response to those inquiries, the Commission initiated a review of whether the advertising and marketing practices documented in the Commission's Report might violate the provisions of the Federal Trade Commission Act prohibiting the use of unfair or deceptive acts or practices in commerce. After a careful review of the entertainment industry's marketing practices and an analysis of the law, the Commission concluded in November 2000 that there are a number of significant legal limitations, including substantial and unsettled constitutional questions, to effective law enforcement actions under the FTC Act. Instead, the Commission suggested that the most prompt and viable option might be for Congress to continue to encourage further, needed reforms to the self-regulatory systems. See Letter from Robert Pitofsky, Chairman, Federal Trade Commission, to Senator John McCain, Chairman of the Senate Comm. on Commerce, Science and Transp. (Nov. 20, 2000), available at [www.ftc.gov/opa/2000/11/violence.htm](http://www.ftc.gov/opa/2000/11/violence.htm).

7. The MPAA member studios are the Walt Disney Company, Metro-Goldwyn-Mayer, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox Film Corp., Universal City Studios, and Warner Bros. Dreamworks SKG – not an MPAA member – also signed on to the initiative. Motion Picture Association of America, *A Response to the FTC Report* (Sept. 26, 2000).

8. See generally *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106<sup>th</sup> Cong. (Sept. 13, 2000), 2000 WL 1340874; *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106<sup>th</sup> Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

9. 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).

10. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

11. The IDSA directed the task force “to explore whether and how to define target marketing, to consider policies covering licensing of action figures, to consider possible development of general industry guidelines for marketing M rated product and to discuss potential monitoring tools [for the ESRB] to determine whether companies are improperly targeting M rated products to young users.” Letter from Douglas Lowenstein, President of the IDSA, to FTC staff (Mar. 2, 2001) (on file with the Commission). The IDSA notes that its members see several difficulties in drafting such guidelines:

Guidelines that deny company’s access to outlets where there is a large population

17. The Commission contracted with a commercial advertising tracking firm, Video Monitoring Services (“VMS”), to track advertisements for rated or labeled products on television programs popular with teens and younger children. For seven weeks during December 2000 and January 2001, VMS continuously monitored eight programs that were the highest rated among teens or where teens comprised the largest percentage of the audience: *Malcolm in the Middle*, *Seventh Heaven*, *That ‘70s Show*, *The Simpsons*, *Titus*, *Total Request Live*, *WWF Heat*, and *WWF Smackdown*. The Commission selected these shows because they are ranked among the top shows in terms of number of teen viewers or the percentage of teen viewers of the viewing audience. All of these programs are televised before 9:00 p.m. For additional details, see Appendix A (*Data Collection Methodology and Television and Print Demographics*).

18. The shows were:

22. September 2000 Report at 54.

23. *Id.*

24. Motion Picture Association of America, *A Response to the FTC Report*, Sept. 26, 2000. See also *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000) (statement of Mel Harris, President and Chief Operating Officer of Sony Pictures Entertainment) (presenting MPAA initiatives), available at 2000 WL 1530870. Also, the Directors Guild of America announced its support for the creation of a self-regulatory — not government-imposed — code of conduct to address marketing of films intended for mature audiences, as well as for a universal ratings system to apply to a variety of entertainment products. David Robb, *DGA Calls for Industry Code on Marketing*, *Hollywood Reporter*, Sept. 15, 2001, at [www.hollywoodreporter.com/crafts/briefs/0915.asp](http://www.hollywoodreporter.com/crafts/briefs/0915.asp) (visited Mar. 6, 2001).

25. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

26. *Id.* MGM pledged to use the 35% audience share as a guideline, but not as an absolute. *Id.* (testimony of Chris McGurk, Vice Chairman and COO of MGM).

27. For example, Disney agreed not to run ads for such movies on entertainment programming airing before 9 p.m. Press Release, The Walt Disney Co., *The Walt Disney Company Announces Policies for Marketing Its Motion Pictures*, Sept. 12, 2000 (on file with the Commission). The Disney pledge extended to “any of its films released under the Touchstone, Hollywood Pictures and Miramax Film banners.” *Id.* According to a News Corporation press release, Fox Broadcasting Company will no longer “accept advertising for R-rated films in any family programming, or in any program in which 35 percent or more of the audience is anticipated to be under 17.” Press Release, News Corporation, [www.newscorp.com/news/newscorplan.html](http://www.newscorp.com/news/newscorplan.html) (undated) (visited Mar. 6, 2001).

The 9 p.m. cutoff is one hour earlier than the 10 p.m. cutoff used by the Federal Communications Commission for limiting the time that “indecent” programming may be broadcast on television. The FCC presumes children are in the audience between 6 a.m. and 10 p.m. and therefore prohibits “indecent” programming during that time. 47 C.F.R. § 73.3999.

28. September 2000 Report at 14.

29. *Id.* at 14-15. “Early fringe” and “prime access” times are after school and before prime-time network programming begins at 8 p.m.

30. Other data provided by VMS show that ads for at least five other movies rated R at least in part for violence were aired between 6:00 p.m. and 9:00 p.m. between October 1, 2000 and February 8, 2001 on programs that were the highest rated among teens. The movies were

Artisan's *Book of Shadows: Blair Witch 2*, Paramount's *The Gift*, and Warner Bros.' *3000 Miles to Graceland*, *Proof of Life*, and *Valentine*. For additional details, see Appendix A.

31. The Commission's monitoring of syndicated programs showing Monday through Friday that are in the top ten in terms of number of viewers aged 12 to 17 (*Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Mo'Nique*, and *The Simpsons*) showed that the R-rated films *Dracula 2000*, *Hannibal*, *Proof of Life*, *Shadow of the Vampire*, *Snatch*, *The Gift*, *The Pledge*, *Traffic*, and *Valentine* were advertised on those programs on 60 occasions.

32. Based on VMS's continuous monitoring of eight network programs with a substantial youth audience for seven weeks during December 2000 and January 2001, the Commission found that three R-rated movies – *Snatch*, *Dracula 2000*, and *Traffic* – were advertised. Miramax advertised *Dracula 2000* a total of six times on *That '70s Show*, *The Simpsons*, and *Titus*. Sony Pictures aired four advertisements for *Snatch* on *WWF Heat* (two ads), *That '70s Show*, and *WWF Smackdown*. USA Films (an independent studio and not an MPAA member) aired four advertisements for *Traffic* on *WWF Heat*, *That '70s Show*, *Titus*, and *Total Request Live*. Of the 14 advertisements for these films, 10 were national advertising buys and four were "local" buys purchased only in the market monitored. The number of local buys may be expected to vary depending on the market monitored. For additional details, see Appendix A.

33. Miramax advertised *Dracula 2000* a total of six times on Fox Broadcasting Network programs *That '70s Show*, *The Simpsons*, and *Titus*.

34. Press Release, News Corporation, [www.newscorp.com/news/newscorpplan.html](http://www.newscorp.com/news/newscorpplan.html) (undated) (visited Mar. 6, 2001).

35. The ad for *Traffic* was placed by non-MPAA member USA Films.

36. See Appendix A.

37. There were several ads for R-rated videocassettes or DVDs. For example, MGM ran an ad in *Vibe* for *Silence of the Lambs* (rated R) and *Raging Bull* (rated R). Retailers such as [netflix.com](http://netflix.com) and Tower Records also advertised R-rated videocassettes or DVDs in these publications.

38. September 2000 Report at 18.

39. September 2000 Report at 15-16. Studios send completed features to theaters with one trailer physically attached; other unattached trailers are sent to the theaters with a request that they be shown with a particular feature. At the time the September 2000 Report was issued, National Association of Theatre Owners ("NATO") members were required to show the attached trailer, and had discretion (subject to pressure from studios) to play the trailers that were not attached.



40. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

41. NATO's pledge extended to any trailers that are attached to the film by the studio, which would require theaters to physically detach those trailers from the film reel. NATO members also agreed not to show "red band," or restricted, trailers or trailers for films rated NC-17 before any G, PG, or PG-13 film.

42. Only one G-rated film and one PG-rated film were released nationally in the mid-January through mid-March time period during which the Commission could contract for a trailer check.

43. The trailer checking service found a trailer for one R-rated movie, Paramount's *Along Came a Spider* ("Rated R for violence and language"), showing before the G-rated feature *Recess* 300 74.8i2Caed mov

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47. Robert W. Welkos, *Studios Cut Back Marketing of Violent Movies to Teens*, L.A. Times, Dec. 22, 2000, [www.latimes.com/news/state/updates/lat\\_drac001222.htm](http://www.latimes.com/news/state/updates/lat_drac001222.htm) (visited Mar. 2, 2001).

48. *Id.* In addition, Miramax did not create a Web site for the film or a music video for the soundtrack. As noted above, however, television ad monitoring showed that *Dracula 2000* was advertised on a number of television programs with large teen audiences.

49. *Id.*

50. *Id.* Another press account suggests that these types of marketing curbs may have hurt ticket sales for certain films. However, the same article points out that other factors may also be at play, and one of the films mentioned in the article as avoiding marketing to youth, *Hannibal*, has been a huge box office success. Sharon Waxman,



reason in large, contrasting print (a second icon and rating reason was also displayed, but this one was too small to read unless the viewer placed the cursor over the rating in order to display a readable version of it). The official site for *Quills*

obtain it. In addition to the rating reason database, the educational Web sites also include detailed explanations of the different movie ratings.

69. Through moviefone.com, the site provides an opportunity to purchase tickets, but if one attempts to purchase a child's reduced price ticket for an R-rated feature, a message appears: "Sorry, children under 17 will not be permitted into an R Rated feature without an adult."

70. See Appendix H to the September 2000 Report. The survey also looked at sales of M-rated games and explicit-content labeled music.

71. The same five retailers were examined in both reviews, except that Bestbuy.com replaced Cdnow.com.

72. Though the explicit content label makes no reference to age, common sense suggests that the "parental advisory" is meant for the parents of minor children.

73. The Commission's Report found that the marketing plans for all 55 recordings for which the Commission obtained information detailed plans to market the recordings in media that would reach a majority or a substantial percentage of teens. The plans for 15 of the 55 explicit content recordings expressly identified teenagers as part of their target audience. See September 2000 Report Section Section V.

74. [www.riaa.com/Parents-Advisory-5.cfm](http://www.riaa.com/Parents-Advisory-5.cfm).

75. See Letter from Mitch Glazier, Senior V.P., Recording Industry Ass'n of America, to FTC staff (undated but faxed Mar. 28, 2001) [hereinafter *RIAA March 2001 Letter*].

76. Thus, unlike the movie and game industry associations, the RIAA continues to focus only on the benefits of the current labeling system, which does not address targeting explicit content recordings to children. In addition, none of the individual recording companies has indicated that it would voluntarily cease marketing to children, even though several of these companies (Warner Bros., Sony, and Universal) have announced participation in the industry-wide (and, in the case of Warner Bros., company-specific) anti-targeting initiatives regarding the marketing of R-rated violent films.

The National Association of Recording Merchandisers ("NARM") informed the Commission that the association supported the (now-rescinded) RIAA guidelines that restricted advertising for explicit content recordings in media targeting those aged 16 and below, but does not support any sanctions for failure to comply with a voluntary system. Letter from Pamela Horovitz, President, NARM, to FTC staff (Mar. 21, 2001) at 5 [hereinafter *NARM March 2001 Letter*].

77. The Commission monitored advertising on eight television programs with substantial teen audiences (MTV: *Total Request Live* and *WWF Heat*; Fox: *The Simpsons*, *Malcolm in the Middle*, *That '70s Show*, *Titus*; WB: *7<sup>th</sup> Heaven*; UPN: *WWF Smackdown*). See *supra* note 17.





retail association expects “that increasing numbers of ads for new releases will contain the Parental Advisory,” while ads for already-released recordings “will take longer to bring into compliance.” *Id.* at 2. The NARM also stresses that a “comprehensive effort” is underway to encourage its members to display the parental advisory consistently on their Web sites. *Id.* at 2-3.

93.

### Music Retailer Web Site Surf

	Amazon	Best Buy	CDNow	Sam Goody	Tower Records
<b>Does the site contain album cover art?</b>	5 of 5	5 of 5	5 of 5	5 of 5	5 of 5
Does the advisory appear on the cover art?	3 of 5	1 of 5	3 of 5	2 of 5	4 of 5
Is the advisory readable?	1 of 3	0 of 1	0 of 3	0 of 2	0 of 4
	1 other partially readable only		2 partially readable	1 partially readable	3 partially readable
<b>Are there audio clips?</b>	5 of 5	0 of 5	5 of 5	0 of 5	5 of 5
<b>Are there video clips?</b>	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5
<b>Is there other clear and conspicuous information about explicit content?</b>	5 of 5	5 of 5	3 of 5	0 of 5	3 of 5
	“explicit lyrics” and “PA”**	“parental advisory”	“explicit,” “explicit version,” and “edited”	only “clean” version noted	“explicit,” “edited,” and “PA”**
<b>Are disclosures provided throughout purchasing process?</b>	5 of 5	0 of 5	0 of 5	0 of 5	0 of 5
<b>Is there a link to <a href="http://www.parentalguide.org">www.parentalguide.org</a>?</b>	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5
<b>Are there age restrictions on listening or purchase?</b>	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5

\*readable if consumer chooses to enlarge the image of the cover art. Otherwise the image is visible but not readable.

\*\* The letters “PA” were not counted as an understandable disclosure of explicit content.

94. Best Buy provided the disclosure “parental advisory” near the picture of the cover art, but not throughout the purchasing process. CDNow at times used the terms “explicit” and “edited” next to the album cover art, but in other cases either provided no information regarding an album’s explicit content or provided this information buried several screens down, after the consumer could purchase, read about, and listen to clips from the album. Tower Records would



at times use the disclosure “explicit” but more often provided the cryptic abbreviation “PA” throughout the purchasing process.

95. The Commission’s December 1999 survey of 39 artist Web sites or Web pages showed that four of the 39 sites examined provided the advisory label on the recording cover art in readable form and that 14 of the 39 sites provided other information about an album’s explicit content.

96. *See* RIAA March 2001 Letter at 4.

97. These core violations of the industry’s own self-regulatory code were evidenced foremost by internal company marketing documents for M-rated games that expressly targeted children (typically boys) under age 17. The marketing documents provided to the Commission indicated that at least 70% of the violent M-rated games studied were targeted to children under 17. Fifty-one percent had at least one marketing or media plan or creative brief that expressly included children under 17 in the game’s target audience. The incidence of express targeting was much higher for console games (72%) than for personal computer games (26%).

98. *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (Sept. 13, 2000) (statement of Douglas Lowenstein, President, Interactive Digital Software Ass’n [hereinafter *IDSA testimony*]), available at 2000 WL 1340874, at \*68. Mr. Lowenstein stated:

We agree that placing an ad for a Mature rated product in a publication that is clearly and squarely aimed at young readers, such as Nickelodeon or SI for Kids, is a violation of our standards. But we reject the FTC’s operating assumption that ads in publications that happen to have some noteworthy percentage of young readers, but a substantial and perhaps even dominant share of older readers and users, is inappropriate. We do not think it is unreasonable for a company to place an ad for a game in GamePro magazine where the average age of the readers is 18. We do not feel it is inappropriate to place an M ad in Electronic Gaming Monthly where, according to the magazine, 59% of its readers are 17 and over.

*See also* statements by Peter Moore, President and C.O.O., Sega of America, and Gregory Fischback, President and C.E.O., Acclaim Entertainment. *Id.* at 78, 102.

99. The Guidelines seek to explain the different percentages used for print and television advertising:

**Note:** The distinction between the 45% under 17 audience allowed for print publications and the 35% under 17 audience allowed for TV advertising recognizes that the most effective and in some cases the **only** cost-effective way to reach **adult game enthusiasts** is through magazines that have a substantial adult readership along with some younger readers. The 35% demographic for TV advertising is utilized because TV is a mass medium and does not present the same issues when seeking to reach an adult audience.

*See Guidelines Addressing Marketing of Mature Rated Games to Persons Under 17, attached to Letter from Douglas Lowenstein, President, IDSA, to FTC staff (Mar. 28, 2001) [hereinafter M-*

*rated Game Ad Guides]* (on file with the Commission).

The Guidelines also set a 45% under-17 audience limit for advertising on Internet sites, and oblige game publishers who license third parties to sell action figures and other products based on their M-rated games to require that packaging for the products include the following statement: “This [state item] is based on a Mature rated video game.” *Id.*

100. The Commission contracted with VMS to monitor advertising on eight television programs with substantial teen audiences (MTV: *Total Request Live* and *WWF Heat*; Fox: *The Simpsons*, *Malcolm in the Middle*, *That ‘70s Show*, *Titus*; WB: 7<sup>th</sup>

106. Eidos has also placed two ads for *Legacy of Kain, Soul Reaver 2* in both *GamePro* and *Electronic Gaming Monthly*, using the RP (Rating Pending) designation since the game has not yet been rated by ESRB. The prequel to this game, *Legacy of Kain, Soul Reaver*, is rated M.

107. The ad in *GamePro*



*Koudelka* contains the rating icon on the game's cover art and renders it almost microscopic in size. [www.koudelka-thegame.com](http://www.koudelka-thegame.com) (visited Jan. 24, 2001). Electronic Arts' *Alice* appears to downplay the significance of a mature rating. The warning states, "Due to its collection of certifiable characters, its challenging environments, and its furious, nearly always terminal (to

promise to “make their best efforts not to sell games rated ‘M’ to children under age seventeen.” The ESRB notes that seven retailers have adopted the “Commitment to Parents” program: Babbages, Electronics Boutique, Funcoland (owned by Babbages), Kmart, Hastings, ShopKo, and Toys “R” Us.

It remains to be seen how these retailers implement such restrictive sale policies. The undercover shopper survey of electronic game retailers conducted for the Commission’s September 2000 Report found that children ages 13-16 were able to purchase M-rated games at 85% of the 380 stores visited. Even at the four retailers that had adopted the “Commitment to Parents” program at the time of the Commission’s shop, underaged shoppers were able to purchase an M-rated game 81% of the time.

136. Outpost.com displays the Mature rating for two of the six games surveyed, and then only on the box art that is too small to read or is inconspicuously located at the bottom of the Web page.

137. The Commission gave credit to online retailers if they displayed a product’s content descriptors anywhere on the site. Two of the retailers did not display content descriptors for any of the games surveyed, and three displayed content descriptors for only a selection of the games. For example, a visitor can view the descriptors for

The Commission purchased an M-rated game, *Diablo II* (published by Blizzard Entertainment) directly from ToysRUs.com. Unlike the practice at Toys “R” Us bricks-and-mortar stores, *see* September 2000 Report text accompanying note 304, online Toys “R” Us did not ask the purchaser’s age, require parental consent, or confirm that the buyer knows he or she is purchasing an M-rated game. Moreover, when the game arrived, its packaging did not display the game’s content descriptors (Animated Violence and Animated Blood & Gore) on the back of the box as required by the ESRB, although it did display the M-rated icon on the front of box.

141. The Commission’s earlier review for the September 2000 report found that at least 16 companies placed five or more ads without any rating information, with two companies each placing at least 33 ads without any rating information. The review also found that in the February through the June 2000 magazine issues, at least 13 companies had placed five or more ads without descriptors, despite the new IDSA requirement, beginning in February 2000, to include descriptors in print ads.





## **APPENDIX A: DATA COLLECTION METHODOLOGY AND TELEVISION AND PRINT DEMOGRAPHICS**

This Appendix describes the media monitoring the Commission undertook to gather the data for this report. It also sets out demographic data for the audiences for the television  
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percentage of viewers under 17 was under 25%, and advocated 35% under 17 as a more appropriate threshold. However, the industry marketing plans reviewed for the September 2000 Report showed that companies who wanted to reach teen audiences did so by advertising widely and heavily on programs whose audience was less than 35% under 17.<sup>2</sup> Indeed, Nielsen data indicate that few of the programs most popular with teens garner an audience that is 35% or more under 17. Only three of eleven programs that marketing plans reviewed for the September 2000 Report revealed were outlets used to reach teens had a youth audience greater than 35% under 18.<sup>3</sup> Even shows with 22% under-17 audiences were characterized by marketing plans as “youth-targeted.”<sup>4</sup> These shows reach millions of teens and are ranked by Nielsen as among the top teen programs. Accordingly, to determine which television programs to review for this report, the Commission focused on the same programs airing during the same time of day that industry marketing plans previously indicated were used when targeting teens, even if the percentage of the audience under 17 is less than 35%.

The electronic game industry similarly has questioned whether advertising M-rated games in game enthusiast magazines with a substantial or even majority under-17 readership constitutes inappropriate targeting of children under 17. The Commission acknowledges that game enthusiast magazines are a natural venue for advertising games, but some of these magazines have many times the number of young readers they would have if their readership mirrored the population at large. Indeed, the editor of one such magazine described it as a “male-teen magazine.”<sup>5</sup> The Commission believes that such magazines are appropriately characterized as popular with children under 17 and as having a substantial under-17 audience.

## **II. POPULAR TELEVISION SHOWS AMONG TEENAGERS**

The Commission reviewed advertising that occurred in December 2000 and January 2001 on network and cable television, including shows in syndication, in the after-school and early prime-time slots when children under 17 are most likely to be watching television. The Commission also reviewed data showing where each particular ad for an R-rated movie was first aired between October 2000 and February 2001.

***A. Network Television Monitoring***

The Commission contracted with a commercial advertising tracking firm, Video

Table A below sets out audience size for these programs based on March 2001 Nielsen data:

**Table A: Network Program Demographics**

<b>Program</b>	<b>(Network)</b>	<b>Average Audience 12-17</b>	<b>Average Total Audience</b>	<b>Percentage of Audience Under 18</b>
<b>Malcolm in the Middle</b>	<b>(FOX)</b>	2,264,000	15,062,000	31%
<b>Simpsons</b>	<b>(FOX)</b>	2,189,000	15,342,000	30%
<b>Titus</b>	<b>(FOX)</b>	1,364,000	9,896,000	24%
<b>That '70s Show</b>	<b>(FOX)</b>	1,342,000	11,272,000	22%
<b>WWF Smackdown!</b>	<b>(UPN)</b>	1,323,000	7,392,000	36%
<b>Seventh Heaven</b>	<b>(WB)</b>	1,270,000	7,271,000	32%
<b>WWF Heat</b>	<b>(MTV)</b>	453,000	2,449,000	35%
<b>Total Request Live</b>	<b>(MTV)</b>	283,000	605,000	58%

***B. Syndicated Programs***

In addition to the network programs listed above, the Commission reviewed syndicated programming. Specifically, the Commission reviewed tapes of seven of the top eight syndicated programs airing daily Monday through Friday in terms of audience among children 12-17 based on Nielsen data: *Friends*, *Seinfeld*, *Drew Carey*, *Home Improvement*, *Spin City*, *Seventh Heaven*, *Moesha*, and *The Simpsons*.<sup>7</sup> The programs were taped on selected dates from mid-December 2000 to mid-January 2001 as aired in Chicago, Cleveland, Dallas, Los Angeles, San Francisco, and Seattle during the weekday after-school and pre-prime-time periods (between 4:00 p.m. and 8:00 p.m. local time). Because these programs are ranked by audience size, they are not necessarily the programs with the highest percentage of viewers under 17 relative to the total audience. The percentage of children under 18 in the viewing audience for these six shows ranges from 16% to 39% based on March 2001 data provided by Nielsen. Table B below sets out the audience demographics for the syndicated programs.


**Table C: Advertisements for R-rated Motion Pictures  
First Aired on Programs Popular with Teens**

Motion Picture Title	Studio	Program During Which Ad Was First Aired	Network, Syndicated or Cable
<b>3000 Miles to Graceland</b>	Warner Brothers	Drew Carey	Syndicated
<b>Book of Shadows: Blair Witch 2</b>	Artisan	Friends	Syndicated
<b>Book of Shadows: Blair Witch 2</b>	Artisan	The Simpsons	Syndicated
<b>Proof of Life</b>	Warner Brothers	Friends	Syndicated
<b>Proof of Life</b>	Warner Brothers	Friends	Syndicated
<b>The Gift</b>	Paramount	Friends	Syndicated
<b>Valentine</b>	Warner Brothers	Friends	Syndicated
<b>Valentine</b>	Warner Brothers	The Simpsons	Syndicated
<b>Valentine</b>	Warner Brothers	Friends	Syndicated

The “first airing” data indicate that advertisements for explicit recordings were placed primarily on cable television programs with substantial youth audiences in terms of percentage, ranging from 35% to 58%. These programs include the programs identified in Table D:

**Table D: Demographics of Television Programs Where  
Ads for Stickered Music Recordings First Aired**

Program	(Network)	Average Audience 12-17	Average Total Audience	Percentage of Audience Under 18
<b>WWF Smackdown</b>	<b>(UPN)</b>	1,323,000	7,392,000	36%
<b>Jackass</b>	<b>(MTV)</b>	357,000	1,217,000	35%
<b>Total Request Live</b>	<b>(MTV)</b>	283,000	605,000	58%
<b>Top Ten Live at 106 &amp; Park</b>	<b>(BET)</b>	112,000	432,000	41%

Source: Nielsen data as of March 2001.

Table E sets out those recordings for which advertisements were initially aired on programs with a substantial teen audience. All of these programs began before 9:00 p.m.<sup>10</sup>

**Table E: Advertisements for Stickered Music Recordings  
First Aired on Programs Popular with Teens**

<b>Recording Title</b>	<b>Recording Artist and Label</b>	<b>Program During Which Ad Was First Aired</b>	<b>Network, Syndicated or Cable</b>
<b>Awake</b>	Godsmack/UMG	WWF Smackdown	Network
<b>Awjuswannaseing</b>	Musiq Soulchild/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Awjuswannaseing</b>	Musiq Soulchild/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Back For the First Time</b>	Ludacris/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Back For the First Time</b>	Ludacris/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Checkmate</b>	B.G./UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Chocolate Starfish and the Hot Dog-Flavored Water</b>	Limp Bizkit/UMG	WWF Smackdown	Network
<b>Da Baddest</b>	Trina/WEA	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Damizza Presents: Where I Wanna Be</b>	Various/WEA	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Dracula 2000 Soundtrack</b>	Various/Sony	WWF Smackdown	Network
<b>Ghetto Postage</b>	Master P/EMI	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>H.N.I.C.</b>	Prodigy of Mobb Deep/Sony	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>H.N.I.C.</b>	Prodigy of Mobb Deep/Sony	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Holy Wood</b>	Marilyn Manson/UMG	Total Request Live (TRL)	MTV
<b>Lights Out</b>	Lil' Wayne/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>No Limit Records</b>	Various/EMI	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET
<b>Nothin' But Drama</b>	Profyle/UMG	BET's Top Ten Live (106 <sup>th</sup> & Park)	BET









## ENDNOTES

1. See September 2000 Report at 15, 33, 48-49.
2. See generally *id.* and Appendix I to the September 2000 Report.
3. See Appendix I to the September 2000 Report. Moreover, only one had more than 37% under 18. *Id.* The 11 programs are those network and syndicated programs for which the Commission had audience composition data. Those industry members that have defined a substantial youth audience have used a 35% under 17 figure, a threshold that only one of the 11 programs would likely reach.
4. See September 2000 Report at n.283 and Appendix I.
5. According to the editor of *GamePro*: “GamePro is the fifth largest male-teen magazine and the largest-circulation video game publication in the U.S. According to Teen Research Unlimited, 20 percent of all American male teens (one out of five) read *GamePro* in ‘99.” *Editor’s Letter: I’ll Take GamePro to Win*, *GamePro*, Apr. 2000, at 26. *GamePro*’s readership is nearly 60% under 17. See chart *infra* Section III.A.
6. Newer programs rose to popularity only after the time that the industries prepared the advertising dissemination schedules which were later provided to the Commission for the September Report.
7. Ranking is based on Nielsen data as of December 2000. Technically, older episodes of *The Simpsons* are no longer in “barter syndication,” and for that reason Nielsen no longer ranks the program among those syndicated shows. *The Simpsons* is included here because, for the three years preceding the release of the September Report when the program was barter syndicated, that program ranked first, third, and first among those programs in terms of audience size among children 12-17. See Appendix I to September 2000 Report. For purposes of this report the Commission refers to older episodes of *The Simpsons* as “syndicated” to distinguish those programs from the first-run network episodes.
8. The first airing data show that one M-rated game was initially advertised on a television program that likely has a substantial teen audience. The game, THQ’s *Evil Dead*, was advertised on an early morning MTV program.
9. Where a particular motion picture or recording appears two or more times in the first airing data, different ads for that film or recording initially aired on those programs.
10. Some advertisements for stickered recordings were aired between 9:00 p.m. and 10:00 p.m. during the second hour of the program *WWF Smackdown*, which begins before 9:00 p.m.
11. The general circulation periodicals were not reviewed for the purpose of assessing whether ads were targeted to children.





