

**Prepared Statement of
the Federal Trade Commission
on**

**"Marketing Violent Entertainment to Children: Self-Regulation and
Industry Practices in the Video
Game Industry"**

June 14, 2006

I. Introduction

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

The Commission's involvement in this area dates back to 1999 with the revelation that the teen-aged shooters at Columbine High School had been infatuated with extremely violent movies, music, and video games. This event led to Congressional and Presidential requests that the Commission investigate and report back on the practices of the movie, video game, and music recording industries with respect to the marketing of violent entertainment to children under 17. Since then, the Commission has issued five reports on the marketing of violent entertainment products. These reports have examined voluntary guidelines and nl thesee9dly

rated games, and Explicit-Content Labeled recordings in media popular with teens, and require the disclosure of rating and labeling information in advertising and on product packaging. Given that the focus of today's hearing is video games, I will limit most of my remarks to that industry, except to point out relevant comparisons.²

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

Despite this progress, there remain a number of concerns relating to video games and how they are marketed. First and foremost, there is the question of the usefulness of the rating system widely used by the industry. It is critically important that parents know about and use the Entertainment Software Rating Board ("ESRB")³ ratings and content descriptors⁴ when choosing

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

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

⁴ The ESRB ratings have two parts: 1) rating symbols that suggest what age group the game is appropriate for; and 2) content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern. The ESRB system consists of the following rating symbols: EC (Early Childhood), E (Everyone), E10+ (Everyone 10 and older), T (Teen), M (Mature 17+), and AO (Adults Only 18+). There are more than thirty different content descriptors, including Blood and Gore, Intense Violence, Lyrics, Mature

games for their children. Content descriptors – such as *Blood & Gore*, *Strong Language*, *Strong Sexual Content*, and *Violence* – which can be found on the back of the game box, help inform parents about the game's content.

In addition, it is important that parents understand that game content, especially o

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

The Commission also has expressed concerns regarding how readily children can buy M-rated video games in stores. Although retailers selling video games have steadily improved their record of denying under-age children access to M-rated games, a significant percentage of children sent in as undercover shoppers are still able to buy these games. Moreover, children are often exposed to advertising for these products. As is the case with the movie and music industries, existing voluntary guidelines for the video game industry still would permit M-rated ad placements in media that are very popular with large numbers of teens. In the past, all three industries have placed ads for M-rated, R-rated, or labeled products on television programs that are, according to Nielsen rankings, among the most popular shows watched by teens, yet still fall within industry placement guidelines.

Because the expressive content in video games has been considered protected speech

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

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

II. The Commission's Studies

A. Scope of the Studies

As stated earlier, the Commission has issued five reports on the self-regulatory and marketing practices concerning violent entertainment by the movie, music, and video game industries.⁸ In the course of preparing these reports, the Commission staff requested information from the principal industry trade associations and the Commission staff requested information

contacted interested government agencies, medical associations, academics, and parent and consumer advocacy groups.¹⁰ The Commission collected information from consumers through publicly available surveys and polls and also designed and conducted its own research. In addition, the Commission has conducted four “mystery” shopper surveys of retail stores and movie theaters in an attempt to see if unaccompanied children could purchase or gain access to products labeled as inappropriate or warranting parental guidance. Finally, the Commission staff reviewed Internet sites to study how they are used to market and provide direct access to rated or labeled products.

B. Findings of the Commission’s First Report

In September 2000, the Federal Trade Commission issued its first report entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (“September 2000 Report”).¹¹ That report found that the three entertainment industries had engaged in widespread marketing of violent movies, music, and video games to children that was inconsistent with the cautionary messages of their own parental advisories and that undermined parents’ attempts to make informed decisions about their children’s exposure to violent content. In addition, the Commission found that advertisements for such products frequently failed to contain rating information.

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

¹¹ The Commission’s September 2000 Report is available online at: <http://www.ftc.gov/reports/violence/vioreport.pdf>.

The Commission also conducted national telephone surveys of parents and children on their familiarity and use of the ratings and parental advisories. With respect to video games, our survey in 2000 found that only 61% of parents were aware

marketing violent entertainment products to children. These reports noted progress by the video game industry, as well as the movie industry, in providing clear and conspicuous disclosure of rating information in advertising, as well as new efforts by both industries to limit advertising for M-rated games and R-rated movies in popular teen media venues. The reports also found that the music industry showed virtually no change in its placement of parental advisory-labeled music ads since the September 2000 Report.

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

D. Findings of the Commission's June 2002 Report

The Commission's next report, issued in June 2002,¹⁵ showed continued progress by the movie and video game industries and improvement by the music industry in including rating

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

¹⁵ *Marketing Violent Entertainment to Children: A Twenty-One Month Follow-up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*, 47 F.T.R. 47-D 8 >>BDCdvd0

information in advertising that would help parents identify material that may be inappropriate for their children. In the case of video games, the Commission found nearly universal compliance with ESRB standards limiting the advertising of M-rated games in media where children constitute a certain percentage of the audience (35% for television and 45% for print media). Nonetheless, the Commission found that some industry members had placed advertisements for M-rated

upon the results of the Commission's most recent mystery shop (*see* Section II. G., *infra*), it appears that game retailer members have adopted policies to restrict such sales but need to do more to ensure that such policies are being enforced.

F. Findings of the Commission's July 2004 Report

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

The report discussed the results of a mystery shopper survey of retailers conducted on the Commission's behalf in 2003. This survey found that 69% of young teen shoppers (age 13–16) were able to buy Mature-rated games, reflecting some improvement from earlier undercover shopping surveys conducted in 2000 and 2001. However, the survey also revealed that retailers still far too often were selling such games to children. The report encouraged retailers to do a better job disclosing ratings and reasons for ratings in advertising, and to more widely implement and enforce sales policies restricting children's access to restricted or labeled entertainment media, and, in particular, R-rated DVDs and home videos, music with a parental advisory, and

knowledge of and ability to use the rating system is a key factor, the Commission intends to survey both parents and children to find out, among other things, whether parental participation in the selection and purchase of video games has changed since the 2000 survey, whether parental knowledge and use of the ESRB system has changed, and what parents' level of agreement is with the ESRB ratings for games they have personally encountered through purchase or play with their children. The Commission plans to survey 1,000 parents who have one or more children, aged eight to 16, who play video games or personal computer games.¹⁹ The FTC will also survey 500 children aged eight to 16 who play video or personal computer games.

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

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

B. Collection of Media Violence Complaints

On March 17, 2004, the Commission announced an expansion of its consumer complaint handling system to categorize and track complaints about media violence, including complaints

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On March 30, the FTC published the second of two Paperwork RID 9 >d the se7.2Ched thrch 30

In July 2005, after media reports of a widely available “mod,” the ESRB found that the game discs for the originally released PC, PlayStation 2, and Xbox versions of *San Andreas* contained unused nude female textures (“skins”) and a sexually explicit mini-game that had been edited out of game play but was embedded in wrapped form in the game’s computer code²³. Users of the originally released PC version of the game could access this content by downloading and installing a third-party program called “Hot Coffee.” Later, PlayStation 2 and Xbox users were able to access the same content by taking certain affirmative steps, such as installing special software and/or hardware accessories on their game consoles.

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

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

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

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

The ESRB clarified its rules to clearly require all game companies to disclose any pertinent content that might impact the rating contained on the game discs sold to the public, even if that content is not intended to be accessed during game play. The ESRB also has stated publicly that it intends to increase the fines available for companies who fail to disclose pertinent content during the rating process to as much as \$1,000,000.²⁶

Undisclosed explicit content in video games is obviously a matter of serious concern. Parents must be able to rely on the accuracy of the industry rating system. Practices, whether by

accepted for public comment a settlement with Take-Two Interactive and Rockstar Games that seeks to ensure that such events not happen again. The agreement, if made final following a 30-day comment period, would require the companies to make disclosures in their advertising and marketing whenever they include content on a game, whether playable or not, that would likely affect the rating for the game, unless they have disclosed that content to the ESRB or other applicable rating authority. In addition, the agreement includes a requirement that the companies

Because of First Amendment and other issues, the Commission continues to support private sector initiatives by industry and individual companies to implement the suggestions mentioned above. Nonetheless, the Commission will continue to monitor closely developments in the area and will initiate actions, such as the case challenging the marketing of *San Andreas*, when appropriate.