

Appendix G

THIRD-PARTY VIEWS AND SUGGESTIONS FOR IMPROVEMENT OF ENTERTAINMENT MEDIA RATING AND LABELING SYSTEMS

I. INTRODUCTION

The Commission sought information from many sources to conduct its study of the structure and effectiveness of the entertainment industries' self-regulatory rating and labeling programs.¹ Those sources included documents and other materials submitted by individual companies and industry trade associations, as well as information obtained in meetings and discussions. Similarly, the Commission sought the views of public health organizations, academics, parent and consumer advocacy groups, and other interested third parties. Many of these third parties have criticized one or more aspects of the existing self-regulatory systems and have made recommendations for their improvement;² some praise has been offered for the electronic games' industry's rating system.³ In addition, legislators⁴ and other public figures⁵ have suggested changes to one or all of the entertainment industries' marketing practices and self-regulatory efforts. Although the Commission is not endorsing the third-party views presented in this Appendix, it believes that constructive criticism of the self-regulatory systems may be of use to Congress and others in considering the policy questions that arise in this area.

II. THIRD-PARTY VIEWS OF THE MOTION PICTURE INDUSTRY SELF-REGULATORY SYSTEM

Perhaps due to its longevity and visibility, the motion picture rating system has been the subject of more written commentary than the other rating and labeling systems analyzed in this Report. Critics have focused on the failure of the CARA/MPAA system,⁶ unlike the rating systems for electronic games and television, to include content descriptors (*e.g.*, V for violence, L for language) as part of the rating.⁷ As a result, the system has been challenged for not providing sufficient information to allow parents and other consumers to make informed judgments about the violent content in motion pictures.⁸ Systems with content descriptors have been recommended for at least three reasons: (1) descriptive ratings may be more consistently applied by raters, since the level of discretion is lower and simpler to apply; (2) descriptive ratings provide more specific information and allow disparate consumers to make choices appropriate to their values and viewing preferences;⁹ and (3) descriptive ratings may deter those children who are attracted to movies rated PG-13 or R.¹⁰

Other suggestions for revising the movie rating system focus on the specific rating groupings. Several sources have suggested reorganizing the age divisions of the current ratings

by designating movies to be appropriate for children either under, or over, age 7 or 8.¹¹ Child development experts, educators, and advocacy groups point out that age 7 or 8 is a dividing point in children's perception of reality, and younger children are very likely to believe that media violence is real.¹² For that reason, they say, PG-rated material currently rated as potentially appropriate for all children under 13 (subject to parental guidance) may not necessarily be suitable for children under age 7.¹³ Other suggestions include adding a new "A" rating between "R" and "NC-17" to signify adult material that – while strictly for adults – is not pornographic,¹⁴ and eliminating the "NC-17" category entirely while adding descriptors for violence, language, drugs, etc. as well as qualifiers (*e.g.*, "M" for mild and "E" for extreme) to the ratings.¹⁵

The rating process itself also is controversial.¹⁶ The identities of the members of the CARA/MPAA rating board are kept secret; some critics claim the lack of public accountability undermines the legitimacy of the movie rating process.¹⁷ The MPAA and CARA counter that the anonymity of the rating board protects the members from outside pressure.¹⁸ Some commentators have suggested that viewing the 600 to 700 movies per year that the rating board rates may desensitize the raters to what would be considered offensive or appropriate by most parents, with the result that movies receive less restrictive ratings than they should.¹⁹ Others say that the rating board should include child development experts, educators, and media research professionals rather than just parents.²⁰ The movie rating system has also been criticized for focusing on the amount or explicitness of violence in a film, while not taking into account the context of the portrayals.²¹

III. THIRD-PARTY VIEWS OF THE MUSIC INDUSTRY PARENTAL ADVISORY LABELING PROGRAM

Due to the relative lack of rules and standards in the Recording Industry Association of America's ("RIAA") parental labeling program, most critics of the music industry system have concentrated on the system as a whole, and not on particular practices. They assert that the industry's "explicit content" labels²² do not provide parents with sufficient information as to the content of a recording or music video because the label may be awarded for having any combination of "strong language or depictions of violence, sex or substance abuse"; the label does not specify into which category or categories the recording fits.²³ Some have suggested the lyrics be included in all labeled recordings so parents can judge for themselves the appropriateness of the recordings for their children.²⁴

In general, critics urge that the current parental advisory label system be replaced with an age- and/or content-based rating system.²⁵ The American Academy of Pediatrics (“AAP”), for example, has specifically called for “the music industry [to] develop and apply a system of specific content-labeling of music regarding violence, sex, drugs or offensive lyrics If labeling is not done voluntarily by the music industry, then regulations should be developed to make it mandatory.”²⁶

IV. THIRD-PARTY VIEWS OF THE ELECTRONIC GAME INDUSTRY SELF-REGULATORY SYSTEM

Since 1995, the Entertainment Software Rating Board (“ESRB”) rating system, which is the most comprehensive rating system of the three industries analyzed in this Report,²⁷ has been examined by the National Institute on Media and the Family (“NIMF”).²⁸ Through its yearly “Report Cards,” NIMF grades various aspects of the electronic game rating system, including the accuracy of the ratings and the percentage of games rated. In the 1998 and 1999 Report Cards, NIMF gave ESRB a “B” and “B-” respectively for the accuracy of its ratings, and an “A” in both years for the percentage of games rated.²⁹ In addition, members of Congress have praised the rating system.³⁰

Although the rating system itself is generally given good marks, other aspects of the electronic game industry have been criticized. For example, some have expressed concerns that violent, M-rated electronic games are marketed indirectly to children through the sale of less violent hand-held versions of the games and the sale of action figures based on the games.³¹ Although the hand-held games for young children do not use the same detailed graphics as the adult versions and may be rated E (for Everyone), some activists have charged that these “gateway” games introduce the characters of the violent, adult-rated games and attempt to establish “brand loyalty.”³² One advocacy group has recommended that games rated for, and marketed to, children but which are based on adult games be clearly labeled as such.³³

Others have raised questions about the depiction of violent themes in some industry advertising.³⁴ Apparently in response to such criticism, the Interactive Digital Software Association (“IDSA”) put in place a code of ethical principles for the electronic gaming industry on January 31, 2000. The code calls upon industry members to avoid graphic or excessive depictions of violence in their advertising.³⁵

V. **THIRD-PARTY VIEWS OF THE ENTERTAINMENT INDUSTRY SELF-REGULATORY SYSTEMS IN GENERAL**

Some have commented that having different ratings and labels for the motion picture, music recording, and electronic game industries is confusing and contradictory.³⁶ Although the media industries contend that each system needs to be tailored to the unique characteristics of each industry,³⁷ some commentators have called for a uniform rating system for all entertainment media.³⁸ For example, the Media Violence Labeling Act of 2000, introduced in the U.S. Senate in May 2000, calls for:

The establishment, use, and enforcement of a consistent and comprehensive system in plain English for labeling violent content in audio and visual media products and services (including labeling of such products and services in the advertisements for such products and services), whereby

(1) the public may be adequately informed of –

(A) the nature, context, and intensity of depictions of violence in audio and visual media products and services; and

(B) matters needed to judge the appropriateness of the purchase, viewing, listening to, use, or other consumption of audio and visual media products and services containing violent content by minors of various ages; and

(2) the public may be assured of –

(A) the accuracy and consistency of the system in labeling the nature, context, and intensity of depictions of violence in audio and visual media products and services; and

(B) the accuracy and consistency of the system in providing information on matters needed to judge the appropriateness of the purchase, viewing, listening to, use or other consumption of audio and visual media products and services containing violent content by minors of various ages.³⁹

To achieve these goals, the proposed legislation calls for the manufacturers and producers of audio and visual media products and services to develop a uniform labeling system, with a single label format, for violent content in interactive electronic game products and services, video

program products, motion picture products, and sound recording products.⁴⁰

Some critics, citing economic temptations to “downrate” a product to capture a larger audience, have recommended moving beyond voluntary rating and labeling systems to an external rating board with authority to assign or approve ratings.⁴¹ Such rating boards, it is proposed, could include the media industries, but the industries would not have majority representation.⁴²

Finally, a public education campaign to educate parents about the rating and labeling systems also has been suggested,⁴³ as has a National Clearinghouse on Children and Entertainment Violence,⁴⁴ with funds to be appropriated by Congress, to distribute information nationally to parents, educators, and child advocates.⁴⁵

VI. THIRD-PARTY VIEWS OF ENTERTAINMENT MEDIA RETAIL OUTLETS

The retail outlets for each of the entertainment media industries have been criticized for failing to enforce the age limitations of the existing rating systems. Motion picture theaters and video game rental and retail stores have been called to task for not consistently checking the ages of prospective customers and for selling, renting, or exhibiting M- or R-rated products to children.⁴⁶ The National Association of Theatre Owners (“NATO”) has responded to such criticism by stepping up its enforcement of the motion picture rating system at the box office.⁴⁷ And the ESRB launched a “Commitment to Parents” program to encourage electronic game retailers to prohibit the sale of M-rated games to persons under the age of 17 without parental permission, and the sale of AO-rated games to persons under 18.⁴⁸

Music retailers are free to decide whether or not they will restrict the sale of explicit-content labeled items to those under age 18;⁴⁹ this policy has been criticized as rendering the labeling system ineffective.⁵⁰ Parents have complained that they frequently are unable to screen music lyrics before they or their children purchase recordings,⁵¹ and that many retailers refuse to offer a refund after a CD package is opened, thereby preventing parents from returning unauthorized purchases of explicit-content labeled recordings by their children.⁵²

The Media Violence Labeling Act of 2000, in addition to establishing the uniform labeling system mentioned above, would prohibit sales of audio and visual media products and services to persons below the age designated in the label.⁵³

ENDNOTES

1. See *Report* Section I.C (sources of information provided to the Commission).
2. See generally Bob Dart & Scott Shepard, *A Scattershot Approach to Curbing Violence?: Ratings of Films, Other Media, Not Reliable, Critics Charge*, *The Atlanta J. and Const.*, June 11, 1999.
3. See, e.g., *infra* this Appendix, Section IV, paragraph 1 and accompanying notes.
4. For example, on May 4, 1999, the Senate Commerce, Science and Transportation Committee held a hearing on the marketing of violence to children. See *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999), reprinted at 1999 WL 278161 [hereinafter *1999 Media Violence and Marketing Hearings*]. In his opening statement, Senator Sam Brownback explained that the purpose of the hearing was not to consider legislation, but “to gather more information on a matter of great public concern, and considerable national urgency. . . . We hope to lay the groundwork for a fruitful discussion with industry leaders on how best to address this problem.” *Id.* (opening statement of Sen. Brownback); see also www.senate.gov/~commerce/hearings/0504bro.pdf (visited Aug. 16, 2000).

On September 14, 1999, the Majority Staff of the Senate Committee on the Judiciary, chaired by Senator Orrin G. Hatch, released a report summarizing pending legislation and setting forth additional suggestions for improving the media rating systems. See Majority Staff of the Senate Comm. on the Judiciary, 106th Cong., *Report on Children, Violence, and the Media: A Report for Parents and Policy Makers* (Comm. Print. 1999), www.senate.gov/~judiciary/mediavio.htm (visited July 31, 2000) [hereinafter *Senate Judiciary Media Violence Report*].

On May 2, 2000, Senator John McCain and Senator Joseph I. Lieberman introduced a bill to “provide for the development, use, and enforcement of an easily recognizable system in plain English for labeling violent content in audio and visual media products and services.” See *Media Violence Labeling Act of 2000*, S. 2497, 106th Cong. (2000). The bill has been referred to the Senate Committee on Commerce, Science, and Transportation. See discussion *infra* notes 39-40 and accompanying text.

5. See, e.g., *Report* Section I.B (discussing the broad-based coalition of public figures calling for a voluntary code of conduct for the television, movie, music, and electronic game industries based on the National Association of Broadcasters Television Code).
6. The Classification and Rating Administration (“CARA”)/Motion Picture Association of America (“MPAA”) rating system is discussed in detail at *Report* Sections II.B and II.C and Appendix D.
7. See *Report* Sections II.B and II.C. Brief explanations as to why many films have been rated PG, PG-13, R, or NC-17 are available at www.filmratings.com (visited Aug. 15, 2000), www.mpaa.org/movieratings/search/index.htm (visited Aug. 15, 2000), and www.cara.org

(visited Aug. 15, 2000). The Film Advisory Board (“FAB”) offers an alternate motion picture rating system, which is used primarily by independent producers of video movies and television movies. See www.filmadvisoryboard.com/rating.html (visited Aug. 15, 2000). The FAB rating system, which began in 1974 and was revised in 1988, has six basic ratings and contains at least 16 content descriptors, including violence-related descriptors such as “violence,” “graphic violence,” “violence in fight/war scenes,” and “frightening for younger children.” *Id.* It also employs content descriptors relating to sex, language, nudity, and substance abuse, and uses an Adults Only (AO) rating, comparable to the MPAA’s NC-17 rating, for sexually explicit material. *Id.*; see *infra* text accompanying notes 14-15. Several Web sites aimed at parents, for example, www.kidsinmind.com and www.screenit.com, offer detailed analyses of the amount and nature of violence, sexuality and nudity, and profanity depicted in films.

8. See *Violence in Video Games: Hearing before House of Representatives Subcomm. on Telecomm. and Fin. of the Comm. on Energy and Commerce*, 103d Cong. 16 (1994) [hereinafter *1994 Video Games Hearing*] (testimony of Robert McAfee, M.D., President, Am. Med. Ass’n) (“The current movie rating system doesn’t provide sufficient information for parents and other consumers to make informed judgments about the violent or sexual content in motion pictures. Labels such as R and PG provide little information about the content of a film or why it was given a particular label. An R rating by itself does not tell a parent about the type of violence depicted, the victim, and what sexual behavior is shown.”). Dr. McAfee’s comments were based on the American Medical Association’s 1994 Report of the Board of Trustees, *Media Violence and Film Ratings: Redressing Shortcomings in the Current System*. *Id.* at 29-48. See also Fumie Yokota & Kimberly M. Thompson, *Violence in G-Rated Animated Films*, 283 JAMA 2716, 2720 (2000) (“Our content analysis suggests that animated films determined to be acceptable for the general audience by a ratings board contain a significant amount of violence. A G rating does not automatically signify a level of violence acceptable for very young viewers. The MPAA should consider changing the current age-based rating system to one based on content, which is what an overwhelming number of parents prefer.”).

9. Joel Federman, *Media Ratings: Design, Use and Consequences* 100 (1996) [hereinafter, Federman, *Media Ratings*] (“A broad distinction between the two is that descriptive ratings tend to focus on relaying information about media content, while evaluative ratings tend to make judgments about the appropriateness of media content for particular audiences.”).

10. See Appendix B (*Children as Consumers of Entertainment Media: Media Usage, Marketing Behavior and Influences, and Ratings Effects*).

11. See, e.g., *1994 Video Games Hearing*, *supra* note 8, at 12 (testimony of Marcy Kelly, President, Mediascope). Although Ms. Kelly spoke at a hearing on video games, her call for ratings systems to recognize developmental age differences was based on Mediascope’s study of film and television ratings in 36 countries and provinces. *Id.* at 13. The American Medical Association also recommended that the movie rating system divide children under 13 into two age groups – ages 3 to 7 and ages 8 to 12, to take into account “critical stages of cognitive development in a child’s life.” *Id.* at 16-17 (testimony of Robert McAfee, M.D.).

12. See, e.g., *1999 Media Violence and Marketing Hearings*, *supra* note 4 (testimony of Diane Levin, Professor of Education, Wheelock College), reprinted at 1999 WL 266748; see also Am.

Academy of Pediatrics, Comm. on Communications, *Media Violence*, 95 Pediatrics 949 (1995) (policy statement) (“At young ages (before age 8) children cannot uniformly discriminate between ‘real life’ and ‘fantasy/entertainment.’ They quickly learn that violence is an acceptable solution to resolving even complex problems, particularly if the aggressor is the hero.”); Barbara J. Wilson, *What’s Wrong With the Ratings?*, 63 Media & Values 13-15 (1993), www.medialit.org/Violence/articles/whats_wrong.htm (visited Aug. 15, 2000).

The television industry, in consultation with educators, children’s advocacy groups, and medical and psychological experts, designed its *TV Parental Guidelines* in part to acknowledge the developmental changes that occur at age 7. The TV-Y7 rating, which was created for programs aimed at children age 7 and above, tells parents that the rated program “may be more appropriate for children who have acquired the developmental skills needed to distinguish between make-believe and reality. Themes and elements in this program may include mild fantasy or comedic violence, or may frighten children under the age of 7. Therefore, parents may wish to consider the suitability of this program for their very young children.” *TV Parental Guidelines*, www.fcc.gov/vchip (visited Aug. 15, 2000); *see also* www.tvguidelines.org (visited Aug. 15, 2000); The Center for Media Education and The Henry J. Kaiser Family Foundation, *The V-Chip Education Project: A Parent’s Guide to the TV Ratings and V-Chip* (July 1999), www.vchippeducation.org. For more intense fantasy violence, the TV-Y7 rating uses the descriptor F.V. The ratings for programming not aimed at children are TV-G (General Audience), TV-PG (Parental Guidance Suggested), TV-14 (Parents Strongly Cautioned), and TV-MA (Mature Audiences Only). The latter three age-based ratings also employ content descriptors for violence (V), sexual situations (S), coarse language (L), and suggestive dialogue (D), that vary in intensity depending on the rating level. *Id.*

13. Even G-rated animated movies may contain significant amounts of violence and may not be suitable for very young children, according to a recent study of 74 G-rated animated feature films conducted by researchers at the Harvard School of Public Health. Yokota & Thompson, *supra* note 8, at 2717-19. The study found that the amount of violence and its duration on the screen has steadily increased since the first animated feature film, Disney’s *Snow White and the Seven Dwarfs*, was released in 1937. *Id.* By far the greatest amount of violence in animated films was found in films released during the 1990s. *Id.* at 2720; *cf.* Daphne White, *PG-13 Movies in the Late-Bond Era: The Violence Is Far Beyond What It Used to Be*, Wash. Post, Jan. 18, 2000, at C4 (MPAA places PG-13 ratings on movies that would have been rated R 10 years ago).

14. Film critic Roger Ebert and the Broadcast Film Critics Association endorse this modification. *See* Amy Wallace, *Do Movie Ratings Need New Categories?*, L.A. Times, Aug. 10, 1999, at F1. Ebert states that “instead of helping parents shield their children from objectionable material, the rating system allows in more violence and sex under the R rating than many 17-year-olds should see.” *Id.*; *see also* Roger Ebert, Guest Column, ‘A’ for ‘Adult’ Opens Up New Pic Possibilities, Daily Variety, July 22, 1999, at 18 (“Because the MPAA has so wrong-headedly opposed any kind of a workable adults-only rating, we are faced with the current impasse, in which more and more objectionable material is crammed down into the R category.”).

15. See generally Wallace *supra* note 14, at F1. Matt Stone, the producer of *South Park: Bigger, Longer & Uncut* and other R-rated movies, has, as a result of a high profile ratings dispute with the MPAA, recommended that the MPAA adopt three “easy-to-follow steps” to provide parents some security, artists real freedom, and the MPAA system credibility:

1) Include symbols for nudity, violence, language, drug use, etc. next to the rating. In addition, adding qualifiers such as M for mild and E for extreme will give parents information why a movie is rated a certain way. 2) Enforce age restrictions at theaters. . . . 3) Drop the NC-17 rating altogether. Anything deemed unsuitable for people under 17 should be rated R. With the added labeling, parents can make educated decisions about content. And no filmmaker would have to cut anything, ever. These changes can give the American public confidence in the MPAA’s rating system.

Matt Stone, *Ratings Grating*, Daily Variety, July 30, 1999, at 23.

16. See Report, *supra* Section II.B and Appendix D; see also Amy Wallace, *MPAA’s Dozen Judge Movies for Millions*, L.A. Times, July 18, 1999, at A1.

17. See Wallace, *supra* note 16, at A1; *1994 Video Games Hearing, supra* note 8, at 13 (testimony of Marcy Kelly, President, Mediascope) (urging electronic games industry to establish a non-secretive ratings board: “It is my opinion that the lack of professional guidance and the secrecy of the process undermine the legitimacy of [the MPAA] system. I urge the interactive industry not to follow this approach. Providing public accountability will lend credibility to the interactive ratings process from the outset.”).

18. Richard M. Mosk, *Motion Picture Ratings in the United States*, 15 Cardozo Arts & Ent. L.J. 135, 142 (1997). Mr. Mosk is co-chair of CARA.

19. Cf. Wallace, *supra* note 16, at A1 (noting that in a typical day raters watch, discuss, and vote on three films).

20. See, e.g., *1994 Video Games Hearing, supra* note 8, at 13 (testimony of Marcy Kelly, President, Mediascope) (“In our review of ratings systems around the world, we found only one that does not include [input from professionals] . . . the movie ratings system of the United States”); Am. Med. Ass’n, *AMA Report Card on Virtual Violence* (“The motion picture industry’s ratings are determined by a board of concerned parents, none of whom have training in child development or the effect of mass media on children.”). By contrast, the Entertainment Software Rating Board includes educators and psychologists on its Advisory Board, though not necessarily among the raters. See *About the Entertainment Software Rating Board*, www.esrb.com/esrb.html (visited Aug. 15, 2000). The music industry has no rating board; record companies label their own products. See Appendix D.

21. See *1994 Video Games Hearing, supra* note 8, at 17 (testimony of Dr. Robert McAfee) (“[I]t is essential to realize that contextual features of media violence are critical mediators of harmful effects and that such features often affect younger and older children differently.”).

22. See *Report* Section IV.B and Appendix D.

23. See generally *Report* Section IV.B. The critics of the parental advisory label program do not believe that it provides sufficient information for parents to make informed choices. For example, George Gerbner, a professor at Temple University and former dean of the Annenberg School of Communications at the University of Pennsylvania, maintains that the system as a whole is problematic: “[T]he labeling system is an uninformative scheme that deceives the public and protects industry from parents rather than the other way around.” *Labels and Lyrics: Do Parental Advisory Labels Inform Consumers and Parents?: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 105th Cong. 54 (1998) [hereinafter *1998 Labels and Lyrics Hearing*]. Charles Gilreath, the publisher of the *Family Entertainment Guide*, which reviews all major music releases, believes that parents need detailed information: “It is a known fact that [parental advisory] stickers do not work. The RIAA and NARM’s own studies show that most parents do not know what a sticker means We believe the solution is to empower parents with the information they need to parent To this end, we are now using the information revolution to favor parents.” *Id.* at 12–13.

24. See, e.g., *Senate Judiciary Media Violence Report*, *supra* note 4, at 14 (“[P]arents frequently complain that, with respect to the music their children buy, parents are unable to screen the lyrics beforehand. Consideration should be given to a proposal that would require retail establishments that sell music to make the lyrics of any album, compact disc, tape, or other medium available for on-site parental review.”).

25. See, e.g., *Senate Judiciary Media Violence Report*, *supra* note 4, at 18 (calling on RIAA to adopt content-based ratings similar to those used with other media); National PTA, *Resolution: A Rating System for Records, Tapes, and Cassettes* (adopted 1984, reviewed 1993 and 1998) (labels should include descriptors for profanity, sex, violence, or vulgarity). Barbara Wyatt, president of the Parents’ Music Resource Center, notes: “There are standardized labels, but no standards,” and advocates making the “labels more specific as to content, similar to television ratings.” *1998 Labels and Lyrics Hearing*, *supra* note 23, at 59. And Don Cornelius, president of Don Cornelius Productions, Inc., and former producer of *Soul Train*, believes that the “parental [label] system allows producers, artists, labels, distributors, [and] manufacturers, to release records that are vulgar, profane, antisocial in general with impunity.” *Music Lyrics and Commerce: Hearings Before the House of Representatives Subcomm. on Commerce, Consumer Protection, and Competitiveness of the Comm. on Energy and Commerce*, 103d Cong. 29 (1994) (testimony of Don Cornelius). He has called for the recording industry to adopt a multi-category rating system similar to the MPAA system. *Id.*

26. See *Music Violence: How Does It Affect Our Children?: Hearing Before the Sen. Subcomm. on Oversight of Gov’t Management, Restructuring, and the District of Columbia of the Comm. on Gov’t Affairs*, 105th Cong. 26 (1997) (testimony of Dr. Frank Palumbo on behalf of the AAP). The AAP has also recommended research on the impact music lyrics and videos have on the behavior of adolescents and pre-adolescents; encouraged the music video industry to produce videos about nonviolence and conflict resolution; called for wider involvement of pediatricians in improving media and educating parents; and recommended that pediatricians encourage parents to take an active role in monitoring the music videos that their children watch or purchase. See Am. Academy Pediatrics, *Policy Statement on the Impact of Music Lyrics and Music Videos on*

Children and Youth, 96 *Pediatrics* 1219 (Dec. 1996), www.aap.org/policy/01219.html.

27. *See Report* Section VI.B and Appendix D.

28. *See* David A. Walsh, National Institute on Media and the Family, *1998 Video and Computer Game Report Card* (released Dec. 1, 1998), www.mediaandthefamily.org/research/vgrc/1998-1.shtml (visited Aug. 15, 2000); *1999 Video and Computer Game Report Card* (released Nov. 23, 1999), www.mediaandthefamily.org/research/vgrc/1999-1.shtml (visited Aug. 15, 2000) [hereinafter referred to collectively as *NIMF Report Cards*].

29. *See id.* In its 1999 Report card, NIMF reported that marketers promoted to and labeled as appropriate for children as young as 4 and 5 action figures based on M-rated games such as Metal Gear Solid, Turok, and Mortal Combat. *See* www.mediaandthefamily.org/research/vgrc/1999-1.shtml; *see also Report, supra* Section VII.D.

30. In November 1999, Senators Joseph Lieberman and Herb Kohl issued a press release praising the video game industry for launching a new campaign to promote its voluntary ratings system. *See* News Release, *Lieberman, Kohl Welcome Efforts by Video Game Industry to Help Parents Shield Children from Digital Violence*, www.senate.gov/~lieberman/press/99/11/r110999a.html (visited Aug. 30, 2000).

31. *See supra* note 29. The Lion and Lamb Project notes that the hand-held Game Boy version of the M-rated Duke Nukem game was marketed to children ages five and up. *See* Daphne White, *The "Dirty Little Secret" About Video Games*, 2 *The Lion & Lamb Project Newsletter* 1 (Summer/Fall 1999), www.lionlamb.org/news_2_2_1.html (visited July 31, 2000).

32. *Id.* Arthur Pober, the executive director of the ESRB, disputes this charge: "We're not looking at brand loyalty. We are just looking at each product as an independent, stand-alone entity." *Id.* It has also been suggested that some electronic games should be labeled to show that they are based on R-rated movies. *Id.*

33. *See NIMF Report Cards, supra* note 28.

34. *See id.*; *1999 Media Violence and Marketing Hearings, supra* note 4 (statement of Sens. Orrin Hatch and Joseph Lieberman) (condemning perverse and antisocial messages in game-player magazines read by young gamers), *reprinted at* 1999 WL 278161.

35. *See* IDSA, *Entertainment Software Group Creates Independent Council to Oversee Video Game Advertising Leading Video Game Magazines Adopt Industry Standards*, Oct. 13, 1999 (press release), www.idsa.com/releases/10_13_99.html (visited July 31, 2000). According to the IDSA, the ESRB will monitor and enforce the new advertising principles. If a company violates the code, it will be asked to adjust its advertising to comply. If it fails to do so, according to the IDSA, possible sanctions include "revocation of the title's rating, public notice of the violation, referral of the violation to appropriate government agencies, and/or the payment of fines." *Id.*; *see also Report* Section VI.B.

36. See David A. Walsh & Douglas A. Gentile, National Institute on Media and the Family, *Parents Rate the Ratings: A Test of the Validity of Movie, Television and Video Game Ratings Systems* 15 (2000) (unpublished manuscript under review by professional journal for publication and on file with the Federal Trade Commission; cited with written permission of authors) (“The current alphabet soup of systems is too confusing and even contradictory for parents to use effectively. Multiple systems are also more complicated to test and monitor than a single system, making it more difficult for the academic and medical communities to participate in ensuring the efficacy of this solution to the threats to public health.”); *Senate Judiciary Media Violence Report*, *supra* note 4, at 13-14 (“Asking parents and retailers to master each of [the] differing systems needlessly complicates their ability to shield children from harmful material”); see also Adam Nagourney, *Hillary Clinton Seeks Uniform Sex and Violence Rating for a Range of Media*, N.Y. Times, Dec. 21, 1999, at B5 (citing First Lady Hillary Rodham Clinton’s criticism of the current ratings systems as a series of letters that amount to a confusing “alphabet soup”).

37. For example, the music industry notes that the great volume of CDs produced each year – nearly 60,000 – coupled with the subjective lyrical content of music, would make uniform ratings by an independent rating board virtually impossible. See Hillary Rosen, Recording Industry Association of America, *A Statement from RIAA CEO Hilary Rosen Regarding First Lady Hillary Clinton’s Call for Uniform Entertainment Media Labeling*, Dec. 22, 1999 (press release), (“A uniform rating system is unnecessary and unworkable. Music is different from other forms of content and a one-size-fits-all approach simply doesn't make sense.”), www.riaa.com/PR_Story.cfm?id=24 (visited July 27, 2000); see also Randy Weddington, *Labeling Media Violence; Retailers and Entertainment Executives Speak Out Against the Government’s Latest Push for a Unified Rating System*, Supermarket News, June 5, 2000, at 104.

38. See, e.g., *Senate Judiciary Media Violence Report*, *supra* note 4, at 13-14; Walsh & Gentile, *supra* note 35, at 3 (“A single ratings system applied universally across industries would greatly simplify the efforts of parents and caregivers to use the system as well as the efforts of outside parties to monitor the use and validity of the system.”); *1994 Video Games Hearing*, *supra* note 8, at 16-17 (testimony of Dr. Robert McAfee) (calling for a uniform ratings system for movies, television, and video programs that could be applied to existing and future entertainment technologies). See also Brooks Boliek, *Unified Ratings Plan Resurfaces*, Hollywood Reporter, Apr. 26, 2000 (Clinton administration encourages entertainment industry to develop a single content ratings system for all media).

39. *Media Violence Labeling Act of 2000*, *supra* note 3, at § 2(b).

40. *Id.* at § 2(c). The proposed legislation also calls upon manufacturers and producers of audio and visual media products and services to submit a proposal for a joint labeling system for violence to the Federal Trade Commission. It authorizes the Commission to review the proposal to determine whether it meets the purposes of the legislation, and requires the Commission to adopt either the submitted proposal or a modified proposal. If the manufacturers and producers do not submit a proposal to the Commission, the bill requires the Commission to issue regulations to establish a labeling system. *Id.* Finally, the legislation authorizes civil penalties not to exceed \$10,000 for violations of the act, *i.e.*, a sale of a media product without a label or a sale of a media product in violation of the age restriction established by the labeling system. *Id.* at §2 (c), (d).

41. *See, e.g.,* Walsh & Gentile, *supra* note 36, at 16 (“The economic temptations to ‘downrate’ a product in order to capture a large audience have increased, and, at the same time, each passing season encourages producers to outdo the previous season in edgy material – more violence, more sexual situations, more adult language. The time has come for ratings to move beyond the voluntary arena. An external rating board with authority to assign and/or approve ratings grows increasingly necessary each year.”).

42. *See, e.g.,* Federman, *Media Ratings*, *supra* note 9, at 103. To ensure ratings integrity, Federman recommends “a decision-making body whose board of directors is independent of majority control by the industry being rated and completely independent of government. Such a board could involve a mix of individuals, representing constituencies relevant to the ratings process, such as experts in child development and psychology, as well as parents and teachers. These constituencies would certainly include the media industries in question, but they would not have majority representation on the board.”

43. *See, e.g.,* *Senate Judiciary Media Violence Report*, *supra* note 4, at 13 (calling for a national media campaign to educate parents about rating systems, the V-Chip, Internet filters, and other tools available to shield children from media violence); *1999 Media Violence and Marketing Hearings*, *supra* note 4 (testimony of Diane Levin, Professor of Education, Wheelock College) (recommending that schools develop strategies for counteracting the lessons children are learning about violence). Daphne White, executive director of The Lion and Lamb Project, has suggested that “this country. . . undertake a massive parenting outreach and education campaign about the ways that children learn violence.” *1999 Media Violence and Marketing Hearings*, *supra* note 4, reprinted at 1999 WL 266735. *See also* Am. Academy Pediatrics, Comm. on Pub. Education, Policy Statement, *Media Education*, 104 Pediatrics 343 (Aug. 1999) (“Pediatricians should encourage their state and federal governments to explore mandating and funding universal media education programs with demonstrated effectiveness in American schools.”).

44. *See, e.g.,* *1999 Media Violence and Marketing Hearings*, *supra* note 4 (testimony of Daphne White, Executive Director, The Lion and Lamb Project), reprinted at 1999 WL 266735. Ms. White compared such a clearinghouse to the Congressionally funded National Clearinghouse for Alcohol and Drug Information that could provide materials on, among other things, the ways children learn violence, how to select appropriate toys, how to teach children anger management and conflict resolution skills, and ways that parents can teach their values to their children. *Id.*

45. The entertainment media industries’ education programs are discussed in Appendix D.

46. *See, e.g.,* *1999 Media Violence and Marketing Hearings*, *supra* note 4 (testimony of Sen. Joseph Lieberman) (asking theater owners to uniformly enforce the R-rating prohibition and calling on retail and rental outlets to adopt a similar policy barring the sale or rental of adult-rated video games to children), reprinted at 1999 WL 278161. The perception that retailers and exhibitors do not consistently limit children’s purchases of all media products is consistent with the findings of this Report. *See* Appendix F (*Mystery Shopper Survey and Parent-Child Survey*).

In its *1998 Video and Computer Game Report Card*, NIMF gave retailers a “D” for ratings enforcement, recommending that retail and rental stores develop and enforce policies about the sale or rental of Mature games to children, and that the industry and the stores develop

and implement an educational program about the rating system for employees and customers. *See NIMF Report Cards, supra* note 28. In the 1999 Report Card, NIMF gave retailers a “C” for ratings enforcement, reporting a substantial improvement in the number of stores that had policies preventing the rental of T-rated games to children younger than 13 or M-rated games to children younger than 17. *See id.* NIMF also lauded the IDSA’s planned major educational campaign about the ESRB rating system. *See id.*

47. In June 1999, shortly after the announcement of this study, President Clinton and National Association of Theatre Owners’ president William Kartoizian jointly announced that NATO would require that young patrons present picture identification cards before being admitted to R-rated movies and that theater owners would enforce the policy strictly. *See* Charles Babington, *Theaters to Require Picture IDs for R Films: Effect of Post-Littleton Move Is Questioned*, Wash. Post, June 9, 1999 at A1.

48. *See Report* Section VII.E. The Video Software Dealer Association renewed its program, “Pledge to Parents,” which is similar to the ESRB’s program, but applies to both electronic games and movie videos. *Id.*

49. *See* statements available at www.riaa.com/Parents-Advisory-1.cfm (visited Aug. 15, 2000) and www.narm.com/government/papers.htm (visited Aug. 15, 2000).

50. *See, e.g., 1998 Labels and Lyrics Hearing, supra* note 23, at 5 (opening statement of Sen. Sam Brownback) (“[A]lthough some stores have a policy of refusing to sell albums that carry a parental sticker to children, anecdotal evidence suggests that this policy is often ignored, particularly since store employees are often themselves under the age of 18. Other stores do not restrict the sale of explicit music to minors”); *id.* at 60 (testimony of Barbara P. Wyatt, president of the Parents’ Music Resource Center).

51. *See Senate Judiciary Media Violence Report, supra* note 4, at 14 (recommending requirement that music retailers make lyrics available for on-site parental review).

52. *See 1998 Labels and Lyrics Hearing, supra* note 23, at 60 (testimony of Barbara P. Wyatt).

53. *See Media Violence Labeling Act of 2000, supra* note 3, at § 2(c).