

## Concurring Statement of Commissioner Orson Swindle

Concerning the Federal Trade Commission's Second Follow-up Report to the Congress on The Marketing of Violent Entertainment to Children

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I applaud and support the Commission's third report on the marketing of violent entertainment to children. I write separately to emphasize the lack of serious attention given by the music industry and by retailers to the Commission's recommendations in its two earlier reports. In response to these earlier reports, the movie and electronic game industries have made real progress. In contrast, the music industry and theaters, stores, and other retail outlets that sell R-rated movies, M-rated games, or explicit-content labeled music to children have been intransigent. In my view, the music industry and retailers will require continued scrutiny and pressure if they are to be persuaded to improve.

At the outset, I want to make clear that what is at issue here is not imposing any government restriction of the content of movies, music, or video games. Such restrictions, of course, would raise serious First Amendment concerns. Rather, the issue has been whether the government can persuade the movie, music, and electronic game industries to discontinue marketing to children products that they themselves have rated as having content potentially inappropriate for children.

In response to the Commission's two earlier reports, the movie and electronic game industries have taken significant steps forward. I applaud the cooperation and progress demonstrated by those industries. They are leading the way to better standards and better conduct that parents will truly appreciate. Although I cannot say their success is complete, I am confident that we will see far better practices from them in the future.

On the other hand, the music industry has been obdurate. Industry representatives have said that the industry should not have to rate its music because its audible nature distinguishes it from visual media. Parents' concerns about their children's exposure to violence are no less important when a violent message is communicated orally. An oral message can be as effective as a visual one, as the power of propaganda has historically proven.

Although the industry has established a label for explicit content, it has steadfastly argued that it has the absolute right to market music to children regardless of the nature of the content. I think that it is hypocritical for the music industry to claim that it is helping parents by placing a parental advisory label on a CD, while at the same time undermining parents by aggressively marketing the same CD to children. As it is, parents are challenged to protect their children from inappropriate material and impart values that will measure up to the test of time in a complicated world. Marketing violent entertainment directly to children only serves to frustrate parents' efforts.

Surely, the music industry ought to be able to do better. The movie industry has demonstrated that an industry can establish an age-based and practical rating system and can effectively restrict advertising to children if corporate executives are committed to making the system work. Given that in the music industry -- like the movie industry -- a small number of companies controls the

vast majority of U.S. distribution, a commitment to change by the executives associated with relatively few companies could make a big difference.

Retailers that sell movie tickets, music, and video games are part of the problem, too. Effective enforcement at the retail level is necessary to ensure that age-related ratings are not circumvented or undermined. There obviously must be significant improvements in enforcement of ratings at the retail level.

After over 12 months of scrutiny, reports, and numerous recommendations, the music industry and retailers have chosen to do next to nothing. I am deeply skeptical that the government could or should try to compel industry to improve its performance. But I also do not think that we should merely identify the problem here and then walk away. Instead, we -- the Congress, the Commission, parents, and the general public -- must persuade the music industry and retailers to change their behavior to solve the problem. The time for change is now.