



**MARKETING VIOLENT ENTERTAINMENT
TO CHILDREN:**

**A REVIEW OF SELF-REGULATION AND
INDUSTRY PRACTICES IN THE MOTION
PICTURE, MUSIC RECORDING &
ELECTRONIC GAME INDUSTRIES**

**REPORT OF THE
FEDERAL TRADE COMMISSION**

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EXECUTIVE SUMMARY

On June 1, 1999, President Clinton asked the Federal Trade Commission and the Department of Justice to undertake a study of whether the movie, music recording, and computer and video game industries market and advertise products with violent content to youngsters. The President's request paralleled Congressional calls for such a study. The President raised two specific questions: Do the industries promote products they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience? And are these advertisements intended to attract children and teenagers?

For all three segments of the entertainment industry, the answers are plainly "yes."

Although the motion picture, music recording and electronic game industries have taken steps to identify content that may not be appropriate for children, companies in those industries routinely target children under 17 as the audience for movies, music and games that their own rating or labeling systems say are inappropriate for children or warrant parental caution due to their violent content. Moreover, children under 17 frequently are able to buy tickets to R-rated movies without being accompanied by an adult and can easily purchase music recordings and electronic games that have a parental advisory label or are restricted to an older audience. The practice of pervasive and aggressive marketing of violent movies, music and electronic games to children undermines the credibility of the industries' ratings and labels. Such marketing also frustrates parents' attempts to make informed decisions about their children's exposure to violent content.

For years – over backyard fences and water coolers, on talk radio and in academic journals – parents, social scientists, criminologists, educators, policymakers, health care providers, journalists and others have struggled to understand how and why some children turn to violence. The dialogues took on new urgency with the horrifying school shooting on April 20, 1999, in Littleton, Colorado.

Scholars and observers generally have agreed that exposure to violence in entertainment media alone does not cause a child to commit a violent act and that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes and

violence. Nonetheless, there is widespread agreement that it is a cause for concern. The Commission's literature review reveals that a majority of the investigations into the impact of media violence on children find that there is a high correlation between exposure to media violence and aggressive, and at times violent, behavior. In addition, a number of research efforts report that exposure to media violence is correlated with increased acceptance of violent behavior in others, as well as an exaggerated perception of the amount of violence in society.

For their part, the entertainment industries have recognized these concerns and taken steps to alert parents to violent or explicit content through self-regulatory product rating or labeling programs. Self-regulation by these industries is especially important considering the First Amendment protections that prohibit government regulation of content in most instances.

The self-regulatory programs of the motion picture, music recording and electronic game industries each address violence, as well as sexual content, language, drug use and other explicit content that may be of concern to parents. In keeping with the President's request, the Commission focused on the marketing of entertainment products designated as violent under these systems. In its analysis, the Commission accepted each industry's determination of whether a particular motion picture, music recording or electronic game contains violent content; the Commission did not examine the content itself.

The motion picture industry uses a rating board to rate virtually all movies released in the United States, requires the age-related rating to appear in advertising and makes some effort to review ads for rated movies to ensure that their content is suitable for general audiences. The music recording industry recommends the use of a general parental advisory label on music with "explicit content." The decision to place a parental advisory label on a recording is made by the artist and the music publishing company and involves no independent third-party review; nor does the industry provide for any review of marketing and advertising. In late August 2000, the recording industry trade association recommended that recording companies not advertise explicit-content labeled recordings in media outlets with a majority under-17 audience. The electronic game industry requires games to be labeled with age- and content-based rating information and requires that the rating information appear in advertising. Only the electronic

game industry has adopted a rule prohibiting its marketers from targeting advertising for games to children below the age designations indicated by the rating.

The Commission carefully examined the structure of these rating and labeling systems, and studied how these self-regulatory systems work in practice. The Commission found that despite the variations in the three industries' systems, the outcome is consistent: individual companies in each industry routinely market to children the very products that have the industries' own parental warnings or ratings with age restrictions due to their violent content. Indeed, for many of these products, the Commission found evidence of marketing and media plans that expressly target children under 17. In addition, the companies' marketing and media plans showed strategies to promote and advertise their products in the media outlets most likely to reach children under 17, including those television programs ranked as the "most popular" with the under-17 age group, such as *Xena: Warrior Princess*, *South Park* and *Buffy the Vampire Slayer*; magazines and Internet sites with a majority or substantial (*i.e.*, over 35 percent) under-17 audience, such as *Game Pro*, *Seventeen* and *Right On!*, as well as *mtv.com*, *ubl.com* and *happypuppy.com*; and teen hangouts, such as game rooms, pizza parlors and sporting apparel stores.

Movies. Of the 44 movies rated R for violence the Commission selected for its study, the Commission found that 35, or 80 percent, were targeted to children under 17. Marketing plans for 28 of those 44, or 64 percent, contained express statements that the film's target audience included children under 17. For example, one plan for a violent R-rated film stated, "Our goal was to find the elusive teen target audience and make sure everyone between the ages of 12-18 was exposed to the film." Though the marketing plans for the remaining seven R-rated films did not expressly identify an under-17 target audience, they led the Commission to conclude that children under 17 were targeted nonetheless. That is, the plans were either extremely similar to the plans of the films that did identify an under-17 target audience, or they detailed actions synonymous with targeting that age group, such as promoting the film in high schools or in publications with majority under-17 audiences.

Music. Of the 55 music recordings with explicit content labels the Commission selected for its study, marketing plans for 15, or 27 percent, expressly identified teenagers as part of their

target audience. One such plan, for instance, stated that its “Target audience” was “Alternative/urban, rock, pop, hardcore – 12-34.” The marketing documents for the remaining 40 explicit-content labeled recordings examined did not expressly state the age of the target audience, but they detailed the same methods of marketing as the plans that specifically identified teens as part of their target audience, including placing advertising in media that would reach a majority or substantial percentage of children under 17.

Games. Of the 118 electronic games with a Mature rating for violence the Commission selected for its study, 83, or 70 percent, targeted children under 17. The marketing plans for 60 of these, or 51 percent, expressly included children under 17 in their target audience. For example, one plan for a game rated Mature for its violent content described its “target audience” as “Males 12-17 – Primary Males 18-34 – Secondary.” Another plan referred to the target market as “Males 17-34 due to M rating (the true target is males 12-34).” Documents for the remaining 23 games showed plans to advertise in magazines or on television shows with a majority or substantial under-17 audience. Most of the plans that targeted an under-17 audience set age 12 as the younger end of the spectrum, but a few plans for violent Mature-rated games targeted children as young as six.

Further, most retailers make little effort to restrict children’s access to products with violent content. Surveys conducted for the Commission in May through July 2000 found that just over half the movie theaters admitted children ages 13 to 16 to R-rated films even when not accompanied by an adult. The Commission’s surveys also indicate that unaccompanied children have various strategies to see R-rated movies when theaters refuse to sell them tickets. Additionally, the Commission’s surveys showed that unaccompanied children ages 13 to 16 were able to buy both explicit content recordings and Mature-rated electronic games 85 percent of the time.

Although consumer surveys show that parents value the existing rating and labeling systems, they also show that parents’ use and understanding of the systems vary. The surveys also consistently reveal high levels of parental concern about violence in the movies, music and video games their children see, listen to and play. These concerns can only be heightened by the extraordinary degree to which young people today are immersed in entertainment media, as well

as by recent technological advances such as realistic and interactive video games. The survey responses indicate that parents want and welcome help in identifying which entertainment products might not be suitable for their children.

Since the President requested this study over a year ago, each of the industries reviewed has taken positive steps to address these concerns. Nevertheless, the Commission believes that all three industries should take additional action to enhance their self-regulatory efforts. The industries should:

1. *Establish or expand codes that prohibit target marketing to children and impose sanctions for violations.* All three industries should improve the usefulness of their ratings and labels by establishing codes that prohibit marketing R-rated/M-rated/explicit-labeled products in media or venues with a substantial under-17 audience. In addition, the Commission suggests that each industry's trade associations monitor and encourage their members' compliance with these policies and impose meaningful sanctions for non-compliance.

2. *Increase compliance at the retail level.* Restricting children's retail access to entertainment containing violent content is an essential complement to restricting the placement of advertising. This can be done by checking identification or requiring parental permission before selling tickets to R movies, and by not selling or renting products labeled "Explicit" or rated R or M, to children.

3. *Increase parental understanding of the ratings and labels.* For parents to make informed choices about their children's entertainment, they must understand the ratings and the labels, as well as the reasons for them. That means the industries should all include the reasons for the rating or the label in advertising and product packaging and continue their efforts to educate parents – and children – about the meanings of the ratings and descriptors. Industry should also take steps to better educate parents about the ratings and labels.

The Commission emphasizes that its review and publication of this Report, and its proposals to improve self-regulation, are not designed to regulate or even influence the content of movies, music lyrics or electronic games. The First Amendment generally requires that creative decisions about content be left to artists and their distributors. Rather, the Commission believes the industries can do a better job of helping parents choose appropriate entertainment for their

children by providing clear and conspicuous notification of violent content. Industry self-regulation also should support parents' decisions by prohibiting the direct sale and marketing to children of products labeled as inappropriate or warranting parental guidance due to their violent content.

Implementation of the specific suggestions outlined above would significantly improve the present self-regulatory regimes. The Report demonstrates, however, that mere publication of codes is not sufficient. Self-regulatory programs can work only if the concerned industry associations actively monitor compliance and ensure that violations have consequences. The Commission believes that continuous public oversight is also required and that Congress should continue to monitor the progress of self-regulation in this area.

I. INTRODUCTION

A. President's June 1, 1999 Request for a Study and the FTC's Response

On June 1, 1999, following the horrifying school shooting in Littleton, Colorado that increased public calls for a national response to youth violence, President Clinton requested that the Federal Trade Commission and the Department of Justice conduct a study of whether the motion picture, music recording, and computer and video game industries market and advertise violent entertainment material to children and teenagers.¹ Specifically, the President requested that the study ascertain whether entertainment media products that the industries determine are inappropriate for children or otherwise warrant a parental advisory due to their violent content are promoted in media outlets for which children comprise a substantial percentage of the audience. The President also urged the Commission to examine whether these advertisements are intended to attract underage audiences. President Clinton's request paralleled congressional proposals for such a study.²

In response to the President's request and Congress's concerns, the FTC initiated this study³ to obtain information regarding the three media industries' self-regulation efforts and marketing practices.* The Commission's study is designed to provide information to three critical groups of decision makers: (1) elected officials and policymakers, including the President and Congress, who have raised concerns about this issue; (2) the entertainment media industries, who develop and implement the existing self-regulatory systems; and (3) parents, who are faced with the challenge of determining what is appropriate for their minor children.

B. Public Concerns About Entertainment Media Violence

The Columbine High School shooting in Littleton heightened the public's existing concerns about violence committed by children.⁴ Although the rate of violence perpetrated by young people has declined in the 1990's, the rate for murders committed by youths in the United States is still substantially higher than in other industrialized countries.⁵ For the past few decades, parents, social scientists, criminologists, educators, policymakers, health care providers,

* The Department of Justice provided funding and technical assistance to the FTC for this study, but did not draft this report or its appendices. The analysis, recommendations, and opinions expressed in this report and its appendices are those of the FTC, and do not necessarily represent the positions or views of the Department of Justice.

journalists, and others have struggled to understand how and why children turn to violence.⁶ Following a plethora of news reports suggesting that the boys involved in the Columbine killings were immersed in a violent entertainment subculture,⁷ many observers focused on the teenagers' exposure to images of violence in entertainment media as a cause of the Columbine murders.⁸

While the entertainment media received a great deal of blame for youth violence in the past year,⁹ most people agree that exposure to media violence alone does not cause a child to commit a violent act. Although several major public health organizations recently voiced their shared conviction that the viewing of entertainment media violence can lead to increases in aggressive attitudes, values, and behavior in children,¹⁰ they also have acknowledged that it is not the sole, or even necessarily the most important, factor contributing to youth aggression, anti-social attitudes, and violence.¹¹ They, and the researchers and advocates who have studied youth violence, posit that a range of other factors – such as child abuse and neglect, victimization, bullying, drug and alcohol abuse, exposure to violence in the home, neurobiological indicators, and low socioeconomic status – can interrelate to cause youth violence.¹² Some observers focus on children's access to handguns as the cause for the high fatality rates associated with youth violence in America.¹³ Others look for cultural explanations.¹⁴

Even those who disagree that media violence causes violent behavior, however, concede that a child's exposure to violence in the media can be a concern.¹⁵ Indeed, by including violence as a component in developing their parental advisory labeling and rating systems, the entertainment media have recognized that violence is an issue of societal concern.¹⁶ As Thom Mount, president of the Producers Guild of America, acknowledged after Columbine: "It is not that violent pictures create more violence, but the constant litany of gratuitous violence is destructive of the fabric of the culture because it lowers our threshold for sensitivity to the issue."¹⁷

C. Overview of the Commission's Study

Focus on Self-Regulation: For decades, the FTC has recognized the important role that self-regulation can serve in many industries and has worked with industry groups to develop sound self-regulatory initiatives, including those involving industry advertising practices.¹⁸ A

well-constructed self-regulatory system can be more prompt, flexible, and effective than government regulation, and can be especially appropriate when government intervention would raise significant First Amendment concerns. The products studied in this Report – motion pictures, music recordings, and computer and video games ("electronic games") – are forms of expression protected under the First Amendment.¹⁹ Given that the concerns examined in this Report stem from the violent content of some of these products, effective industry self-regulatory responses are even more important and appropriate than in most other industries.

The Commission's study of the motion picture, music recording, and electronic game industries focused on the marketing of entertainment products designated as violent under the self-regulatory systems currently in use by these industries.²⁰ In its analysis, the Commission accepted each industry's determination of whether a particular motion picture, music recording, or electronic game contains violent or explicit content.²¹

Structure of the Report: This Report examines: (1) the structure and scope of the rating or labeling system that each industry uses to advise parents that its products contain violent content that may be unsuitable for children, including whether the system discourages the marketing or sale of violent products to minors; and (2) the actual practices of companies that market or sell such violent entertainment to minors in light of these self-regulatory systems. To answer the President's questions of whether these products are advertised in media outlets for which children comprise a substantial percentage of the audience and whether the advertisements were intended to attract children, the Commission reviewed the entertainment industries' marketing and media plans and considered their advertising placement strategies. For print and online advertising, the Commission looked at whether advertising reached an audience of 35% or more under 17. Consistent with industry marketing and media plans for television, the Commission looked at advertising placement on those programs ranked as the "most popular" with the under-17 age group, which includes those with the highest U.S. teen audience.

The Report suggests possible modifications to the existing self-regulatory systems to improve their utility to parents, guardians, and other care-givers ("parents") in achieving their stated goal: to help parents make decisions about which entertainment products their children

should and should not view, listen to, or play. A number of appendices supplement the information provided in the Report.

Sources: The sources for the Report include documents and other information (including sample sound recordings, movie previews, electronic game demonstration disks, and magazine and television advertisements) voluntarily submitted by over 60 companies in the motion picture, music recording, and electronic game industries, including movie studios, theaters, recording labels, game developers and publishers, retailers, and media outlets.²² The Report also is based on voluntary submissions by and discussions with the major media industries' trade associations about their (and their members') self-regulatory efforts.²³ Much of the material that the industry associations and companies submitted in response to the FTC's requests contained confidential commercial or financial information under relevant statutes and rules.²⁴ Accordingly, this study presents certain of the Commission's findings in anonymous and/or aggregated form. In addition, a substantial amount of information was provided by interested government agencies, public health organizations, academics, and parent and consumer advocacy groups,²⁵ as well as consumers themselves through various surveys and polls including surveys designed and conducted specifically for this study.²⁶

II. THE MOTION PICTURE INDUSTRY SELF-REGULATORY SYSTEM

The basic mission of the rating system is a simple one: to offer parents some advance information about movies so that parents can decide what movies they want their children to see or not to see.

– Jack Valenti, President of the Motion Picture Association of America²⁷

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The motion picture rating system, which was established in 1968 as a joint venture between the Motion Picture Association of America (“MPAA”) and the National Association of Theatre Owners (“NATO”), is the longest-running of the self-regulatory systems the

Commission examined. It was crafted following a pair of U.S. Supreme Court decisions

upholding the power of states to regulate children's access to materials protected by the First Amendment.²⁸ To curtail a proliferation of local censorship boards, the major film studios and theaters created a single, nationwide rating system.

Although the system is voluntary, all MPAA member companies have agreed not to distribute a film without a rating.²⁹ As a result, the vast majority of films are rated. A high percentage of parents are familiar with motion picture ratings (surveys show more than 90% awareness³⁰) and a large majority (more than 70%³¹) find the ratings useful.

A. Scope of Commission's Review

In examining the motion picture industry's self-regulatory program and the marketing of films to children, the Commission reviewed documents provided by the MPAA and its member studios; NATO and its member theaters, as well as theater chains that do not belong to NATO; and publicly available materials concerning the system.

More specifically, the Commission studied the marketing of 44 violent R-rated films and 20 violent PG-13-rated films distributed by nine major studios from 1995-1999.³² In selecting these films, the Commission chose R- and PG-13-rated movies that the MPAA's rating body had determined should receive such a rating at least in part for violence, including films the industry trade press had referred to as teen or children's movies. Thus, these 64 films are not a random sample of all violent R and PG-13 movies produced by the MPAA member studios over the relevant time period.

The Commission studied "media plans," which outline where the television, radio, print, and Internet advertising was placed and describe the target audiences the studios intended the advertising to reach; promotional reports for many of these films, which detail the vast array of promotional activities used to generate consumer awareness and interest in a movie; and studio research conducted on test audiences for the films and their advertising. The studios and the theater chains also supplied trailer reports detailing which trailers preceded certain features.³³

B. Operation of the Motion Picture Self-Regulatory System

1. The rating process

The motion picture industry has put in place a formalized rating system (including an appeals process) that is designed to impose a measure of objectivity and consistency across the broad array of subjects and styles encompassed by modern filmmaking. Although this system has been criticized over the years,³⁴ it has remained intact for more than 30 years and is well-established with the American public.

The current categories for film ratings, as defined by the MPAA and NATO, follow:

G General Audiences - All ages admitted

Signifies that the film rated contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common everyday expressions.

Recent examples: Chicken Run; Fantasia 2000

PG Parental Guidance Suggested - Some material may not be suitable for children.

Signifies that the film rated may contain some material parents might not like to expose to their young children – material that will clearly need to be examined or inquired about before children are allowed to attend the film. Explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly, horror and violence do not exceed moderate levels.

Recent examples: The Adventures of Rocky and Bullwinkle; The Kid

PG-13 Parents Strongly Cautioned - Some material may be inappropriate for children under 13.

Signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; some use of one of the harsher sexually-derived words may be heard.

Recent examples: Mission Impossible 2; The Perfect Storm; Big Momma's House

R Restricted - Under 17 requires accompanying parent or adult guardian (age varies in some jurisdictions).

Signifies that the rating board has concluded that the film rated may contain some adult material. Parents are urged to learn more about the film before taking their

children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sex or its portrayal of drug use.

Recent examples: Gladiator; Shaft; The Patriot; Me, Myself and Irene

NC-17 No one 17 and Under Admitted.

Signifies that the rating board believes that most American parents would feel that the film is patently adult and that children age 17 and under should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, and/or scenes of excessive violence. The NC-17 designation does not, however, signify that the rated film is obscene or pornographic in terms of sex, language or violence.³⁵

Recent examples: None

Each film assigned a rating other than G also receives a brief explanation for the film's rating, e.g., "Rated R for terror, violence and language," or "Rated PG-13 for intense sci-fi violence, some sexuality and brief nudity."

The Classification and Ratings Administration ("CARA") determines the ratings and explanations. Qualifications for membership in CARA are parenting experience and no connection to the film industry. Currently, CARA has 12 members (known as raters), and two Co-Chairs, all of whom are approved by, and serve at the discretion of, the President of the MPAA.³⁶

A Policy Review Committee consisting of MPAA and NATO officials sets the rules that govern CARA procedures. This Committee instructs CARA board members to give each film the rating that, based on theme, language, nudity and sexual content, violence, drug use, and "other relevant matters,"³⁷ they think most American parents would consider appropriate for viewing by children.³⁸ A simple majority vote determines the rating.³⁹

The studio submitting the film can accept the CARA rating, appeal, or edit the film to achieve a less severe rating. Rating appeals are rare;⁴⁰ more often, a distributor will edit the film to achieve a desired rating. However, if a studio chooses to appeal the rating, an Appeals Board views the film. Unlike the original CARA raters, who have no connection to the film industry, the Appeals Board is made up of industry members, with MPAA and NATO members comprising the vast majority of the votes.⁴¹ For an appeal to be successful, two thirds of the Appeals Board must conclude that the rating assigned by CARA was "clearly erroneous."⁴²

As noted above, violence is one of the factors that CARA members specifically consider in assigning ratings to the films they review. According to the MPAA, PG-13 films have no rough or persistent violence, and the existence of such violence will cause a film to be rated R.⁴³ Nevertheless, the Commission's study of the ratings explanations indicates that CARA often describes the violence in PG-13 films in terms synonymous with rough and persistent violence, for example, as "intense," "strong," "disturbing," "brutal," "graphic," "shocking," "non-stop," and "pervasive." These words are identical or similar to words often used to describe violence in R-rated movies,⁴⁴ causing some to question the usefulness of the ratings for helping parents distinguish the amount and kind of violence in PG-13 films from that in R-rated films.⁴⁵ Parental uncertainty over the violent content contained in PG-13 films is of concern because, as will be described in Section III of this Report, these films frequently are marketed to children as young as six.

2. Review of advertising for content and rating information

The motion picture industry's self-regulatory system is the only one of the three examined by the Commission that includes substantive review and pre-approval of advertising. For a film to use the MPAA-trademarked rating, all advertising materials for a film, including all television and radio commercials, print advertising, Web sites, and trailers (previews shown in theaters), must be approved by the MPAA's Advertising Administration.⁴⁶ The Advertising Administration does not approve advertising for products related to motion pictures, such as action figures, toys, clothing, or other licensed products.

Review by the Advertising Administration is designed to accomplish two goals. The first is to ensure the accurate dissemination of the rating symbol in all advertising for a film. MPAA rules require that a film's letter rating be displayed in all advertising. The Commission's review suggests that the Advertising Administration generally achieves this goal.

The Advertising Administration's other goal is to ensure that the content of a film's advertising, regardless of the film's rating, is appropriate for even the youngest audience. With one exception described below, the MPAA requires the Advertising Administration to disapprove advertising if it would not pass muster with most parents as suitable for young

children; that is, the content of the advertising must be the equivalent of a G-rated movie.⁴⁷ A film distributor that disagrees with the Advertising Administration's decision regarding the content of an advertisement can appeal the decision directly to the MPAA President.⁴⁸

The Commission's review indicates that the Advertising Administration is less successful at meeting its second goal. Theatrical trailers illustrate the point. The Advertising Administration approves two types of trailers, which, based on the Commission's review of studio media plans, appear to be the first widely disseminated advertisements for a film. The first type, known as an "all audience" trailer, is for general audiences and can be shown before any feature film.⁴⁹ According to the MPAA, "There will be, in 'all audiences' trailers, no scenes that caused the feature to be rated PG, PG-13, R, or NC-17."⁵⁰ The second type of trailer is for restricted audiences and can be shown only before films rated R or NC-17.⁵¹

A review of materials submitted to the Commission suggests that, although the Advertising Administration restricts the material allowed in all audience trailers, it does not require the studios to remove everything that would cause a movie to be given a rating more restrictive than G. Trailers are approved by the Advertising Administration and shown in theaters long before a film is rated; consequently, for these "teaser trailers,"⁵² the Advertising Administration has no way to know what will cause the raters to rate a film PG or higher.⁵³ And CARA raters do not evaluate trailers or other advertising.

The Commission found numerous examples when trailers approved for "all audiences" contained material that the Advertising Administration's Handbook says might "engender criticism by parents."⁵⁴ For example, the "all audience" trailer for *I Know What You Did Last Summer* contained verbal references to mutilations (references to decapitation and to a person being "gutted with a hook") and drug use. A trailer for *Scream 2* contained a verbal reference to mutilation (that a woman had been stabbed seven times) and several visual depictions of violence against women (women being pursued by a masked, knife-wielding killer).⁵⁵

Television advertising also is affected when material causing a rating more restrictive than G is not edited out of an "all audience" trailer. Television commercials for movies generally are shortened versions of the trailers; they thus may contain some of the same violent material. Although the MPAA states that "TV spots containing sexual references, violence, blood or

profanity are not acceptable,”⁵⁶ the Commission’s review shows that the television networks sometimes require the deletion of certain scenes or restrict the airing of commercials the MPAA had approved for general audiences because the advertisement is too violent.

C. Issues Not Addressed by the Motion Picture Self-Regulatory System

1. Accessibility of reasons for ratings

The MPAA first integrated brief rating explanations – for example, *Rated PG-13 for intense horror sequences* – into the rating system in 1990.⁵⁷ According to the Association, these explanations are as much a part of the rating as the letter symbol.⁵⁸ The MPAA sends these explanations to newspapers for use in movie reviews and to theaters to enable box office personnel to respond to questions from patrons. The MPAA’s NATO partners have requested that the studios also place these explanations in advertising,⁵⁹ but the MPAA does not require this information in advertising for movies and the studios do not include it in their ads. According to the MPAA, typical newspaper ads do not contain enough space for the rating explanations to be legible, given the other information that must be included in the ads.⁶⁰

Recently, the MPAA and its members announced that print advertising would include a reference to a Web site, www.filmratings.com, where people can find the ratings explanations issued for individual films.⁶¹ Although a step in the right direction, this approach requires parents to seek out this important information rather than placing it at their fingertips in the ads themselves,⁶² moreover, many do not have ready access to the Internet.⁶³ Further, the Web site reference is not included in all print ads and is not in advertising other than print ads, such as television commercials or Web sites promoting individual films.⁶⁴

Consumer survey evidence suggests that parents want more from the movie rating system. Although it appears that over 90% of parents are familiar with motion picture ratings and about 75% find the ratings useful,⁶⁵ some surveys show the system could do a better job of informing parents about the level of violence in movies. For example, a survey of parents conducted by the Commission for this Report in May and June 2000 found high satisfaction with the movie rating system in general but much less satisfaction regarding the information about violence the system provides: 50% of the parents surveyed said the movie rating system does a fair or poor job of

informing them of the level of violence in a movie, while 48% stated the rating system does an excellent or good job.⁶⁶ Similarly, a Gallup poll conducted in June 1999 reported that 58% of the respondents believed that the movie industry does not provide adults with enough information about violent content to make decisions about what is appropriate for children, while 40% stated that it does.⁶⁷

 Parents' Responses - Movies 	
Who selects the product?	
An adult	21%
An adult and the child together	78%
The child	2%
Who purchases the product?	
An adult	60%
An adult and the child together	36%
The child	3%
Parent restricts child's use of the product	90%
Parent is aware of a rating system for the product	91%
How often do you use the rating system?	
Some, most, or all of the time	88%
Rarely or never	11%
Are you satisfied with the rating system?	
Somewhat or very satisfied	81%
Somewhat or very dissatisfied	17%
How does the rating system do in informing you about violence?	
Good or excellent	48%
Fair or poor	50%

2. Advertising placement standards

The movie self-regulatory system does not have a code of conduct or guidelines regarding advertising placement or marketing to children. The MPAA's Advertising Administration reviews advertising solely for content. Once the MPAA is satisfied that the advertising contains nothing that "most parents would find offensive for their children to see or hear,"⁶⁸ it plays no further role in the marketing of the film.⁶⁹ Significantly, the motion picture studios, unlike the electronic game industry, believe that it is appropriate to target advertising for R-rated films to children under 17 and to target advertising for PG-13-rated films to children under 13, on the

grounds that these ratings are merely cautionary warnings to parents.⁷⁰ The industry notes, among other reasons, that, “Many socially and artistically important films have received PG-13 and R ratings because they contain such depictions [of violence],” and that those filmmakers have the right to draw as much attention to their work as possible – “even the attention of persons under the age of 17, who are entitled to view such films with the permission and in the company of their parents.”⁷¹

Although the motion picture industry does not have guidelines regarding ad placement, the major television networks and the theaters do have restrictions or guidelines about where and when film advertising is appropriate. Documents provided to the Commission suggest that almost all the major television networks have guidelines governing the airing of commercials for PG-13 and R films. In general, advertising for PG-13 films is evaluated on a case-by-case basis, depending on the content of the ad and the film. Half the networks have policies limiting the airing of ads for R-rated films (*e.g.*, to news and sports programs, or only after 9 or 10 p.m.); the others evaluate these ads on an individual basis.

For the major theater chains, the prevailing policy, either written or unwritten, is to limit trailer placement to feature presentations within one rating of the movie being promoted. That is, the policy allows trailers for R-rated movies to be placed with R and PG-13 features, and trailers for PG-13-rated movies to be placed with R, PG-13, and PG features.⁷²

Still, as discussed in the next Section of this Report, the Commission found that neither the television networks’ nor the theaters’ placement restrictions are entirely effective in limiting children’s exposure to advertising for movies generally rated for older audiences.

III. MARKETING MOVIES TO CHILDREN

A. *Background*

A central question the Commission was asked to address in this study is whether violent entertainment products are being marketed to children. With respect to the film industry, the answer is plainly “yes.” The Commission’s review indicates that motion picture studios routinely advertise movies rated R for violence to children under 17 and movies rated PG-13 for violence to children under 13.

The marketing of a motion picture begins long before the film is rated.⁷³ The studios exhibit rough cuts of the actual film as well as its core advertisements (trailers, TV commercials, and print ads) to test audiences, and conduct detailed research on many aspects of the film. Movie marketers choose audiences for these tests to meet defined demographics, including age parameters set by the studios. They conduct advertising research to measure the interest-generating potential of the advertisement, identify the moviegoers most attracted by the advertisements, and determine the messages conveyed.

Media advertising for a film also begins before the film is rated, or even completed. Six months to a year before a film opens, teaser trailers appear in theaters and on the Internet. Television commercials for summer releases may air during the Super Bowl in January. Newspaper and magazine advertising and outdoor banners also appear months before opening. Two to four weeks before a film opens, studios may launch a massive media blitz designed to saturate the marketplace. Because studio research suggests that most moviegoers learn about new films through television advertising, it is the most important aspect of many motion picture advertising campaigns.⁷⁴ The studios also use radio, print, outdoor advertising, the Internet, and promotional activities to generate interest in a film. During a campaign, studios receive industry-wide tracking reports – up to three times per week – measuring the campaign’s success among various age groups, including children aged 12-17.⁷⁵

B. Marketing R-Rated and PG-13-Rated Films to Children

As noted above, the motion picture industry’s self-regulatory system does not restrict the placement of advertising materials for R and PG-13 films because the MPAA takes the view that children are appropriate targets for such films, so long as parental accompaniment or guidance is provided. The marketing documents reviewed by the Commission indicate extensive marketing – and, in many instances, explicit targeting – of violent R films to children under the age of 17 and of violent PG-13 films to children under 13.

Specifically, the documents show that 35 of the 44 R-rated films studied by the Commission, or 80%, were targeted to children under 17.⁷⁶ Media plans or promotional reports for 28 of those 44 films,⁷⁷ or 64%, contain express statements that the film’s target audience included children

under 17.⁷⁸ Marketing materials for seven other R-rated films also appeared to be targeting those under 17, though they did not expressly identify a target audience under 17. The plans for these seven films were either strikingly similar to the plans that did expressly target those under 17, or they detailed actions synonymous with targeting that age group (*e.g.*, advertising in high school newspapers or other publications with majority under-17 audiences, or otherwise promoting the films in high schools).⁷⁹

Studio records also indicate that youngsters under the age of 17 were included in some marketing research activities. Thirty-three of the 44 R-rated films tested either a rough cut of the film or the film's advertising on an audience that included teens under 17.⁸⁰ Although most of this research was conducted on those 15 and older, research for eight R-rated films included 12-year-olds, and research for at least one other R-rated film was conducted on children as young as 10.⁸¹

Promoting violent PG-13-rated films to those under 13, while not as pervasive, is not unusual. Marketing materials for 20 films rated PG-13 for violence revealed that nine, or 45%, targeted children 11 and younger.⁸²

1. Television advertising

R-rated films: Studio research shows that most moviegoers, and teens in particular, become aware of movies through television. Accordingly, studio media plans detail massive television campaigns. Of the 35 R-rated movies that targeted children under 17, studio media plans indicate that 26 designed at least part of their television campaign around a target audience including people aged 12 and above.

The studios repeatedly advertised films rated R for violence on television programs that were the highest rated among teens or where teens comprised the largest percentage of the audience.⁸³ The plans sometimes referred to these programs as “teen-oriented.”⁸⁴ When studios targeted films to a particularly young audience, they increased significantly the frequency of advertising on those shows and excluded other programming.⁸⁵

To reach teenage audiences more effectively, studios target advertising for certain times of day. Studio marketing materials indicate that the best way to reach younger viewers is to

purchase advertising on local stations – a process referred to as “Spot TV buys” – on weekends, and during the “early fringe” and “prime access” hours, *i.e.*, after school and before prime-time network programming begins at 8 p.m.⁸⁶

The studios advertised violent R-rated movies to children under 17 with cable television campaigns that were remarkably similar to each other. MTV, with its core demographic of 12-24,⁸⁷ was the largest advertising cable outlet for almost every motion picture the Commission examined, in terms of both the quantity of ads and the target audience reached. Indeed, the younger the target audience, the more the studios tended to advertise on MTV. For some of the movies targeting particularly young audiences, it was not uncommon for a studio to use MTV to achieve over 50% of its cable audience exposure.⁸⁸

PG-13-rated films: Seven of the nine PG-13-rated films that were targeted to children 11 and younger were advertised on afternoon and Saturday morning cartoon programs. Marketing plans also included advertising on the Cartoon Network and Nickelodeon.⁸⁹

An analysis of the television campaigns for PG-13 films targeting youngsters 6-11 indicates that many of the television programs popular with teens and used heavily to promote R-rated movies, also are very popular with children 6-11. As one marketing plan for a PG-13 movie targeting those 6-11 stated, “Other programs, such as *Buffy The Vampire Slayer*, *WWF* and *WCW Wrestling* cross over to Children 6-11 and local television buys targeted this group as well.” This plan also showed that *Xena: Warrior Princess* – used in advertising for virtually every R-rated movie the Commission examined – was as popular with children 6-11 as it was with males 12-17. MTV is also popular with children 6-11.⁹⁰ Thus, although the Commission found little indication that R-rated films were deliberately being marketed to children under 12,⁹¹ those young children nevertheless had substantial exposure to the television advertising for R-rated films as well.

2. Trailers

Trailers are a unique form of advertising. Trailer placement is governed by unwritten agreements between the studios and theaters through their principal trade associations. Studios do not pay the theaters to show their trailers. Completed features are sent 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. The MPAA and NATO have agreed to limit trailer length and to require only that theaters play the attached trailer. Although unattached trailers are played at the discretion of the theater, the studios exert pressure on the theaters to adhere to their requests. Studios hire “trailer checkers” to verify that theaters are showing their trailers,⁹² and theaters may be concerned that if they do not show the requested trailers, a studio might not book a future hit feature with them.

**National Association
of Theatre Owners**

4605 Lankershim Blvd., Ste. 340
North Hollywood, CA 91602
818.506.1778
www.hollywood.com/nato

In general, theaters do not show trailers for R- and PG-13-rated movies before children’s animated features. In 1989, NATO passed a resolution stating: “All trailers shown with a ‘G’ rated film should be compatible therewith, and theatre owners should be especially sensitive to this situation to the end that the theatre going

public will be entirely comfortable taking young children to view ‘G’ rated motion pictures.”⁹³

NATO adopted this resolution due to complaints received from irate parents over the strong content of “all audience” trailers shown at films geared to young audiences. For this reason, the major theater chains (as discussed above in Section II.C.2) have adopted policies to limit trailer placement to within one rating of the feature presentation. The net effect of this trailer placement policy, however, is that previews for R-rated films are shown to audiences containing substantial numbers of youngsters under 17: trailer requests reviewed by the Commission show that the studios routinely seek to place trailers (both attached and unattached) for R-rated movies at PG-13-rated features, including those PG-13 features the Commission determined were marketed to children 11 and younger.⁹⁴

In addition, the theaters appear to grant exceptions to the “within one rating” policy. For example, trailer check reports reviewed by the Commission show that *Star Wars Episode I: The Phantom Menace*, rated PG, was regularly preceded by trailers for such films as *The General’s Daughter* (“Rated R for graphic images relating to sexual violence including a strong rape scene, some perverse sexuality, nudity and language”), *South Park* (“Rated R for pervasive vulgar

language and crude sexual humor, and for some violent images”), and *The Beach* (“Rated R for violence, some strong sexuality, language and drug content”).⁹⁵

3. Promotional and “street marketing”

The studios use a wide array of promotional activities to generate interest in a film. Although the majority of these activities are directed to a very broad audience, some are directed to children.

R-rated films: One of the most popular methods the studios used to attract teens to R-rated films was to distribute free passes to movie screenings and free merchandise related to the film (such as t-shirts, tatoos, and mini-posters) at places where teens congregate. As one marketing plan for an R-rated film stated:

[O]ur goal was to find the elusive teen target audience and make sure everyone between the ages of 12-18 was exposed to the film. To do so, we went beyond the media partners by enlisting young, hip “Teen Street Teams” to distribute items at strategic teen “hangouts” such as malls, teen clothing stores, sporting events, Driver’s Ed classes, arcades and numerous other locations.

Although only one studio described this promotional device in such direct terms, all the studios that provided details of their promotional activities used this tactic to attract teens.⁹⁶

PG-13-rated films: Toys, children’s clothing, and fast food appear to be the primary promotional methods for generating interest in PG-13 movies among children 11 and younger.⁹⁷ Three studios had licensing arrangements with toy and apparel companies for children’s merchandise based on violent PG-13 films. Although these agreements are intended to generate their own revenue as well as to generate interest in seeing a film, the marketing materials reviewed by the Commission show they constitute an important facet of film promotion.⁹⁸

4. Radio and print advertising

Radio advertising, although used less extensively than television, was an integral part of many advertising campaigns.⁹⁹ Marketing materials from five of the studios showed that radio was particularly useful in attracting audiences under 17.¹⁰⁰ The studios also used print advertising to target R-rated movies to teens. Magazines with majority under-17 audiences, such

as *Teen*, *Jump*, *YM*, *DC Comics Teen*, or *Marvel Comics*, contained advertisements for numerous R-rated films.¹⁰¹ In addition, six of the studios used print media distributed exclusively in schools – *Planet Report* and/or *Fast Times* – to advertise R-rated movies. *Planet Report* is published by a company that distributes posters and other promotional items to at least 8,000 schools, including high schools and elementary schools.¹⁰² *Fast Times*, a news and entertainment magazine, is used as a high school teaching aid and often is assigned as mandatory reading to high school students.¹⁰³

5. Internet marketing

The motion picture studios also promote their films by establishing an “official” Web site for each movie they release. Web sites generally have trailers for the movie available for downloading and viewing, as well as background information on the film’s cast and creators. The studios include the address for the official movie site in virtually all print advertising and also place banner ads on other sites that link directly to the official site. For the R-rated films that targeted teens, the studios placed banner ads on sites with high teen usage.¹⁰⁴

An important feature of the Internet is that it provides another outlet to show trailers for movies. Before widespread use of the Internet, trailers were limited to theaters. Now, trailers, in addition to being available on a movie’s official site, also are available on numerous theater sites and through aggregator sites, many of which are independent from the studios and provide reviews and information about films.¹⁰⁵

The proliferation of trailers online presents some obvious problems: “restricted trailers,” those with content the MPAA has determined not to be acceptable for “all audiences,” can easily be accessed by children under 17; in addition, the strong content contained in some “all audience” trailers is also accessible on the Internet by those under 17. The Commission’s review found restricted trailers for *American Pie* and *Road Trip* posted on official Web sites that can be accessed as easily as “all audience” trailers by children under 17.¹⁰⁶

C. Box Office Enforcement

As partners in the industry’s self-regulatory system, movie theaters have urged the motion picture studios to include explanations for ratings in print advertising, and they also play a central role in trailer placement. Nevertheless, enforcement of the R rating category – ensuring that patrons under 17, without parental involvement, do not see R-rated films at theaters – remains the fundamental role of the theater.¹⁰⁷ In fulfilling this role, the theaters must strike a delicate balance between the need for enforcement (including the costs associated with measures beyond identification checks) and the need to maintain a friendly and welcoming environment.

Despite the official policy that children under 17 should not be admitted to an R-rated movie unless accompanied by a parent or guardian, such children gain access in a variety of ways. They may purchase a ticket for the film themselves; have a sibling, friend, or stranger over the age of 17 purchase it for them; or, in a multi-theater complex, purchase a ticket

		
Was Rating Information Posted?	YES	54%
	NO	46%
Was Child Able to Make Purchase?	YES	46%
	NO	54%
Did Employee Ask Age?	YES	48%
	NO	52%

to a PG-13- or lower-rated film and then, once past the ticket taker, go into the auditorium showing the R-rated picture. In a multiplex theater, meaningful enforcement of the age restrictions reflected in the MPAA ratings requires that attention be paid at two different places in the theater: the ticket window and the auditorium entrance.

Material from the eight largest domestic theater chains indicates that they have taken responsible measures to increase enforcement of the minimum age requirement for the purchase of tickets to R-rated features since the Columbine shootings. In a June 1999 public announcement with President Clinton, NATO promised stricter enforcement of the MPAA guidelines. Specifically, NATO announced that all its member theaters should require, at the box

office, photo identification of unaccompanied young patrons seeking admission to R-rated films.¹⁰⁸

Despite these enhanced efforts, an undercover shopper survey of 395 theaters conducted for the Commission in May through July 2000 found that just over half of the theaters enforced the age restrictions at the box office. Theaters refused to sell tickets to R-rated movies to unaccompanied 13- to 16-year-old children 54% of the time; youngsters successfully purchased those tickets 46% of the time. The same percentage of theaters that did not admit unaccompanied children (54%) also posted information about the rating system or theater enforcement policy. (See Appendix F for details of the “Mystery Shopper” survey.)

NATO has suggested several ways¹⁰⁹ theater chains might expand enforcement beyond box office identification checks: posting ushers to check for proof of age at the doors of features expected to attract a high proportion of teens; stamping the hands of patrons who have shown proof of age to the cashier, so they later can be checked for proof of age more easily; and, in multiplexes, when and where possible, showing similarly rated features in the same area of the complex.¹¹⁰ The Commission’s review indicates that, to date, the major theater chains have adopted very few of these suggestions. Four of the eight chains may require further proof of age by either the ticket taker or an usher posted at the auditorium entrance. The rest rely solely on the cashier. None of the theaters appears to have implemented NATO’s other suggestions.

D. Retailing of Movie Videos

Children’s access to violent movies on home video¹¹¹ differs according to whether the video is rented or purchased. Parents have significant controls over the videos their children rent because of limitations established by the major rental outlets. To be eligible for rental privileges, a customer of a video rental store usually must be 18 and have a credit card, making it difficult for children to rent videos independent of their parents’ membership.¹¹² Blockbuster Video and Hollywood Video, the dominant home video membership stores, have responded to parental concerns by adopting policies that give parents the option to restrict the videos rented by their children. Under Blockbuster Video’s policy, parents must affirmatively give their consent to their children’s rental of R-rated movies.¹¹³ Hollywood Video’s policy is the opposite: parental

consent to rent R-rated videos is presumed and parents must opt to place restrictions on the account.¹¹⁴ Another large retail chain follows a discretionary policy: it gives individual stores autonomy in deciding whether to permit the rental of R-rated movies to minors.¹¹⁵

Although renting R-rated videos usually requires a degree of parental involvement, the direct purchase of such videos often does not. Home videos are sold at a wide variety of locations, ranging from specialized video stores and small convenience stores to large discount merchants, supermarkets, and the Internet. The Commission reviewed the policies of eight major retailers that sell home videos at traditional “bricks and mortar” stores. Only three of these informed the Commission that they have policies restricting the sale of R-rated videos to children under 17. These three retailers also rent videos, and thus may be more attuned to the issue of parental consent in this area.

All of the online retailers contacted by the Commission¹¹⁶ provide MPAA ratings information.¹¹⁷ However, these same retailers generally do not have express policies restricting the online sale of R-rated videos to children. One retailer stated that it relies on the purchaser’s use of a credit card as a proxy for parental approval. The other retailers did not indicate whether they do so as well.

IV. THE MUSIC RECORDING INDUSTRY PARENTAL ADVISORY LABELING PROGRAM

We believe that not all music is right for all ages and our Parental Advisory Label was created for just that reason. Parents can use the label to identify music that may not be appropriate for their children and make the choice about when – and whether – their children should be able to have that recording.

– Recording Industry Association of America¹¹⁸

**Recording Industry
Association of America**
330 Connecticut Avenue N.W.
Suite 300
Washington, D.C. 20036
202.775.0101
www.riaa.org

The Recording Industry Association of America (“RIAA”) created a parental advisory program in 1985 in response to concerns of parent groups about children’s exposure to music with mature themes.¹¹⁹ Under the program, music recordings that contain explicit lyrics,

including strong language or graphic references to violence, sex, or drug use, are identified with a parental advisory label.¹²⁰

The RIAA describes the parental advisory label as a tool for record companies to use to alert parents to explicit lyrics.¹²¹ The decision to label a recording is made by individual record companies and their artists.¹²² RIAA members, as well as non-member companies, use the advisory.¹²³

A. *Scope of Commission’s Review*

In examining the music recording industry’s parental advisory labeling program, the Commission reviewed documents provided by the RIAA and the National Association of Recording Merchandisers (“NARM”), as well as publicly available materials. In addition, because each recording company labels its own explicit-content recordings, the Commission analyzed documents provided by the major recording companies – BMG Entertainment, EMI Recorded Music, North America, Sony Music Entertainment, Inc., Warner Music Group, Inc., and UMG Recordings, Inc. (Universal) – and their affiliated record companies (together “the recording companies”) that explain their individual procedures for determining which recordings need to display the parental advisory label.¹²⁴

**National Association
of Recording Merchandisers**
9 Eves Drive, Suite 120
Marlton, NJ 08053
856.596.2221
www.narm.com

In addition, the Commission studied the marketing plans, advertisements, and advertisement dissemination schedules for 55 full-length recordings with the parental advisory label, all of which were top sellers in 1999.¹²⁵

Because the recording companies could not specify which recordings received the parental advisory label due to violent content, as opposed to some other explicit content, these companies produced materials for top-selling recordings labeled for any reason due to their “explicit” content (which could include strong language and/or depictions of sex, violence, or substance use).¹²⁶ Also, because the RIAA’s label makes no recommendations to parents about the age appropriateness of recordings with explicit lyrics, the Commission applied the age limit (17) of the movie and electronic game industry self-regulatory programs to its analysis of whether the recording industry is marketing explicit-content labeled recordings to children.¹²⁷

B. Operation of the Music Recording Labeling Program

1. The labeling process

The parental advisory label is black and white, measures 1" x 5/8" and says "Parental Advisory, Explicit Content."



Unlike the film and electronic game self-regulatory systems, the recording industry labeling program does not have a rating board to determine which music recordings should display the parental advisory label. Nor does the RIAA provide standardized procedures or other guidance as to when a recording should display a parental advisory. Instead, the decision is made by each company for its own products. According to the RIAA, with about 60,000 recordings released each year, the artists and recording companies themselves can make the labeling decision most efficiently. In addition, the RIAA believes that because the parental advisory label is meant to flag for parents *any* potentially offensive material, it makes sense for a "sensitive and sophisticated" labeler at each company to make the labeling decision.¹²⁸ Therefore, to report on the labeling process, the Commission reviewed the practices of the five major recording companies.

According to the recording companies, the decision to label is subjective, and often made on a case-by-case basis.¹²⁹ None of the companies has adopted written policies or guidelines defining "explicit" content in music and none memorializes why a particular recording received the advisory.¹³⁰

One company reported that its employees, often in partnership with the artists involved, make "good faith judgments about what kinds of lyrics and depictions parents might find offensive, because of racial epithets, vulgarities, curse words, sexual references, violence, and drug descriptions." Another company evaluates the content of every recording on the basis of various factors, including, but not limited to: explicit exhortations of sex, violence, illicit drug use, or suicide; exhortations of violence against any specific named real person or peace officer; offensive language generally and use of objectionable words; overall impression, including

generally nihilistic world view, pervasive misogyny or racial/minority stereotyping. “The ultimate judgment call of whether the content of a recording warrants the [parental advisory label] is made in light of the message and identity of the artist, the current social climate, and, perhaps most importantly, straightforward common sense,” the company said.

Documents from the three remaining companies suggest that they evaluate the content of a recording based on a cursory review of the lyrics. According to these companies, they may decide to label a recording as soon as they hear a number of expletives on one song, without listening to an album’s entire content.¹³¹ One company explained that because the RIAA system involves a single label, a more thorough analysis is unnecessary, and that “the process is not distinctly tailored to differentiate among ‘violent content,’ sex, language, or any other reason as the basis for stickering.”¹³²

If a company and/or an artist determines that a recording contains explicit content, the RIAA recommends using the label on the packaging of all cassettes, CDs, vinyl records, and music videotapes.¹³³ According to the RIAA, the label should measure 1" x 5/8" and should be part of the permanent packaging under the cellophane shrink wrap, rather than a peel-off sticker.¹³⁴

2. The use of the advisory label on packaging

The Commission’s review of the packaging of 55 top-selling CDs that bore the parental advisory label indicates that the recording companies do not uniformly follow the RIAA’s suggestions for using the label.¹³⁵ In one company’s case, 91% of the CD labels met the RIAA labeling parameters; in another company’s case, none of the CDs – 0% – was labeled according to RIAA suggestions. The Commission noted the following:

- ▶ The advisory labels on 27 of the recordings (50%) met the RIAA recommendations for size, placement, and format.
- ▶ The labels on 41 of the recordings (75%) were incorporated directly into the CD packaging; the labels on the remaining 14 CDs (25%) were removable stickers attached to the CD case.

- ▶ A total of 10 of the removable stickers provided other information about popular songs on the CD in and around the advisory, tending to obscure the message on the advisory.
- ▶ Twenty-two of the advisories (39%) were smaller than the RIAA's recommended size.

In addition, a later review (July 2000) of the labels on 25 current top-selling labeled recordings also showed that the advisory often is smaller than the RIAA specifies or is a peel-off sticker.¹³⁶

3. “Clean” versions

Although not specifically recommended by the RIAA, the recording companies routinely create and sell edited or “clean” versions of the explicit-content labeled recordings.¹³⁷ According to one recording company, an edited version “provides listeners with the option of purchasing an artist’s work without the explicit content as identified by [the recording company and] . . . provides an alternative to retailers and other media outlets that opt not to sell, disseminate or promote the unedited versions of the stickered recordings.”¹³⁸ Explicit or unedited versions of recordings usually outsell the edited version, often by over 10 times.¹³⁹

In creating an edited version, one company states that it:

often works closely with the artists to determine the necessary changes. In some recordings any explicit content is simply taken out, while in other instances new lyrics or sounds are added to replace those in the stickered version. These changes are made on a case by case basis with the focus centered on the deletion of any explicit content while making minimal changes to the artistic expression.¹⁴⁰

The company further acknowledges that “there remain in the edited versions of the CDs identified . . . instances of language, situations, and phrases that reasonably might be considered ‘violent’ without distorting standard English usage.” Its justification for leaving such lyrics in the edited version is “there is also in popular children’s fare (cowboy adventures, military exploits, fairy tales, cartoons, etc.) a great deal that is similarly ‘violent,’ but for which no one would advocate special labeling or warning.”¹⁴¹

Creating an edited version is not always feasible, however. According to one company, if the controversial content is essential to the artist’s message, the recording company may not release

an edited version. The decision to create an edited version, this company said, also “may turn on the practical consequences of editing. . . . [A]n edited version may not be produced if the editing process would eliminate the preponderance of the lyrics.”¹⁴²

Although the lyrics on the two versions may vary, the CD packaging often does not, except that the explicit version bears the parental advisory label. When the CD packaging itself contains “explicit content,” the artwork used for the explicit and edited versions may differ.¹⁴³ Similarly, when the packaging for both versions lists the songs, the edited versions often replace any profanity in song titles with asterisks.

C. *Issues Not Addressed by the Music Recording Labeling Program*

1. Access to important information about explicit recordings

The parental advisory label covers a wide range of content, including violence, sex, and/or drug use, without regard to the fact that some parents may be more concerned with certain types of explicit content than with others. Although the RIAA agrees that parents need information about recordings to be able to make intelligent listening choices for their children,¹⁴⁴ groups such as the American Academy of Pediatrics and the National Parent Teacher Association have expressed concern that the industry’s “one-size-fits-all” approach does not provide enough information to parents.¹⁴⁵

Unlike the motion picture and electronic game rating systems, the label does not provide reasons for the advisory label or “content descriptors” indicating the nature or the amount of the explicit content (*e.g.*, strong language or graphic references to violence, sex, or drug use).¹⁴⁶ Instead, one advisory covers a broad spectrum of content, including violence and/or sex.

Nor does the label specify the age groups for which an explicit-content labeled recording may be inappropriate;¹⁴⁷ parents of a 7-year-old are given the same advisory as parents of a 12-year-old or a 16-year-old.¹⁴⁸ Further, the industry does not provide a means for parents to obtain the lyrics of explicit-content labeled recordings. In fact, the Commission found that out of the 55 labeled CDs that it reviewed, only eight included lyrics for the songs in the packaging. Parental review of a recording may be hindered because the lyrics on many explicit songs are difficult to understand without repeated listening.¹⁴⁹

Focus groups conducted for the RIAA indicate that parents want a “visible and credible voluntary labeling program that helps them monitor the music their children purchase.”¹⁵⁰ Consumer survey evidence suggests that the current labeling program may not provide parents with enough information about violent lyrics to help them make decisions about their children’s listening choices. In a survey conducted for the Commission in May and June 2000, fewer than half of the parents (44%) surveyed viewed the parental advisory as “excellent” (12%) or “good” (32%) at informing them about the level of violence in music.¹⁵¹ And although 74% of parents surveyed reported being “very satisfied” or “somewhat satisfied” with the parental advisory label, only 9% of parents who restrict their children’s music mentioned the advisory label when asked how they decide what music their children can listen to. Of the overall sample of parents, 45% use the advisory program at least some of the time.¹⁵² According to a June 1999 Gallup poll, 74% of the respondents thought that music producers do not provide enough information about the violent content in lyrics of popular music for adults to make decisions about what is appropriate for children; 22% thought that the information was enough.¹⁵³ The same poll found that 73% of parents believed that the music industry should place restrictions on the sale of recordings with violent content to children under 18, as well as provide information to the public about the violent content of recordings.¹⁵⁴

 Parents' Responses - Music 	
Who selects the product?	
An adult	11%
An adult and the child together	55%
The child	34%
Who purchases the product?	
An adult	34%
An adult and the child together	37%
The child	28%
Parent restricts child's use of the product	72%
Parent is aware of a rating system for the product	77%
How often do you use the rating system?	
Some, most, or all of the time	62%
Rarely or never	38%
Are you satisfied with the rating system?	
Somewhat or very satisfied	74%
Somewhat or very dissatisfied	14%
How does the rating system do in informing you about violence?	
Good or excellent	44%
Fair or poor	40%

2. The placement of an advisory on digital music

The current labeling program encourages an advisory on explicit music sold in CD, cassette, or album formats, but not on explicit music that is downloaded electronically and stored as a computer file (*e.g.*, an MP3 file).¹⁵⁵ Internet technology is making music available to a broad audience,¹⁵⁶ and studies show that listening to and obtaining music in a digital format is increasingly popular with teenagers.¹⁵⁷ The recording companies have begun to address the growing availability of digital music and to create their own systems of digital music distribution.¹⁵⁸ However, no parental advisory labeling program exists for digital music.

3. Advertising disclosure and placement standards

The RIAA has stated that the explicit content label is a tool designed “to provide a clear notice to parents to allow them to decide . . . what may or may not be appropriate music for their children.”¹⁵⁹ As noted above, the RIAA program’s single element has been a point-of-purchase

disclosure on the packaging of a CD, cassette, or album (see next section for recently-announced changes).¹⁶⁰ The labeling program has not addressed the advertising of explicit recordings, either in terms of whether the advisory label should appear in advertising or whether the recording companies should limit where they place ads for labeled recordings.¹⁶¹

The Commission's review of the music advertising submitted by the recording companies and by eight major music retailers shows that, while some ads for explicit recordings display the advisory, many do not.¹⁶² Moreover, when the label appears in advertising, it often is a black and white blur that is too small for consumers to read, or is obscured by pricing information.

A separate review of recent issues of magazines popular with teens shows that advertisements for explicit-content labeled recordings rarely display the parental advisory: only 18 (8%) of 234 print ads for labeled recordings displayed the advisory.¹⁶³ Similarly, a review of artist, recording company, and music retailer Web sites shows that many of the online promotions for explicit recordings omit the parental advisory.¹⁶⁴

There are a few notable exceptions, however. Some recording company and retailer Web sites tell consumers about the explicit content of the recordings they are selling through text disclosures near the promotions. For example, Cash Money Records uses clear text disclosures – “Explicit Version” and “Clean Version” – directly below pictures of the individual recordings.¹⁶⁵ Similarly, Amazon.com regularly includes the warning “EXPLICIT LYRICS” on its Web pages and in its print advertising.¹⁶⁶ This advisory text is often presented in a large, easy-to-read notice. CDNow.com and TWEC.com also place the term “explicit” next to promotions for labeled albums and the term “edited” next to promotions for edited albums.¹⁶⁷

However, because most advertisements for labeled recordings do not show the advisory label, parents may not have the notice they need to decide what music is appropriate for their children to purchase. Most teens and many pre-teens make music purchase decisions without consulting their parents;¹⁶⁸ therefore, advertisements may be parents' only advance source of information regarding the music their children are purchasing.

Finally, it appears that the utility of the advisory label as an effective notice to parents has been diminished by the industry's lack of guidance on the marketing of explicit-content labeled music recordings to children. Section V of this Report discusses the efforts marketers have made

to reach children directly and to influence their purchases regardless of the parental advisory label.

D. Recent Changes to the Music Recording Labeling Program

In late August 2000, the RIAA recommended revisions to the parental advisory label program, to be effective October 1, 2000. According to the recommendation, the RIAA now asks that industry members: 1) use general guidelines, included in the RIAA memorandum, to determine whether a recording warrants a parental advisory label; 2) adopt a policy that the parental advisory label or other prominent notice of explicit content should appear in print advertising for explicit-labeled recordings and 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; and 3) adopt a policy that the parental advisory label should appear prominently in online retail sites in all stages of the transaction and that online retail sites should link to the entertainment industry's Web site, www.parentalguide.org, where more information on the rating and labeling systems may be found. Further, the RIAA committed to conducting an annual review of its policies and their implementation. These are constructive changes that begin to address several of the concerns outlined above; whether and how they will be implemented is not yet known. This Report's analysis of the music recording industry's self-regulatory program is based on the program in effect up until September 2000.

V. MARKETING MUSIC RECORDINGS TO CHILDREN

A. Background

Information submitted by the recording companies shows that they market their explicit-content labeled recordings at two levels. First, they advertise and market their recordings directly, assuming responsibility for the design of the materials and the dissemination of the promotions in a variety of venues, including print, broadcast and cable television, in-store displays, radio airplay, music videos, "street marketing," artist appearances on cable music television programming, and contests on Internet Web sites. Second, they promote music

recordings through cooperative advertising agreements with retailers, wholesalers, and other distributors of music.¹⁶⁹ Marketing efforts often begin several weeks before the release of a recording and can continue long after.

B. Marketing Explicit Content Recordings to Children

The Commission's review of marketing documents indicates that the recording companies often market explicit-content labeled recordings to a wide demographic, including a significant under-17 audience. Fifteen of the 55 marketing plans (27%) the Commission studied expressly identified teenagers as part of the group to which the companies planned on marketing the explicit recordings. Examples of express statements regarding the recordings' target audience include:

"Target audience: Hip-Hop, Crossover, Pop, Male/Female – 14-34"

"Target audience: Alternative/urban, rock, pop, hardcore 12-34"

"target demographic are 15-30 males and females of various ethnic backgrounds who are into hip hop."

"the 13-35 year old male demographic; which as we know is our target demo."

Others more generally discuss promoting explicit recordings to "teens" and distributing materials at high schools or in popular teen venues.¹⁷⁰

Although the marketing documents for the remaining 40 explicit-content labeled recordings did not expressly set forth the age of the target audience,¹⁷¹ they detailed the same methods of marketing as the plans that specifically identified teens as a part of their target audience, including placing advertising in media that would reach a majority or substantial percentage of children under 17.

1. Print advertising

The recording companies routinely use print advertising to promote their explicit-content labeled recordings to children under 17. The marketing materials for 39 out of 55 labeled recordings (70%) discussed placing ads in magazines with a *majority* or *significant* teen audience (such as *Blaze*, *GamePro*, *Metal Edge*, *Right On!*, *Seventeen*, *Skateboarding*, *Thrasher*, *Vibe*, and *YM*).¹⁷² These magazines have an under-18 readership of between 40 and 80%.¹⁷³

The recording companies also encouraged and closely tracked the placement in these publications of feature stories about their artists who had released explicit-content labeled recordings. The marketing plans for 11 explicit-content labeled recordings indicated that such features were scheduled to run in publications with a majority or substantial teen audience.

In addition, the Commission reviewed the music advertising in recent issues of nine magazines with a majority or substantial teen readership audience and found ads for explicit-content labeled recordings in each magazine.¹⁷⁴

2. Television promotions – cable music channels

Television cable channels that show music videos and other music-related programming figure prominently in the marketing of explicit-content labeled recordings to children under 17. The marketing plans almost uniformly discuss airing music videos and placing advertisements and promotions on three music cable channels – MTV, BET, and/or The Box – all of which target and reach viewers between the ages of 12 and 34.¹⁷⁵

The recording companies' marketing materials show that these companies often:

- ▶ advertise the release of labeled recordings during cable music programming;
- ▶ submit for airplay music videos of songs that appear on labeled recordings;
- ▶ encourage appearances by the artist on cable music programs; and
- ▶ arrange promotional activities with cable music channels, such as contests and special features on the artist.¹⁷⁶

In addition, many of the marketing documents discuss securing promotions on specific cable music programs that appear during popular after-school and early-prime-time shows, such as MTV's *Total Request Live* and *Jams Countdown* and BET's *Rap City*. A review of these cable programs confirms that advertisements for labeled recordings, and music videos for songs from these recordings, appear on these channels during after-school and prime-time hours.¹⁷⁷

3. Other television advertisements

The marketing materials for the music recordings placed significantly less emphasis on network and non-music cable television advertising than did the plans for motion pictures.

Nonetheless, several of the marketing plans indicated that the recording companies intended to advertise and promote explicit-content labeled recordings on television programs with large under-17 audiences, such as *The Simpsons*, *South Park*, *Buffy the Vampire Slayer*, and various wrestling programs.¹⁷⁸

4. Internet marketing

The Commission found that Internet advertising and promotion is an integral part of most of the marketing plans for explicit recordings. There is every indication that the companies will continue to increase their marketing of labeled recordings over the Internet: as one marketing plan noted, “Internet marketing and promotions is the wave of the future.” Such marketing efforts easily reach a young audience,¹⁷⁹ and surveys of teens indicate that a significant percentage of children are listening to music on and obtaining music from Internet Web sites.¹⁸⁰

Promoting a labeled recording over the Internet usually involves setting up an artist Web site or Web page (as part of a recording company site) where consumers can listen to short samples of songs (audio clips) from explicit recordings.¹⁸¹ These sites link to others, including artists’ sites, and recording company and retail sites, from which recordings can be previewed, ordered, or downloaded. The recording companies also promote explicit-content labeled recordings through popular music sites, including *mtv.com*, *bet.com*, *launch.com*, and *ubl.com*. Several of the marketing plans for labeled recordings also detailed their use of electronic mail to alert fans about upcoming releases. Children under 17 constitute a significant percentage of the audience on these music Web sites.¹⁸²

5. Street marketing

Most of the marketing materials the Commission examined included plans to promote explicit-content labeled recordings through the use of aggressive “street marketing campaigns.”¹⁸³ The companies use “street teams” to distribute a variety of promotional materials at non-traditional venues such as concerts, sporting goods stores, street fairs, and trendy clothing stores. The promotional materials involved include “coming soon” banners, posters, postcards,

window displays, flyers, cassette and CD samplers, locker posters, key chains, t-shirts, hats, pencils, baseball cards, CDs, and “scratch and win” promotions.

Street marketing efforts also include outdoor advertising for labeled recordings on billboards, posters at bus shelters, bus stop benches, buildings, and street poles. Several plans discussed attaching promotions for the labeled recordings to public buses, ice cream trucks, and shuttle vans that drive through urban neighborhoods.

In efforts geared specifically to the under-17 audience, several plans discussed distributing promotional materials for, and playing music and music videos from, explicit recordings in sporting goods and apparel stores popular with teens, such as Foot Action and Downtown Locker Room.¹⁸⁴ One plan also discussed distributing singles from a labeled recording for play at “Back To High School” parties.

6. Radio

Radio is an important medium for reaching the youth market. Many of the marketing documents the Commission reviewed described plans to seek heavy radio play of singles from explicit-content labeled recordings on radio stations with a primary audience of 12- to 24-year-olds. These documents emphasized placings ads and other promotions, such as concert ticket giveaways, album giveaways, and a variety of prize promotion contests, on these stations. In addition, several of the marketing plans provided for on-air artist interviews on these stations.

7. Licensing

Like the motion picture and electronic game companies, the recording companies often cross-market their products through licensing agreements. The companies agree to the use of songs from explicit-content labeled recordings in other products marketed to teens, such as movies, video games, and television programs. Several companies licensed songs from labeled albums for use in R-rated movies that the movie studios promoted to an audience of 12- to 17-year-olds. One company licensed music from explicit-labeled recordings for use in PG and PG-13 movies.

The recording companies also licensed music from explicit-content labeled recordings for use in electronic games. One company licensed music from labeled recordings for use on a “fighting” game rated M (“Mature” audiences) that marketing documents indicated was targeted to 12- to 24-year-olds. Two companies approved the use of music from explicit-content labeled recordings on E-rated (“Everyone”) video games. Further, the companies provided agreements authorizing the use of music from labeled recordings in programs and networks popular with teens. One marketing plan detailed a cross-marketing effort involving a contest with a clothing company whose products are “targeted to men and women 12-24,” and also discussed using the contest as a means to “gather tens of thousands of e-mail addresses.”

C. Retailing of Music Recordings

Recordings with an explicit content label are sold at specialty music stores, large electronics retailers, department stores, and on the Internet, among other locations. The eight music retailers the Commission contacted take a variety of approaches toward selling labeled recordings.¹⁸⁵ Of the six of these music retailers with “bricks and mortar” stores:

- ▶ Two have company-wide policies restricting the purchase of labeled recordings in their retail stores by the age of the purchaser. One has a written policy not to sell any labeled CDs to “children,” which some individual stores within the chain define as anyone age 17 and under. The other said its policy is not to sell recordings that display the advisory label to anyone under 13 years of age without a parent or guardian present.
- ▶ Three do not place any restrictions on in-store purchases of explicit recordings by children of any age.
- ▶ One does not carry recordings with a parental advisory label in its stores, stocking *only* the edited versions of these recordings.

Seven of the eight retailers contacted by the Commission sell explicit music on their Web sites; none imposes any age restrictions on online purchasers of explicit music.

The undercover shopper study conducted for the Commission confirms that retail stores rarely restrict children from purchasing explicit-labeled music. In that survey of 383 music stores, unaccompanied children ages 13-16 were able to buy an explicit-content labeled recording 85% of the time.¹⁸⁶ Moreover, only about 12% of the music stores posted information about the parental advisory system or about the store’s sales policy regarding explicit-content labeled recordings.¹⁸⁷

 FTC Mystery Shopper Survey Music (383 Shoppers)		
Was Rating Information Posted?	YES	12%
	NO	88%
Was Child Able to Make Purchase?	YES	85%
	NO	15%
Did Employee Ask Age?	YES	16%
	NO	84%

VI. THE ELECTRONIC GAME INDUSTRY SELF-REGULATORY SYSTEM

The ESRB rating system is unique because it provides information about both age-appropriateness AND content elements that may be of interest or concern. The ratings and content descriptors are designed to help parents exercise control over the computer and video games their children play.

– Entertainment Software Rating Board¹⁸⁸

Beginning in the early 1990’s, Congress responded to concern about the violent content in some electronic games with hearings and legislative proposals. Although no legislation was enacted, several members of Congress were critical of the electronic game industry for its lack of a self-regulatory system to rate electronic games.¹⁸⁹ In 1994, industry members formed the Interactive Digital Software Association (“IDSA”) to address this criticism.¹⁹⁰ The IDSA, in turn, created and funded a separate division, the Entertainment Software Rating Board (“ESRB”), to develop an interactive software rating system to assist parents in their efforts to select appropriate games for their children.¹⁹¹

**The Interactive Digital
Software Association**
1211 Connecticut Ave., NW,
#600
Washington, D.C. 20036
202.223.2400
www.idsa.com

The IDSA/ESRB system rates game software published for all gaming platforms, including cartridge-based and CD-based console systems (such as the Nintendo 64, the Sega Dreamcast, and the Sony Playstation, which hook up to a television set) and personal computer-based systems (such as a Windows-based PC or a Macintosh). The ESRB's rating symbol can be found on all console-based video games and on nearly all personal computer software games.¹⁹²

The electronic game industry's self-regulatory system is the most comprehensive of the three industry systems studied by the Commission. It is widely used by industry members and has been revised repeatedly to address new challenges, developments, and concerns regarding the practices of its members. Its requirements are set out in the IDSA's *Advertising Code of Conduct* ("Adcode"), first adopted in 1995, and in the ESRB's *Principles and Guidelines for Responsible Advertising Practices* ("Ad Principles"), which became effective in January 2000.¹⁹³

A. *Scope of Commission's Review*

To evaluate the electronic game industry's self-regulatory system, the Commission obtained information from the IDSA and the ESRB concerning the development and enforcement of the self-regulatory mechanisms they established for industry members. To assess industry members' use of those self-regulatory mechanisms, the Commission contacted 11 video and personal computer game publishers and obtained marketing and media plans for over 200 games¹⁹⁴ that the ESRB had rated as containing violent content, including plans for most of the best-selling Mature-rated games from the last three years.¹⁹⁵

B. Operation of the Electronic Game Self-Regulatory System

1. The rating process

According to the ESRB, each electronic game title is rated by three people who have no ties to industry and whose identities remain anonymous to industry members. The rating panel for any given game title is selected from a pool of more than 200 individuals with different demographic characteristics; members of the pool vary by gender, ethnicity, age, and marital and parental status.¹⁹⁶ Each three-member panel rates a game based on materials submitted by the game publisher or developer, typically videotaped footage of the most extreme portions of the game.¹⁹⁷ During this review, each rater records every instance in which he or she observes a segment of gameplay that qualifies under a particular content rating category. When at least two of the three raters apply the same rating category to the same segment of the game, that rating category becomes the consensus rating for the game.¹⁹⁸

**Entertainment Software
Rating Board**
845 Third Avenue
New York, NY, 10022
212.759.0700
www.esrb.org

The IDSA/ESRB system rates game titles according to five age-based categories: (1) Early Childhood, or “EC”; (2) Everyone, or “E”;¹⁹⁹ (3) Teen, or “T”; (4) Mature, or “M”; and (5) Adults Only, or “AO.”²⁰⁰ By definition, game titles rated M contain content suitable only for persons ages 17 and older, and T-rated titles contain content suitable only for persons ages 13 and older. There is also a Rating Pending category (“RP”) to indicate that a game has been submitted to, but not yet rated by, the ESRB.²⁰¹ According to the ESRB, nearly 75% of games have been rated either EC or E, while 19% have a T rating, 7% have an M rating, and less than 1% have an AO rating.²⁰²

The current rating icons appear as follows:²⁰³



As in the motion picture rating system, a descriptive phrase may be assigned to the letter rating to indicate content that might be of concern to parents, such as language, sexual themes, or

violence.²⁰⁴ Descriptors reflecting violent content include “Mild Animated Violence,”²⁰⁵ “Mild Realistic Violence,”²⁰⁶ “Comic Mischief,”²⁰⁷ “Animated Violence,”²⁰⁸ “Realistic Violence,”²⁰⁹ “Animated Blood and Gore,”²¹⁰ “Realistic Blood and Gore,”²¹¹ “Animated Blood,”²¹² and “Realistic Blood.”²¹³

The clear majority of games, such as sports and racing games or strategy and puzzle games, do not contain graphic violence or depict blood and gore. Yet hundreds of games do, and, due to technological advances,²¹⁴ it is now possible for the maiming and killing depicted in those games to be inflicted with a vast array of weaponry and illustrated in graphic, near lifelike detail.²¹⁵ The descriptors, however, do not indicate the intensity of violence in a game. All the violence descriptors but two – “Animated Blood and Gore” and “Realistic Blood and Gore” – may appear in E-rated games. Games rated T, M, or AO may be assigned any of the violence descriptors. Although the M-rating may suggest a greater level of violence compared to T- and E-rated games, the particular game may have received the M-rating for content other than violence (*e.g.*, strong sexual content).²¹⁶ Thus, although the descriptors, when combined with the ratings, do provide parents with information that is helpful in making decisions as to what is appropriate for their children,²¹⁷ the degree of violence may not always be apparent.²¹⁸

2. Requirements for packaging, advertising, and marketing

a. Disclosure of rating information on product packaging and in advertising

Unlike the film and music industries, the electronic game industry requires the display of rating icons and, in most cases, content descriptors (*e.g.*, “Realistic Blood and Gore”) on packaging, in print ads, and online. It also requires television ads to include a voice-over stating the game’s rating. Specific requirements include:

- ▶ display of the rating icon on the front of the package and any content descriptors on the back;
- ▶ display of the rating icon on all game cartridges, compact discs, and floppy disks;
- ▶ display of the rating icon *and* content descriptors²¹⁹ in print advertisements;
- ▶ display of the rating icon *and* a voice-over²²⁰ of the rating in television ads; and

- ▶ display of the rating icon on game Web sites and on pages where a game “demo” (an abbreviated version of the game) or trailer is accessed, and display of the rating icon *and* content descriptors on product ordering pages.

Although the Adcode expressly includes banner ads²²¹ on Web sites within its very broad definition of online advertising, it does not require that banner ads contain either rating icons or content descriptors. Nor does the IDSA Adcode cover ads for products related to electronic games, such as action figures or other products licensed by game manufacturers.

The Commission reviewed product packaging, recent print and television advertising, and industry Web sites promoting particular games to assess industry compliance with the disclosure requirements. This review, described in Appendix J (*Electronic Game Industry Compliance with Self Regulatory Code Requirements to Disclose Ratings Information on Product Packaging, in Advertising, and Online*), found a high level of compliance with the packaging requirements and with requirements concerning proper visual disclosure of the rating and voice-overs of rating information in television ads. Industry compliance was mixed, however, with respect to the requirement to display ratings and content descriptors in print advertising,²²² although it appears that compliance levels are improving. Compliance with the rating disclosure requirements for industry Web sites was poor. Although most sites complied with the basic requirement to display the ESRB rating, many failed to display the rating icon on pages where a demo could be downloaded or viewed, and only a few displayed required descriptors at the point where one could order a game.

To its credit, the IDSA has taken several steps to encourage industry members to comply with these requirements. It has contacted many individual game publishers regarding their noncompliance with the rating display requirements for packaging, print, and television advertising.²²³ For packaging violations, the IDSA has asked the violator to place a hold on any future shipments of games with noncompliant packaging and to distribute stickers containing the correct rating information for retailers to apply on any packaging already in stores.²²⁴ For advertising violations, the IDSA has generally asked the publisher to avoid future noncompliance. None of the documents submitted to the Commission revealed an instance when

a violation resulted in a fine or a revocation of the ESRB rating, which the IDSA has the power to seek.²²⁵

Even though most advertisements and packaging comply with the requirements to display rating information, consumer familiarity with and usage of the IDSA/ESRB system appear to be low. According to the Commission's May-June 2000 survey of parents and children, 61% of parents were aware of a rating system for video games, but only 37% had both heard of and had more than slight familiarity with the rating system.²²⁶ A bare majority of parents who claimed to be aware of and at least slightly familiar with the rating system said they use the rating at least some of the time when their children want to play a video game.²²⁷ However, just over half of those parents could correctly state that the rating system provides for both age-based ratings and content descriptors, and less than half could name a single one of the ESRB ratings unaided or distinguish the ESRB ratings from rating terminology used in the music or motion picture industries.²²⁸

Other studies have demonstrated similarly low levels of familiarity and use. An ESRB-sponsored survey of parents in 1999 found that 45% were aware of the electronic game rating system, in contrast with 94% of respondents for the movie rating system and 60% for the music labeling system.²²⁹ A 1999 survey commissioned by the Kaiser Family Foundation found that about 53% of parents reported using ratings on electronic games.²³⁰ A smaller survey conducted by the National Institute on Media and the Family in 1998 suggested a lower level of use, finding that 40% of parents routinely looked at industry ratings before buying or renting computer or video games.²³¹

At the same time, the game rating system appears to be helpful to those parents who actually use it. The Commission's study found that five in six of those parents who use the video game rating system at least some of the time when their children want to play a game were "very satisfied" or "somewhat satisfied" with the rating system.²³² Similarly, the *Kaiser Survey* reported that about 86% of parents who had used the rating system found it to be "very useful" or "somewhat useful."²³³ Eighty percent of respondents in the ESRB survey who had the components of the IDSA/ESRB system described to them found the system "very helpful" or "somewhat helpful."²³⁴

As to violence, the Commission’s survey found that a majority of parents who are at least slightly familiar with the system believe that the rating system does either an excellent (4%) or good (50%) job of informing parents about the level of violence in video games.²³⁵ In contrast, a Gallup poll conducted in June 1999 reported that 74% of respondents felt that the electronic game industry did not provide parents with enough information about violent content to make decisions about what is appropriate for children, while 20% believed that the information was sufficient.²³⁶ However, respondents in that poll apparently were not screened for experience with the system.

 Parents’ Responses - Games 	
Who selects the product?	
An adult	17%
An adult and the child together	53%
The child	29%
Who purchases the product?	
An adult	38%
An adult and the child together	45%
The child	15%
Parent restricts child's use of the product	68%
Parent is aware of a rating system for the product	61%
How often do you use the rating system?	
Some, most, or all of the time	52%
Rarely or never	45%
Are you satisfied with the rating system?	
Somewhat or very satisfied	77%
Somewhat or very dissatisfied	9%
How does the rating system do in informing you about violence?	
Good or excellent	55%
Fair or poor	29%

b. Limits on violent content in advertising

The IDSA/ESRB system also governs the content of advertising. In the fall of 1999, the IDSA created the Advertising Review Council (“ARC”) as a separate division of the ESRB.²³⁷ In addition to being given responsibility to enforce the Adcode, as of January 31, 2000, ARC became responsible for implementing, administering, and enforcing an expanded set of

Principles and Guidelines for Responsible Advertising Practices (“Ad Principles”), which add new requirements beyond the Adcode to assist companies in providing for “responsible, appropriate, truthful and accurate advertising.”²³⁸ Companies that receive an ESRB rating agree to comply with the Ad Principles and to cooperate with all of ARC’s reviews, investigations, and inquiries.²³⁹

The IDSA charged ARC with ensuring that industry ads comply with the following four principles. An advertisement should:

- ▶ accurately reflect the nature and content of the game and the rating issued;
- ▶ not glamorize or exploit the ESRB rating;²⁴⁰
- ▶ be created with a sense of responsibility towards the public; and
- ▶ not contain any content that may cause serious or widespread offense to the average consumer.²⁴¹

With regard to the violent content of ads, ARC will examine, among other things, whether ad copy includes graphic and/or excessive depictions of violence.²⁴²

Because the Ad Principles only recently took effect, ARC’s initial efforts to foster compliance have focused principally on educating members about their requirements.²⁴³ Nonetheless, the Commission’s review of recent ads in game enthusiast magazines shows several instances of ad copy for M-rated games that might be covered by these Principles, such as an ad that states, “the huge 15 foot genetically engineered Behemoth rips the cop’s heart out and like a rag doll tosses his lifeless body across the room” or an ad that promises “more powerful weapons” and urges gamers to “exercise your trigger finger.”²⁴⁴ It is not clear whether ARC or the IDSA would consider these examples to violate the letter or spirit of the Ad Principles.

ARC officials expect that compliance with the Ad Principles will be enhanced by the decision of leading game enthusiast magazine publishers to incorporate the Ad Principles into their ad acceptance practices.²⁴⁵ It remains to be seen, however, whether the game magazines will be effective in screening out excessive violence from game ads. In answering a recent letter from a young reader upset that his parents would not let him buy *Resident Evil* (an M-rated game

with violence descriptors), the editor for one of the most popular game magazines responded as follows:

We all know that Resident Evil is gory and violent; in fact, the series is rated “Mature” by the ESRB – that means appropriate only for gamers 17 and older . . . end of story. The fact that you own Turok and Quake [both M-rated games with violence descriptors], but are not allowed to play Resident Evil, indicates that your parents are somewhat befuddled by video games. . . . Most parents are simply protective of their kids, however, and yours are probably making a decision with your best interests in mind. Why not find a pal who has Res Evil and enjoy the classic series that way?²⁴⁶

c. Limits on marketing to minors

Unlike the movie and music recording industries, the electronic game industry does prohibit marketing targeted to children under the age suggested in the game’s rating. Since 1995, the IDSA Adcode has barred industry members from “specifically target(ing) advertising . . . for entertainment software products rated Teen, Mature, or Adults Only to consumers for whom the product is not rated as appropriate.”²⁴⁷ According to the IDSA, this provision is intended to prohibit a company from advertising a game rated Teen or Mature in, for example, the Barbie Magazine.²⁴⁸ In a 1998 letter, the IDSA emphasized that the “anti-targeting provision is important to the integrity of the rating system and is meant to ensure that young people are not encouraged to play games that are not suitable for them.”²⁴⁹ As discussed in the next Section of this Report, however, nearly all the industry members contacted by the Commission appear to have targeted their marketing to audiences that include a high percentage of children for whom the products are rated as not suitable.

VII. MARKETING ELECTRONIC GAMES TO CHILDREN

A. Background

Publishers of electronic games rely heavily on print advertising, especially in gaming enthusiast magazines, and make frequent use of Internet and television advertising to promote new game titles.²⁵⁰ Other promotional tactics used by one or more industry members include: in-store displays at major game and toy retailers;²⁵¹ the giveaway of sampler or “demo” disks of the game in popular gaming magazines; the aggressive solicitation of online and print press

coverage, particularly for previews, reviews, and magazine covers; the creation of “official” Web sites or Web pages for a game title where browsers can learn about the game, view game clips, or download an abbreviated version of the game;²⁵² the encouragement of electronic chat about the game on the Internet;²⁵³ direct mail and e-mail solicitations; “street marketing” (the distribution of posters, flyers, and stickers at clubs, music shops, and skateboard shops); the giveaway of game-related paraphernalia, such as sunglasses, stickers, t-shirts, and key chains; and game giveaways over the radio.

B. Marketing M-Rated Games to Children

The Commission’s review of industry documents indicates that nearly all the game companies contacted have marketed violent M-rated games to children in violation of the IDSA’s anti-targeting provision. These violations are evidenced foremost by marketing documents for M-rated games that expressly target children (typically boys) under age 17. This under-17 targeting occurred as late as February 2000, the cut-off date for Commission-requested materials.

The marketing documents provided to the Commission indicate that at least 83 of the 118 violent M-rated games studied (70%) were targeted to children under 17. Sixty of the 118 game titles (51%) had at least one plan that expressly included children under 17 in the game’s target audience.²⁵⁴ The incidence of express targeting was much higher for console games (72%) than for personal computer games (26%).²⁵⁵ Marketing documents for 23 other M-rated games, though they did not expressly identify children under 17 as the target audience, included plans to advertise the games in magazines or on television shows with a majority or substantial under-17 audience,²⁵⁶ strongly suggesting that children under 17 were being targeted.

Overall, 10 of the 11 companies contacted by the Commission (91%) produced at least one marketing document expressly identifying males (denoted by the letter “M”)²⁵⁷ under 17 as the core, primary, or secondary target of their advertising campaigns for a violent M-rated game.²⁵⁸ In nearly all these instances, males over age 17 were also part of the target audience. Most of the plans targeting an under-17 audience set age 12 as the younger end of the target spectrum, *e.g.*, “M 12-17” or “M 12-24,”²⁵⁹ but two targeted children as young as six and eight.

In several instances, company marketing documents contained inconsistent statements on whether the game's target audience included children under age 17. For example, a 1999 creative brief for a violent M-rated game stated, "The ad campaign MUST be targeted to people over the age of 17. . . . No GUNS or BLOOD should appear anywhere in the ads. . . . Rating icon to be prominent in all ads." At the same time, the marketing and media plans for the game expressly targeted a 12- to 17-year-old audience and planned advertisements in magazines and during television shows highly popular with younger teens.

Further, while some marketing plans indicated an intent to market M-rated games to an older audience,²⁶⁰ others targeted under-17 consumers while simultaneously acknowledging that this practice might conflict with the game's M rating. For example, a 1997 plan stated, in part:

Although Nintendo 64 purchasers space a large range in terms of age (6-34 years old), we recommend approaching the middle segment of this group because: [The game] has an M rating, which 1) may discourage parents from buying the game, and 2) hinder clearance of a commercial airing in shows primarily for children under 12. However, the younger the audience, the more likely they are to be influenced by TV advertising Therefore, the recommended media target audience is: Males 12-17 – Primary Males 18-34 – Secondary.

In addition, two plans for games developed in 1998 described the target market as "Males 17-34 due to M rating (the true target is males 12-34) who own, or plan to own a PSX machine," and "Target: Males 17-34 due to M rating (the true target is M9-34) who own or plan to buy an N64 machine."²⁶¹

Aside from express statements targeting an under-17 audience, the marketing documents show plans²⁶² to place advertisements for M-rated games: 1) in magazines with a majority or close to a majority under-17 audience; 2) on the television shows most popular with younger teens; and 3) on Internet sites popular with younger teens.²⁶³ The documents also show that the planned/actual television and print advertising for M-rated games resulted in extensive exposure to those under age 17 (typically 12-17).²⁶⁴

The following chart provides an overview of the extent to which each of the companies contacted by the Commission appears to have targeted teens under 17 in their marketing of M-rated games.

Targeting of M-Rated Games to an Under-17 Audience ²⁶⁵

Company	A	B	C	D	E	F	G	H	I	J	K
Plans Expressly Target ²⁶⁶ Kids Under 17	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
Ads in Magazines Majority Under 18 ²⁶⁷	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Ads on Teen T.V. Shows ²⁶⁸	Y	Y	n/a	Y	Y	n/a	Y	Y	n/a	Y	n/a
Ads on Web Sites Popular With Teens ²⁶⁹	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y

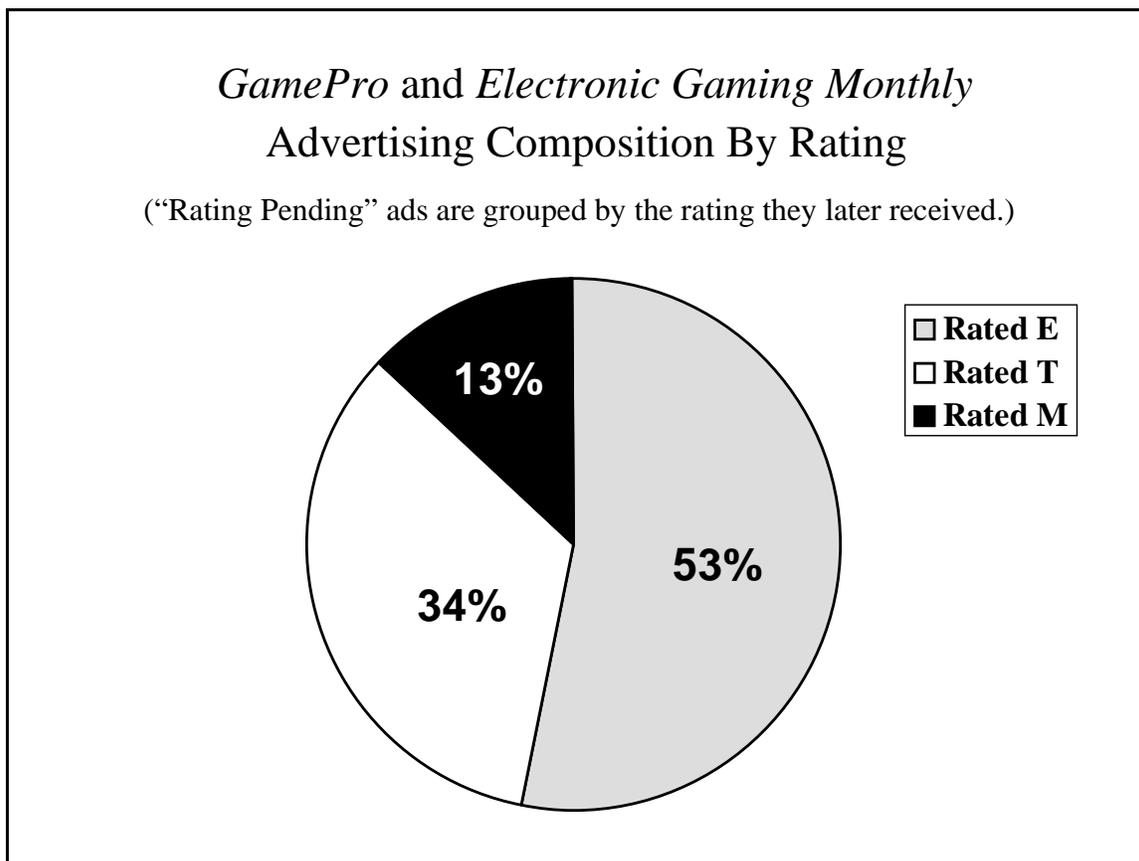
The companies' efforts at targeting youngsters under 17 appear to have had some success. Although only 7% of video games are rated M, a variety of studies and surveys indicate that these games, despite their "Mature" rating, are quite popular with boys under 17.²⁷⁰ In a survey sponsored by the Commission, 24% of children between the ages of 11 and 16 included at least one M-rated game in their list of three favorite games.²⁷¹ Data from industry surveys in 1998 and in 1999 indicate that 40% of users of the M-rated games included in those surveys were under 18.²⁷² Information from game data registration from two companies is mixed, however. Data from one company indicate that for five of its M-rated games, 14% to 67% of the users were 17 and under, while data from another company indicate that for two of its M-rated games, 10% of the users were under age 18.²⁷³

1. Print advertising

All but two of the companies produced marketing documents containing plans to place ads for M-rated games in magazines that have a majority under-17 readership. Specifically, nine of the 11 companies' marketing documents show repeated plans to place numerous ads for M-rated games in magazines such as *GamePro*, *Electronic Gaming Monthly*,²⁷⁴ *Expert Gamer*, *Tips and Tricks*, and the *Unofficial PlayStation Magazine*, all of which have a majority (from 54% to 68%) of readers or subscribers age 17 or under.²⁷⁵

The Commission reviewed 18 months (from January 1999 through June 2000) of two of those magazines – *GamePro* and *Electronic Gaming Monthly*.²⁷⁶ This review reveals that 16 industry members, including eight of the companies contacted by the Commission, advertised M-rated games in these magazines. Although one company placed only a single ad, others used these magazines more frequently, with five IDSA members placing 20 or more advertisements

for M-rated games.²⁷⁷ In fact, the 16 companies collectively placed more than 200 advertisements for M-rated games in these magazines, even though 60% of their readership is 17 and under, indicating broad-based targeting that is inconsistent with the self-regulatory system.²⁷⁸ A breakout of the magazine ads by rating²⁷⁹ is presented below.²⁸⁰



2. Television advertising

Game companies also use television advertising to target M-rated games to teen audiences. Marketing documents set out a long list of television programs popular with teens ages 12 to 17 on which companies planned to place their advertisements for M-rated games.²⁸¹ These programs include *The Simpsons*, *WWF Smackdown*, *That 70's Show*, *King of the Hill*, *Dawson's Creek*, *Buffy the Vampire Slayer*, *Xena: Warrior Princess*, *The Wayans Brothers*, *Hercules: The Legendary Journeys*, *Baywatch*, *X-Files*, *V.I.P.*, *Smart Guy*, and *WCW Wrestling*.²⁸²

Company documents also show plans for frequent ad placements for M-rated games on cable networks popular with teens: MTV, Comedy Central, Sci-Fi, USA, TBS (wrestling), and TNT (wrestling). Indeed, at least two companies' media plans for several M-rated games expressly singled out programming on these networks because of their "high M12-24 composition" or because they were "Youth-targeted."²⁸³ A few companies also planned television ads for shows airing in the afternoon, a time-frame particularly popular with teens.

3. Internet marketing

Many of the marketing documents describe plans to build game title awareness and generate sales through promotional efforts on the Internet and, in particular, at Web sites frequented by younger teens. Ten of the 11 companies (91%) produced marketing documents for M-rated games showing plans to place advertisements (typically in the form of banner ads) on popular teen Web sites.²⁸⁴ These included gamespot.com, ign.com, mtv.com, happypuppy.com, and gamesdomain.com.²⁸⁵ One marketing plan described placing ads at ign.com, gamespot.com, and mtv.com as a way to target males ages 12 to 25, and referred to mtv.com, in particular, as a "teen-targeted" site.

C. Marketing T-Rated Games to Children

Although the Commission's primary focus was M-rated games, the Commission also requested marketing documents for some games rated T (Teen) which contain descriptors for violence, and received information on approximately 85 such games. These documents reveal several instances in which company plans expressly targeted T-rated games to those under age 13,²⁸⁶ including, in two cases, children as young as six. Overall, however, game companies appeared to expressly target an underage audience far less frequently for T-rated games than they did for M-rated games. Six of the 11 (55%) companies produced at least one marketing document for a T-rated game that listed children under the age of 13 as the primary or secondary targets of the advertising campaign.²⁸⁷ Of the 41 T-rated games for which marketing or media plans specified a target age, 10 (24%) games had a plan that expressly included those under 13 in the target audience.²⁸⁸

In many instances, the planned magazine and television advertising campaigns to promote these T-rated games looked much like those for many M-rated games, with plans to place ads in the same magazines and on the same television shows.²⁸⁹ In other instances, the planned programs and publications skewed younger than those used to market M-rated games. For example, marketing documents from two companies revealed plans to advertise three Teen games on either the Cartoon Network, Nickelodeon, or both; a large majority of the audience for these channels is between the ages of two and 11.²⁹⁰ Other plans suggested ad placement on several print publications popular with young children – *DC Comics-Kids*, *Sports Illustrated for Kids*, *Nickelodeon Magazine*, and *Disney Adventures*.²⁹¹

D. Licensing Products Based on M- and T-Rated Games

Company documents frequently reference plans to use or license images or characters from M- or T-rated games in a wide variety of products, including action figures, comic books, t-shirts, stickers, key chains, posters, mouse pads, sweatshirts, caps, decals, temporary tatoos, and hand-held versions of the game. As noted above, the IDSA Adcode does not expressly cover licensing.

One area that has drawn particular criticism is game licensees' marketing to children of action figures based on characters from popular M-rated games.²⁹² Sold in the toy aisles of major mass merchandisers and in toy stores, these action figures – regardless of the rating of the game on which the figure is based – are labeled as suitable for children, sometimes as young as four or five.²⁹³ For example, the package for one action figure based on a violent M-rated game states prominently on the front, "Ages 4 and up."²⁹⁴ The back of the package invites the reader to "[j]oin the blood battle" by playing the Nintendo 64 version of the game, which is M-rated. As an additional incentive to purchase the game, the package offers free game codes for navigating the M-rated version of the game.

Action figures, however, also may appeal to older collectors, and comic book retailers catering to adults may stock action figures in the collectibles area of their stores. Several magazine and Web sites target collectors, with ads offering "retired" action figures at premium prices.²⁹⁵

Perhaps in response to such criticism, one game company licensor recently adopted a policy to require its licensees not to advertise, market, or sell products based on M-rated games to those under 17, and to include on product packaging a statement that such products are based on an M-rated game. Another major licensee has begun labeling its licensed products that are based on M-rated games (and R-rated movies) as “Recommended for mature collectors.”²⁹⁶

E. Retailing of Electronic Games

The ESRB has urged retailers to adopt policies restricting the sale of Mature- and Adult Only-rated electronic games. In particular, the ESRB’s “Commitment to Parents” program encourages electronic game retailers to prohibit the sale of computer and video games rated M to persons under the age of 17 without parental permission, and to refuse to sell games rated AO to persons under 18.²⁹⁷

To assess the extent of children’s access to violent M-rated games,²⁹⁸ the Commission contacted 12 retailers and online sellers of electronic games. All of the electronic game retailers the Commission contacted carry M-rated games;²⁹⁹ a few, however, restrict the types of M-rated games stocked. For example, one retailer states that it has a policy not to carry M-rated titles that contain certain content descriptors, including “Realistic Blood & Gore.”³⁰⁰ Another retailer has opened several stores that do not carry games with mature or adult content in order to cater specifically to children.³⁰¹ Most of the retailers contacted do not carry AO-rated games.³⁰²

The ESRB indicates that four retailers have agreed to make their best efforts not to sell games rated “Mature” to children under 17, and that the ESRB is giving each store that participates a certificate it can post announcing that it has made a “Commitment to Parents.”³⁰³ One of these four retailers uses a point-of-purchase cash register system that prompts the cashier, whenever the bar code for an M-rated game is scanned into the system, either to ask for age identification if the customer appears to be under 17 or to inform the adult purchaser that the product is intended for a mature audience.³⁰⁴ A fifth retailer has adopted a policy of not renting or selling M-rated electronic games to youths under the age of 17 unless parental consent is given.³⁰⁵

None of the retailers contacted specifically requests age information before completing an Internet purchase, even where it has policies to verify age for in-store purchases. At least one retailer relies, instead, on its credit-card-only purchase policies to restrict children from buying inappropriate games.

The undercover shopper survey of electronic game retailers conducted for the Commission demonstrates that children under 17 can easily buy M-rated games. Unaccompanied children ages 13-16 were able to purchase these games at 85% of the 380 stores visited.³⁰⁶ Except at a few stores, the teens were not questioned or asked their age when buying the

 FTC Mystery Shopper Survey Games (380 Shoppers)		
Was Rating Information Posted?	YES	12%
	NO	88%
Was Child Able to Make Purchase?	YES	85%
	NO	16%
Did Employee Ask Age?	YES	15%
	NO	85%

games. Even at the four electronic game retailers that the ESRB says have adopted the “Commitment to Parents” program or other restrictions on selling M-rated games to children under 17, underage shoppers were able to purchase an M-rated game 81% of the time (in 64 of 79 stores).³⁰⁷

Recently, the major retailers of electronic games formed their own trade association, the Interactive Entertainment Merchants Association (“IEMA”).³⁰⁸ At its first “Executive Summit” in July 2000, IEMA members were asked to enhance their efforts to provide parents with information about the IDSA/ESRB rating system. Whether those efforts will include increased attention to checking age identification when selling M-rated products is not yet known.

VIII. CONCLUSION

Members of the motion picture, music recording, and electronic game industries routinely target children under 17 as the audience for movies, music, and games that they themselves acknowledge are inappropriate for children or warrant parental caution due to their level of

violent content. The motion picture industry and, until late August, the music recording industry take the position that targeting children is consistent with their rating and labeling programs; the game industry does make targeting children a violation of its self-regulatory code, but violations are widespread. The Commission believes that by targeting children when marketing these products, the entertainment industries undermine their own programs and limit the effectiveness of the parental review upon which these programs are based. Moreover, most retailers make little effort to restrict children's access to these products with violent content.

For the motion picture, music recording, and electronic game industries, a self-regulatory program in which the public can have confidence should include: comprehensive ratings or labels that provide parents with meaningful information about the nature, intensity, and appropriateness for children of depictions of violence; an accurate and consistent rating or labeling process with clear standards; clear and conspicuous disclosures of the rating or label – with related age and content information – on packaging and in advertising; sales and marketing policies that are consistent with the ratings or labels; industry-wide participation; and mechanisms to ensure compliance.³⁰⁹

The motion picture, music recording, and electronic game industries should stop targeting children under 17 in their marketing of products with violent content. All three industries should increase consumer outreach, both to educate parents about the meaning of the ratings and to alert them to the critical part the industries assume parents play in mediating their children's exposure to these products. Because of First Amendment protections afforded to these products, industry is in the best position to provide parents with the information they need. Finally, parents must become familiar with the ratings and labels, and with the movies, music, and games their children enjoy, so they can make informed choices about their children's exposure to entertainment with violent content.

The body of the Report describes the result of the Commission's survey of marketing practices. The empirical inquiry, however, inevitably suggests certain conclusions about ways in which the present system of self-regulation could be improved.

- **Industry should establish or expand codes that prohibit target marketing and impose sanctions for violations.**

The target marketing of R-rated films, explicit-labeled music, and M-rated games to children under 17 is pervasive, and the target marketing of PG-13-rated films and T-rated games to children under 12 is common. The Commission believes that these marketing efforts send children the message that these are movies they should see, music recordings they should listen to, and games they should play. At the same time, the message inherent in the rating or label – that the product’s content is inappropriate for children or that it requires a strong warning to parents – is not adequately conveyed. Marketing directly to children essentially is an end-run around the parental review role underlying the ratings and advisory labels.

While it comes up short on compliance, the electronic game industry at least acknowledges that targeting children undermines its rating system; it has crafted a code of conduct to address this issue. In late August 2000, the music recording industry trade association recommended that recording companies not advertise explicit-labeled recordings in outlets where a majority of the audience is under 17. The motion picture industry has no similar code or guideline. All three industries should 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.

- **Industry should improve self-regulatory system compliance at the retail level.**

Restricting children's access to R-rated movies, explicit-labeled music recordings, and M-rated games is an essential complement to all the rating and labeling programs. The industries should 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. Without action to address electronic access to these products, the ratings and advisory label may be of limited value to parents in the future.

- **Industry should increase parental awareness of the ratings and labels.**

The industries should expand their outreach programs to parents to facilitate informed choice and raise awareness and understanding of the ratings, content descriptors, and advisory labels. They have begun to move in that direction with www.parentalguide.org, which provides links to the various association sites that have information about each rating or label. In addition, the industries 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.

Implementation of these specific suggestions would significantly improve the present regimes of self-regulation. The Report demonstrates, however, that mere publication of codes is not sufficient. Self-regulatory programs can work only if the concerned industry associations actively monitor compliance and ensure that violations have consequences. The Commission believes that continuous public oversight also is required, and that Congress should continue to monitor the progress of self-regulation in this area.

ENDNOTES

1. See Letter from William J. Clinton, President of the United States, to Janet Reno, Attorney General of the United States, and Robert Pitofsky, Chairman, Federal Trade Commission (June 1, 1999) (on file with the Commission).
2. Legislation calling for the FTC and the Justice Department to conduct such a study was introduced in both houses of Congress following the Columbine incident. See Amendment No. 329 by Senator Brownback et al. to the *Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999*, S. 254, 106th Cong. § 511 (1999); H.R. 2157, 106th Cong. (1999); 145 Cong. Rec. S5171 (1999). In May 1999, the U.S. Senate Committee on Commerce, Science, and Transportation conducted hearings on the marketing of violent entertainment media to children. See *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999), www.senate.gov/~commerce/hearings/hearin99.htm (visited July 30, 2000). Based on those hearings, in September 1999, the Majority Staff of the Senate Committee on the Judiciary issued a committee report on this issue. 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).
3. The FTC has the authority to conduct this study under Section 6 of its authorizing statute, 15 U.S.C. § 46. Section 6(f) of the FTC Act provides that “the Commission shall also have power . . . [t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress”
4. In the two years leading up to the Columbine tragedy, more than a dozen students or teachers had been killed in six school-related shootings in Edinboro, Pennsylvania; Richmond, Virginia; West Paducah, Kentucky; Pearl, Mississippi; Jonesboro, Arkansas; and Springfield, Oregon. See John Kip Cornwell, *Preventing Kids from Killing*, 37 Hous. L. Rev. 21, 23 & n.13, 24 (2000); Sue Anne Presley, *Year of Mass Shootings Leaves Scar on U.S.; Sense of Safety Suffers As Fewer Believe ‘It Can’t Happen Here,’* Wash. Post, Jan. 3, 2000, at A1. After Littleton, school shootings occurred in several other cities including Conyers, Georgia; Fort Gibson, Oklahoma; and Flint, Michigan. *Id.*; see, e.g., David Barboza, *Boy 6, Accused in Classmate’s Killing*, N.Y. Times, Mar. 1, 2000, at A14; *Fort Gibson Middle School to Resume Classes a Day After Shooting*, www.cnn.com/1999/US/12/06/okla.school.shooting.06/ (visited July 13, 2000).
5. Some observers point out that other Western democracies have significantly lower juvenile homicide rates than the United States. See Sissela Bok, *Mayhem: Violence As Public Entertainment* 7–9 (1998) (evaluating arguments about American culture). Indeed, the Centers for Disease Control and Prevention found that the United States has a teen homicide rate five times greater than the rate of 25 other industrialized countries combined. See Howard N. Snyder & Melissa Sickmund, National Center for Juvenile Justice, *Juvenile Offenders and Victims: 1999 National Report*, at 25 [hereinafter *Juvenile Offenders*].

Still, the rate of violence perpetrated by young people has actually declined in the 1990's and school-associated violent death remains extremely rare. *See Juvenile Offenders, supra*, at 31 (reporting and analyzing crime statistics collected by the Federal Bureau of Investigation and the Bureau of Justice Statistics from the Uniform Crime Reports and the National Crime Victimization Survey). The 1999 report, which contains statistics collected through 1997, is available at www.ojjdp.ncjrs.org. Additional statistics for teen homicide rates through 1998 are available at www.ojp.usdoj.gov/bj/homicide/teens.htm. *See also* Centers for Disease Control and Prevention, *Assessing Health Risk Behaviors Among Young People: Youth Risk Behavior Surveillance System, At-A-Glance 2000*, www.cdc.gov/nccdphp/dash/yrebs/yrebsaag.htm (visited June 26, 2000).

See also Lou Harris & Assocs., *The Metropolitan Life Survey of the American Teacher, 1999: Violence in America's Public Schools – Five Years Later: A Survey of Students, Teachers, and Law Enforcement Officers* (May 26, 1999) (noting sizeable decrease in public school teachers' and students' perceptions of amount of school violence between 1993 and 1998, but reporting sizeable minority's concerns that school violence would increase in next two years); Thomas Cole, *Ebbing Epidemic: Youth Homicide Rate at a 14-Year Low*, 281 JAMA 25 (Jan. 6, 1999); *cf.* Nancy D. Brener et al., *Recent Trends in Violence-Related Behaviors Among High School Students in the United States*, 282 JAMA 440 (Aug. 4, 1999) (reporting decrease among adolescents in non-fatal aggressive behaviors such as fighting and weapon carrying).

6. *See generally* Mark H. Moore & Michael Tonry, *Youth Violence*, in 24 *Crime and Justice: A Review of Research* (Michael Tonry & Mark H. Moore eds., 1998); L. Rowell Huesmann et al., *The Effects of Media Violence on the Development of Antisocial Behavior*, in *Handbook of Antisocial Behavior* (David M. Stoff et al. eds., 1997).

7. In the days following the Columbine killings, many of the major news outlets featured stories about Dylan Klebold and Eric Harris's infatuation with movies, music, and video games that contained extremely violent content and reinvigorated the public debate about the effects of violent entertainment media on youth. *See, e.g.*, Steven Levy, *Loitering on the Dark Side – The Columbine High Killers Fed on a Culture of Violence That Isn't About to Change*, *Newsweek*, May 3, 1999, at 39; Karen Thomas, *Surrounded by Sound and Fury: Whirlwind of Violence, Hate Sweeps Kids On Line and Off*, *USA Today*, Apr. 22, 1999, at D1.

8. *See, e.g.*, Gregg Easterbrook, *Watch and Learn*, *The New Republic*, May 17, 1999, at 22; Erica Goode, *Terror in Littleton: the Motives; When Violent Fantasy Emerges as Reality*, *N.Y. Times*, Apr. 25, 1999, § 1 at 30. The Commission's study is concerned only with the marketing practices of the entertainment media that depict violence, and not with the news media's depiction of real world violence.

9. Congressional committees held hearings, issued reports, and considered legislation on entertainment media violence. *See generally supra* note 2. Public health organizations such as the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association expressed their concerns about the "excessive portrayal of violence in the entertainment industry." *See* American Medical Ass'n, *AMA Applauds President's Call for*

Study of Effects of Media Violence Marketing on Children, June 1, 1999 (press release), www.ama-assn.org/ama/pub/article/1835.html (visited June 30, 2000); *see also* American Academy of Pediatrics Committee on Public Education, *Media Education*, 104 *Pediatrics* 341–43 (Aug. 1999), www.aap.org/policy/re9911.html (visited June 30, 2000). Parent and media responsibility advocacy groups renewed their calls for an end to the marketing of violence to children. *See, e.g.*, S. Robert Lichter et al., Center for Media and Public Affairs, *Merchandizing Mayhem: Violence in Popular Culture* [hereinafter *Merchandizing Mayhem*] (Sept. 1999), www.cmpa.com/archive/viol98.htm (visited June 30, 2000). And a broad coalition of public figures (including former Presidents Gerald Ford and Jimmy Carter, Retired General H. Norman Schwarzkopf, several U.S. Senators, religious leaders, actors, psychiatrists, psychologists, and university professors and other educators) devised an Internet-based *Appeal to Hollywood* to urge media leaders to adopt a new voluntary code of conduct for the entire entertainment industry. Specifically, the signatories to the *Appeal to Hollywood* called for a code of conduct, broadly modeled on the National Association of Broadcasters (“NAB”) Television Code, that would:

- (1) affirm in clear terms the industry’s vital responsibilities for the health of our culture;
- (2) establish certain minimum standards for violent, sexual, and degrading material for each medium, below which producers can be expected not to go;
- (3) commit the industry to an overall reduction in the level of entertainment violence;
- (4) ban the practice of targeting adult-oriented entertainment to youth markets;
- (5) provide for more accurate information to parents on media content while committing to the creation of “windows” or “safe havens” for family programming (including a revival of TV’s “Family Hour”); and, finally,
- (6) pledge the industry to significantly greater creative efforts to develop good family-oriented entertainment.

See An Appeal to Hollywood, www.media-appeal.org/appeal.htm (visited June 26, 2000). In the 1980's, the Justice Department challenged, on antitrust grounds, certain unrelated provisions of the NAB code that would have artificially increased the demand for commercial time. *See United States v. National Ass’n of Broadcasters*, 536 F. Supp. 149, *consent entered*, 553 F. Supp. 621 (D.D.C. 1982). But the Justice Department’s lawsuit did not challenge certain NAB restrictions on advertising aimed at children. Indeed, in 1994, the Justice Department approved voluntary television violence guidelines by the Association of Independent Television Stations, which included a series of parental advisories to be used for programs with violent material. *See* Robert Pitofsky, Chairman, Federal Trade Commission, *Self-Regulation and Antitrust, Remarks at the D.C. Bar Association Symposium, Washington, D.C.* [hereinafter *Self-Regulation and Antitrust*] (Feb. 18, 1998), www.ftc.gov/speeches/pitofsky/self4.htm (visited June 26, 2000).

10. *See* Donald E. Cook, M.D., President, American Academy of Pediatrics; Clarice Kestenbaum, M.D., President, American Academy of Child & Adolescent Psychiatry; L. Michael Honaker, Ph.D., Deputy Chief Executive Officer, American Psychological Ass’n; & E. Ratcliffe Anderson, Jr., American Medical Ass’n, *Joint Statement on the Impact of Entertainment Violence on Children*, July 26, 2000 (statement released at Congressional Public Health Summit), www.aap.org/advocacy/release/jstmtevc.htm (visited Aug. 1, 2000). For a review of

some of the research on the impact of violence in entertainment media on children, see Appendix A (*A Review of Research on the Impact of Violence in Entertainment Media*).

11. *Id.*

12. Researchers funded by the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) of the Department of Justice are studying the characteristics of at-risk juveniles and factors that contribute to violence committed by or against juveniles. OJJDP reports that “the risk that an adolescent will become involved in violent offending and/or be a victim of violence varies based on a number of different factors, including individual characteristics, family characteristics, peer and school factors, neighborhood environment, and daily activities.” OJJDP, *Report to Congress on Juvenile Violence Research 5* (July 1999) (summarizing results of seven violence studies) [hereinafter OJJDP Report]. The National Institute of Mental Health (“NIMH”), is also involved in ongoing research into the causes of youth violence. NIMH is involved in basic research and clinical studies, and oversees research grants at universities and other institutions, on the causes of youth violence. For an overview highlighting what is known about risk factors for the development of aggressive and antisocial behavior from early childhood to adolescence and into adulthood from a research perspective, see the fact sheet on *Child and Adolescent Violence Research at the NIMH*, available at www.nimh.nih.gov/publicat/violenceresfact.cfm (visited Aug. 1, 2000). More data on these factors should be available by the end of this year: the Surgeon General is currently preparing a report on the various risk factors and developmental markers that have been connected through epidemiological research with youths between the ages of 12-18 who commit violent acts. See Opening Remarks by the President in White House Strategy Meeting on Children, Violence, and Responsibility (May 10, 1999), www.pub.whitehouse.gov/uri-res/I2R?urn:pdi://oma.eop.gov.us/1999/5/17/5.text.1 (visited Aug. 14, 2000).

13. See Barry Meier, *Terror in Littleton: The Gun Debate; In Renewed Battle Over Weapons Control, Both Sides Use Attack to Advance Agendas*, N.Y. Times, Apr. 26, 1999, at A17; see also Jill M. Ward, Children’s Defense Fund, *Children and Guns: A Children’s Defense Fund Report on Children Dying from Gunfire in America* (Oct. 1999), www.childrensdefense.org. In its report to Congress, OJJDP reported that firearms were “involved in no less than 80% of the incidents of each of the [OJJDP-sponsored juvenile] violence studies reporting on this topic.” OJJDP Report, *supra* note 12, at 11-12.

14. See Bok, *supra* note 5, at 7–9; cf. American Academy of Pediatrics Committee on Communications, *Media Violence*, 95 Pediatrics 949, 951 (1995). Although most researchers attribute the lower rates of teen homicide in other countries to stricter gun control laws, some note that other countries place more controls on the media than does the United States. Many stable industrialized democracies, in the absence of a strong constitutional guarantee of freedom of expression and First Amendment-like safeguards against censorship, monitor the media and enforce regulations regarding the advertising and marketing of the media, either directly or through quasi-governmental bodies. They also employ ratings systems that contain some similarities to – and some differences from – those currently used by the media industries in the United States.

15. See, e.g., Jonathan Kellerman, *Savage Spawn: Reflections on Violent Children* (1999) (acknowledging that entertainment media violence might cause an adolescent who is already prone to violent behavior to engage in harmful conduct).

The entertainment media are a particularly important part of youth culture in the U.S. According to a Kaiser Family Foundation study released in November 1999, which examined media use among a nationally representative sample of more than 3,000 children ages 2-18, the typical American child spends an average of more than 38 hours a week – nearly the equivalent of a full-time workweek – with entertainment media outside of school. The Henry J. Kaiser Family Foundation, *Kids and Media @ The New Millennium: A Comprehensive National Analysis of Children's Media Use* (1999), www.kff.org. (visited June 26, 2000). Other studies indicate that children's use of the media may be even higher. See Appendix B (*Children as Consumers of Entertainment Media: Media Usage, Marketing Behavior and Influences, and Ratings Effects*). Although much of that time is spent watching television, youngsters spend an average of nearly 10 hours a week listening to music, and nearly five hours a week playing video games or using a computer for fun. The Kaiser study found that younger teens spend the most time watching movies, with children aged 8-13 spending three hours per week, and teens ages 14-18 spending one hour and 17 minutes per week at movie theaters. *Id.* Even more recent data released in June 2000 by the Annenberg Public Policy Center are consistent with these results. See Emory H. Woodard, IV & Natalia Gridina, *Media in the Home 2000: The Fifth Annual Survey of Parents and Children 8* [hereinafter *Media in the Home 2000*] (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000). These figures highlight the significant role that the entertainment media – and advertising and promotion for the various media – play in children's lives.

16. The entertainment media – in part in recognition of their societal role and in part in reaction to public criticism and events like the Littleton tragedy – have been engaged in an ongoing process of trying to determine their level of responsibility to American children and parents. See David Finegan, *BMG's Zelnick: "Increase the Peace" in Media*, *Hollywood Reporter* (Feb. 23, 2000). BMG Entertainment President Strauss Zelnick called for "more industry discussion on violent entertainment and more industry policing of its products." In addition, Zelnick advocated that "[t]he ultimate responsibility for deciding what music to listen to and what TV shows to watch rests with consumers and, in the case of kids, their parents We need to give them the tools that they need to exercise that responsibility." Zelnick did, however, emphasize that the industry "can't and won't ask our artists to eliminate any mention of sex and violence – not even loveless sex and pointless violence." *Id.*

See also Steve Chagollan, *Biz Influence Spans Beyond H'wood*, *Daily Variety*, June 9, 2000, at A2; Michael Mehle, *Killer Concepts: Does Entertainment Celebrate Violence for Its Own Sake? Critics and Programmers Argue Their Case*, *Denver Rocky Mtn. News*, Apr. 16, 2000, at D14; Claudia Puig, *Hollywood Examines Its Soul: Worried About Censorship, Leaders Debate How to Uncreate a Monster*, *USA Today*, Apr. 27, 1999, at D1; Ira Teinowitz & Ann Marie Kerwin, *Media Tighten Policy on Ads' Violent Themes*, *Advertising Age*, May 10, 1999, at 3. But see Sharon Waxman, *Click. Bang. It's Only A Game: Video Designers Shrug Off Blame for Teen Violence*, *Wash. Post*, May 27, 1999, at C1.

17. Fay Fiore, *Media Violence Gets No Action from Congress*, L.A. Times, Nov. 20, 1999; see generally Dennis Hunt, *Debate Over Film Violence Intrudes on a 'Love' Fest*, USA Today, May 17, 1999, at D4.

18. For example, the FTC has supported the National Advertising Division of the Council of Better Business Bureaus' self-regulatory system, which is overseen by the National Advertising Review Council, for many years. See Pitofsky, *Self-Regulation and Antitrust*, *supra* note 9. The FTC has also reviewed the effectiveness of the alcohol industry's self-regulatory guidelines for advertising and marketing to underage audiences. See Federal Trade Commission, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers, A Report to Congress from the Federal Trade Commission* [hereinafter *Self-Regulation in the Alcohol Industry*] (Sept. 1999), www.ftc.gov/reports/alcohol/alcoholreport.htm. The Commission's interest in industry self-regulation in the entertainment media marketing context is motivated in part by its strong belief in the benefits of self-regulation, and in part by its concern that government regulation of advertising and marketing – especially if it involves content-based restrictions – may raise First Amendment issues. The First Amendment issues that have been raised in the context of restricting or limiting advertisements for media products are identified in Appendix C (*First Amendment Issues in Public Debate over Governmental Regulation of Entertainment Media Products with Violent Content*).

19. See Appendix C.

20. The history of the development of the rating systems is described in Appendix D (*An Overview of the Entertainment Media Industries and the Development of Their Rating and Labeling Systems*).

21. The electronic game and motion picture industry systems identify those products that have received a particular rating due to the products' violent content. The recording industry members, in contrast, were not able to specify which recordings had received a parental advisory label due to violent lyrics. They instead provided information about recordings that contain "explicit" content, which may include strong language or references to violence, sex, or substance abuse.

22. The companies that provided information and documents to the FTC for this study are as follows: (a) *Movie Studios and Theaters*: American Multi-Cinema, Inc.; Carmike Cinemas, Inc.; Cinemark USA, Inc.; GC Companies, Inc.; Loews Cineplex Entertainment Corp.; Metro-Goldwyn-Mayer Studios, Inc.; National Amusements, Inc.; Paramount Pictures; Sony Pictures Entertainment; Regal Cinemas; Time Warner Entertainment Company, L.P. (including its independently managed divisions Warner Bros. and New Line Cinema); Twentieth Century Fox Film Corp.; United Artists Theatre Circuit, Inc.; Universal Studios, Inc.; The Walt Disney Company (including its separately operated subsidiary Miramax Film Corp.); (b) *Music Recording Companies*: BMG Entertainment; EMI Recorded Music, North America; Sony Music Entertainment, Inc.; UMG Recordings, Inc.; and Warner Music Group, Inc.; (c) *Electronic Games Designers and Publishers*: Acclaim Entertainment, Inc.; Activision, Inc.; Apogee

Software, Ltd.; Capcom Entertainment, Inc.; Eidos Interactive, Inc.; Electronic Arts, Inc.; GT Interactive Software Corp. (now Infogrames, Inc.); Id Software, Inc.; Interplay Entertainment Corp.; Konami of America, Inc.; Midway Games, Inc.; Sega Companies (Sega of America, Inc., Sega Enterprises, Inc., & SegaSoft Networks, Inc.); Sierra On-Line, Inc.; (d) *Retailers*: Amazon.com, Inc.; Babbage's Etc.; Best Buy Co., Inc.; Blockbuster Video; CDNow, Inc.; Electronic Boutique Holdings Corp.; eToys, Inc.; Hollywood Entertainment Corp.; MTS, Inc. (Tower Records/Video/Books); Musicland Group, Inc.; Target Stores, Inc.; Toys "R" Us, Inc.; Trans World Entertainment Corp.; Wal-Mart Stores, Inc.; and (e) *Media Outlets*: Black Entertainment Television, Inc.; Channel One Network; MTV Networks. See Appendix E (*Entertainment Industry Information Requests*).

23. FTC staff met and corresponded with the Motion Picture Association of America ("MPAA"); the National Association of Theatre Owners ("NATO"); the Recording Industry Association of America ("RIAA"); the National Association of Recording Merchandisers ("NARM"); the Entertainment Software Rating Board ("ESRB"); the Video Software Dealers Association ("VSDA"); the Interactive Digital Software Association ("IDSA"); the Internet Content Rating Association ("ICRA"); the Software and Information Industry Association ("SIIA"); the Interactive Entertainment Merchants Association ("IEMA"); and the American Amusement Machine Association ("AAMA").

24. Section 6(f) of the FTC Act, 15 U.S.C. § 46, constrains the FTC from disclosing publicly materials that contain or constitute trade secrets or privileged or confidential commercial or financial information. When the Commission determined that certain materials or information that the companies or trade associations had marked as "confidential" could be disclosed under the statute for this Report, it provided the companies with notice of the Commission's intent to disclose such information, as required under Section 21 of the FTC Act, 15 U.S.C. § 57b-2, and the applicable Commission Rules. In the case of confidential commercial or financial information that the Report discloses in anonymous or aggregated form, the source document is not specifically cited.

25. In addition to industry sources, the Commission received information from a wide range of consumer, public health, and advocacy organizations. The American Academy of Pediatrics, American Psychological Association, Center for Media Education, Center for 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 were among the organizations that provided information to the Commission.

26. See Appendices E (*Entertainment Industry Information Requests*) and F (*Mystery Shopper Survey and Parent-Child Survey*). The Commission is grateful for the data and analysis concerning Internet advertising provided by Anne Rollow, a Master's Degree Candidate at the John F. Kennedy School of Government and Harvard Business School, and author of *Self-Regulation in the Entertainment Industry: A Study of Online Marketing and Advertising Practices for Entertainment Products with Violent Content* (on file with the Kennedy School of Government and the Commission).

27. Jack Valenti, *The Voluntary Movie Rating System: How It Began, Its Purpose, The Public Reaction* 4 (1996).

28. In *Ginsberg v. New York*, 390 U.S. 629 (1968), the Supreme Court held that material that was not obscene for adults might nonetheless be obscene for children. In *Interstate Circuit v. Dallas*, 390 U.S. 676 (1968), the Court struck down as unconstitutionally vague a local ordinance establishing a motion picture classification board. Nevertheless, it held that such a classification ordinance, if narrowly drawn, could be constitutional due to the state's interest in regulating the dissemination of material to juveniles that it could not regulate as to adults. In the years since the Supreme Court decided *Interstate Circuit*, the Court has decided many cases involving issues of speech and children. For a discussion of these cases and the constitutionality of governmental regulation in this area, see Appendix C.

29. *Rules and Regulations of the Classification and Rating Administration*, Art. II § II (A) (1998). The MPAA members studios are: The Walt Disney Company; Time Warner Entertainment Company, L.P.; Paramount Pictures; Universal Studios, Inc.; Twentieth Century Fox Film Corp.; Sony Pictures Entertainment; and Metro-Goldwyn-Mayer Studios, Inc. MPAA member companies distributed at least 90 of the 100 highest-earning films at the box office over each of the past five years, in terms of gross receipts. See *NATO 1999-2000 Encyclopedia of Exhibition* 336-39 (top releases for 1995-1998); www.worldwideboxoffice.com (top releases for 1999).

The agreement not to distribute a film without a rating apparently does not extend to home video. For example, Universal Studios recently released an unrated version of the film *American Pie*.

30. See Opinion Research Corp., *An Appraisal of the Motion Picture Industry's Voluntary Rating System* [hereinafter *MPAA Survey*] (July 1998) (telephone survey of 2,021 adults and 254 teenagers ages 12 to 17 years old); The Henry J. Kaiser Family Foundation, *Parents and the V-Chip: A Kaiser Family Foundation Survey* [hereinafter *Kaiser Survey*] (May 1999) (telephone survey conducted by Princeton Survey Research Associates of 1,001 parents of children ages 2-17), www.kff.org/content/archive/1477.

31. *Id.*

32. The Commission sent requests to all seven MPAA member studios. Two additional studios, Miramax Film Corp. and New Line Cinema, are subsidiaries of The Walt Disney Company and Time Warner Entertainment Company, L.P., respectively. Because they are under separate management, they received separate requests.

33. The studios and theaters were generally cooperative in supplying their marketing materials. All the film studios redacted financial information from their media plans, citing its sensitive competitive nature and tangential relevance to the study. Accordingly, the Commission does not have figures on the costs associated with marketing individual films, although the MPAA estimates the average marketing cost for a film in 1999 at \$24.5 million. Valenti, *The*

“*Contradiction Molecule*”: *The Rise of the American Movie Goer – and Other Quirks in Human Behavior 2* (Mar. 7, 2000) (speech on file with the Commission). The studios provided ample material to answer the core question: whether the films in question were marketed to those under the age designated in the rating.

34. Third-party views of the motion picture rating system and of the other rating and labeling programs studied for this Report are presented in Appendix G (*Third-Party Views and Suggestions for Improvement of the Entertainment Media Rating and Labeling Systems*).

35. See www.filmratings.com.

36. See Voluntary Response of the Motion Picture Association of America, Inc., Including Responses of the Classification and Rating Administration and the Advertising Administration [hereinafter *MPAA 9/21/99 Submission*] (Sept. 21, 1999), at 2. CARA members serve “at will” and can be removed at any time with or without cause. *Id.*

37. Richard M. Mosk, *Motion Picture Ratings in the United States*, 15 *Cardozo Arts & Entertainment L. J.* 135, 142 (1997).

38. *Id.*

39. Valenti, *supra* note 27, at 6.

40. *MPAA 9/21/99 Submission*, at 8 (fewer than two percent of CARA’s ratings have been appealed).

41. *Rules and Regulations of the Classification and Rating Administration*, *supra* note 29, at Art. III § I (A).

42. *Id.* at Art. III § IV (D). If the appeal is successful, the film will be rated as requested by the appellant.

43. See www.filmratings.com (visited July 18, 2000) (explanation of the PG-13 category). See also www.mpa.org/movieratings/about/index.htm; Valenti, *supra* note 27, at 8 (“If violence is too rough or persistent, the film goes into the R (restricted) rating.”).

44. See www.mpa.org/movieratings/search.htm (visited June 22, 2000).

45. A September 1999 study conducted by the Center for Media and Public Affairs (“CMPA”) reported that, of the 50 top-grossing films in 1998, half of the 10 most violent movies – as determined by CMPA – were rated PG-13 (the other half were rated R). *Merchandizing Mayhem*, *supra* note 9. To determine the 10 most violent films, CMPA counted the number of scenes containing violence, which was defined as any deliberate act of physical force or use of a weapon in an attempt to achieve a goal, further a cause, stop the action of another, act out an angry impulse, defend oneself from attack, secure material reward, or merely to intimidate others. Thus defined, the 10 most violent movies of 1998 were *Saving Private Ryan* (R), *The Mask of*

Zorro (PG-13), *Lethal Weapon 4* (R), *Blade* (R), *Rush Hour* (PG-13), *Ronin* (R), *The Negotiator* (R), *U.S. Marshals* (PG-13), *Man in the Iron Mask* (PG-13), and *Small Soldiers* (PG-13).

46. Motion Picture Association of America, Inc., *MPAA Advertising Handbook 3* (1997); Valenti, *supra* note 27, at 10.

47. *See MPAA Advertising Handbook, supra* note 46, at 6, 16-17, 21 (“all print advertising must be suitable for all audiences”; “trailer for general audiences must be suitable for all audiences and must not contain any scenes which most parents would find objectionable to their young children”; “[a]ll television spots should be made with a general audience in mind.”).

48. *Id.* at 4.

49. *Id.* at 16-17.

50. Valenti, *supra* note 27, at 10.

51. *Id.* Because the studios desire to show trailers to the widest audiences possible, virtually all national releases regardless of their final rating – including all the R-rated movies examined by the Commission – create “all-audience” trailers.

52. The MPAA deems a “teaser” trailer any trailer disseminated before a film is rated. Once a film is rated, it is termed a “regular” trailer. *MPAA Advertising Handbook, supra* note 46, at 17.

53. In addition, CARA will often determine that a film deserves a PG or PG-13 rating based on its theme. For these movies, if the trailer conveys the adult-oriented story, it has conveyed something CARA deemed inappropriate for children without parental guidance.

54. *See MPAA Advertising Handbook, supra* note 46, at 2.

55. Additional examples include the trailer for *The General’s Daughter*, which contains references to rape and “worse than rape,” and the trailer for *The Jackal*, which deals with assassination.

56. *See MPAA Advertising Handbook, supra* note 46, at 21.

57. Documents submitted to the Commission show that NATO members advocated issuing explanations for ratings as early as 1984, but the MPAA member studios did not approve the inclusion of explanations until six years later.

58. Memorandum from Bethlyn Hand, Director, MPAA Advertising Administration to All Advertising Directors (Nov. 19, 1999) (CARA “discusses the rating reasons with each individual company. When the rating is accepted, the reasons become part of the rating”) (on file with the Commission).

59. NATO has advocated placing explanations in all print advertising since at least 1994. The MPAA appeared to acquiesce to placing explanations in print advertising in November 1999, when it announced jointly with NATO that rating reasons would be placed in print advertising. NATO & MPAA, *Movie Rating Explanations to Augment All Print Advertising*, Feb. 9, 2000 (joint press release). This agreement, however, was never implemented.

60. *Movie Ratings: Not Fit for Viewing*, U.S. News & World Report, Apr. 3, 2000, at 67 (MPAA focus groups found print size too small; industry contracts limit print size). The current referral to the Web site where explanations are posted, however, takes up as much space as a typical explanation that accompanies the film:

“for rating reasons go to www.filmratings.com” versus
“for some brutal medieval battles” or
“for some horror violence and gore” or
“for intense sequences of strong violence and strong language” or
“for intense sequences of action violence, sexuality and innuendo” or
“for thematic elements involving death, some disturbing images and language.”

61. Valenti, *The “Contradiction Molecule,” supra* note 33.

62. The MPAA maintains an explanation of its rating system on its own Web site, available at www.mpa.org; *see also* www.cara.org. A search feature available at both Web sites, as well as at www.filmratings.com, displays reasons (*e.g.*, language, violence, nudity, sex, and drug use) for a particular movie’s rating.

63. *See, e.g., Poll: Most in U.S. Embracing New Technologies*, June 6, 2000, www.cnn.com/2000/TECH/computing/06/06/digital.innovation/index.html (visited July 26, 2000) (nearly half of U.S. households have Internet access).

64. The referral is not present in or is not legible in many newspaper advertisements, even when those ads prominently display the URL for the film’s official Web site.

The Commission visited the official movie Web sites for 46 rated films in December 1999 and for 38 rated films in June 2000. *See* Appendix H (*Entertainment Media Ratings Information and Self-Regulatory Efforts on the Internet*). None provided rating explanations, nor did they link to any ratings explanation site.

65. *See Kaiser Survey, supra* note 30 (about 82% of parents reported using the movie rating system; of those, 90% found the system “very useful” or “somewhat useful”); *MPAA Survey, supra* note 30 (75% of American parents with children under 17 believe the movie rating system is “very useful” or “fairly useful”); Peter D. Hart Research Assocs., *Entertainment Software Rating Board Survey* (conducted Oct. 8-17, 1999) [hereinafter *ESRB Survey*] (survey of 1,005 adults with children ages 3-17 living in their household; 82% of respondents found the movie rating system “very helpful” or “somewhat helpful”) (on file with the Commission). *See also* Appendix F (*Mystery Shopper Survey and Parent-Child Survey*).

66. See Appendix F.

67. See Gallup Org., *Children and Violence* (conducted June 1999), www.gallup.com/poll/indicators/indchild_violence.asp (visited June 25, 2000). Five hundred people were asked: “Do you believe that the producers of the following entertainment media do or do not provide adults with enough information about the violence content to make decisions about what is appropriate for children? How about movies? Video or computer games? Lyrics to popular music on CDs, tapes or radio? Television programming?”

68. *MPAA Advertising Handbook*, *supra* note 46, at i. As noted above, there is one exception to this rule: some trailers are specifically approved only for restricted audiences and can only be shown at either R- or NC-17-rated features. *Id.* at 16-17.

69. “‘How a movie is marketed – that is not within the rating system,’ Valenti said. Besides, he added, ‘how can you monitor every piece of advertising that goes out? You can’t monitor every marketing program.’” Denise Gellene, *Marketers Target Schools by Offering Facts and Features*, L.A. Times, June 4, 1998, at D1.

70. See Walter E. Dellinger & Charles Fried, A Paper Presented to the Federal Trade Commission on behalf of Sony Pictures Entertainment Inc., Metro-Goldwyn-Mayer Studios, Inc., Miramax Films, Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Warner Bros., and Walt Disney Pictures and Television, *First Amendment Implications of the Federal Trade Commission’s Inquiry into the Marketing to Minors of Motion Pictures That Depict Violence* (Jan. 19, 2000).

71. *Id.* at 3-4.

72. For those theaters that do not explicitly state such a policy in their operating manuals, the Commission has inferred such a policy based upon an analysis of trailer placement memoranda. Only one theater has a written policy of limiting trailers to similarly or more restrictively rated features, *i.e.*, trailers for R-rated movies only with R-rated features, trailers for PG-13-rated movies with R or PG-13 features, etc. Trailer reports from this theater show, however, that the policy is not enforced.

73. The analysis of motion picture marketing that follows relates to the marketing plans for the domestic theatrical release of the movies the Commission examined. Only a handful of movies that the Commission examined had their home video release supported with a major marketing effort, and even these were much smaller than the enormous theatrical campaign. Thus, an examination of the marketing materials for home video release yielded no significant information not contained in a film’s theatrical marketing campaign.

74. A recent analysis noted that in 1998 and 1999, television advertising consumed approximately 75% of all spending by the major studios for traditional media advertising, *i.e.*, television, radio, magazine, newspaper, and outdoor. Michael Burgi, *Where the Money Went*, *The Hollywood Reporter*, May 16-22, 2000, at S-8.

75. The 12-17 audience is critical to the motion picture industry. MPAA studies show that in 1998, children 12-17 accounted for 17% of the total movie-going audience (although they comprised less than 10% of the population) and that 49% of teenagers describe themselves as frequent moviegoers, *i.e.*, at least once a month. *NATO 1999-2000 Encyclopedia of Exhibition* 362, 364; *Self-Regulation in the Alcohol Industry*, *supra* note 18, at 9 (citing Bureau of the Census, U.S. Department of Commerce, PPL-91, Appendix A: Resident Population – Estimates by Age, Sex, Race and Hispanic Origin (Aug. 1998)). One study conducted by a studio in 1999 noted that in the next five years, teens would overtake the “boomers” as the leading movie ticket buyers.

76. All of the 44 R-rated films the Commission selected for its review were promoted and advertised in media outlets where those under 17 comprise a substantial part (*i.e.*, 20% or more) of the audience. For example, all of the films advertised heavily on MTV and on other programming popular with 12- to 17-year-olds. *See Appendix I (Television, Print, and Online Demographics)*. In deciding which R-rated films’ marketing campaigns were *targeted to* underage audiences, however, the Commission gave the studios the benefit of any doubt that they were not targeting children under 17. With this in mind, it appeared that the overall marketing approach for nine of the 44 R-rated films was less aggressive toward those under 17 than the other 35 films. Thus, even though these nine films were marketed in such a way that those under 17 were likely to be drawn to them, the Commission has declined to conclude that they were actually targeted to children under 17.

77. Eight of nine studios submitted material containing express statements that children under 17 were part of the target audience for an R-rated film.

78. Examples: “Target Audience: The primary target audience is Adults 18-49; The secondary target audience is People 12-24”; and “Target Audience: Primary, People 15-24 (Female Skew).”

79. The one studio that did not submit documents containing express statements that those under 17 were part of the target audience had six films that fell within this second category.

80. For these films, the percentage of the audience under 17 varied widely, from the single digits to a high of close to 50%. For example, for one R-rated film, trailer and TV commercial test demographics included 25% of the test group being 12-14 and another 25% being 15-17. Tests on five TV commercials for another film were conducted among 1800 people, where 16%-17% of the audience was 12-14 and another 16%-17% was 15-17. Forty-six percent of a recruited audience for one screening of another R-rated film was age 17 or younger.

81. A preliminary research plan for a sequel film stated:

Since the bulk of the audience were moviegoers between 12-24, it is suggested that the sample be comprised mostly of 12 to 24 year olds, half between 12 and 17, and half between 18 and 24. Although the original movie was “R” rated and the sequel will also be “R” rated, there is evidence to suggest that attendance at

the original move [sic] dipped down to the age of 10. Therefore, it seems to make sense to interview 10 to 11 year olds as well. In addition, we will survey African-American and Latino moviegoers between the ages of 10 and 24.

82. In studio media plans, demographic information on younger children is usually expressed in terms of children ages 6-11 and demographic information on teenagers is usually represented in terms of those ages 12-17. Accordingly, the Commission chose to analyze PG-13 films using age 11 as the cut-off instead of age 12 to determine if the films were being marketed to those under the age designation in the rating. This does not mean that children 11 and under were the only target audience or even the primary target audience for these nine films. For these films, however, children 11 and under were at least part of the target audience.

83. See Appendix I.

84. For example, a regional promotional report for one movie referred to promotional spots during a local station's airing of *Buffy the Vampire Slayer*, *Dawson's Creek*, "and other teen-oriented programming."

85. Examples of network and nationally syndicated shows most used by the films explicitly targeting those under 17 include *The Simpsons*, *Buffy the Vampire Slayer*, *Dawson's Creek*, *Xena: Warrior Princess*, *Hercules*, and professional wrestling shows such as *WWF Smackdown*.

The president of marketing for New Line Cinema was recently quoted as saying that the company advertised on *Buffy the Vampire Slayer* specifically to reach 13- to 17-year-old girls. See Cindy Mulkern, *Target Practice*, *The Hollywood Reporter*, May 16-22, 2000, at S-3, S-4. Although the film discussed in that article was rated PG-13, it highlights the audience the studios try to reach by advertising on *Buffy the Vampire Slayer*.

86. As one media plan stated: "Spot TV was used heavily throughout the campaign to capitalize on its ability to reach Teens in Early Fringe, Access, and during the Weekends." This same plan also noted how Spot TV advertising could be used to evade some network restrictions on advertising R-rated movies on certain shows: "Prime programs that could not be cleared in network due to the 'R' rating were purchased in Spot TV instead (*Simpsons*, *TGIF*)."

87. One studio document notes that 55% of MTV's audience is 12-24. See also *infra* note 175.

88. For one R-rated movie, 309 of 889 total cable commercials aired on MTV, more than twice the number of any other cable network. Another R-rated movie from a different studio targeting teens achieved almost two thirds of its cable audience exposure through MTV. Similar numbers can be found in marketing plans for movies made by other studios.

After MTV, the other main cable vehicles used most frequently to advertise R-rated movies to those under 17 include BET, The Box, and Comedy Central. In addition, violent R-rated science-fiction movies tended to advertise heavily on the Sci-Fi Channel. Select programming on USA, TNT, and TBS, such as professional wrestling and *Saved by the Bell*,

were also consistently used to advertise to audiences under 17.

89. See Appendix I.

At least one studio was thwarted in its attempt to market a PG-13 film to children 6-11 on Nickelodeon, when the network concluded that it would not be appropriate to air advertisements for that film because the Nickelodeon audience was mostly children under 12 and the film contained situations not seen on Nickelodeon, including several gun battles, a couple of fight sequences, and some devastating bomb blasts (in addition to strong language and sexual suggestion). The studio's advertising agency noted that it had advanced several justifications for showing the ads, including: "This film needs the audience Nickelodeon provides to be successful."

90. Data provided by Nielsen Media Research show that MTV programming is popular among 6- to 11-year-olds. See Appendix I.

91. To the contrary, one studio instructed its staff to purchase Spot TV advertising for an R-rated movie on a particular show only if the composition of children 6-11 was low.

92. Both the studios and the theaters submitted copies of numerous trailer check reports.

93. *NATO "G" Trailer Resolution* (Apr. 1989). Two years later, NATO reminded its members "to be sensitive to the thematic content of teaser trailers when exhibited with feature films, especially those films which are suitable for general viewing," and encouraged the studios to "[exercise] good judgment and sensitivity in determining which teaser trailers to attach to feature films, being guided not only by considerations of the rating of the films in question, but also their thematic content and the likely audience demographics involved." *NATO Teaser Trailer Resolution* (Nov. 1991).

94. Trailer reports received from both the studios and the theaters confirm that this was fairly routine. For example, one studio attached the trailer for an R-rated film to its PG-13 feature that targeted children under 11.

95. All rating reasons are from www.filmratings.com.

96. For example, another studio distributed free passes to its R-rated movie at local high schools, distributed flyers and posters to youth groups such as the Camp Fire Boys & Girls, and sponsored a movie-related contest at what it termed a "very popular teen-hangout." Other areas for retail distribution or placement of promotional items targeting teens included pizza parlors, arcades, record stores, skating or skate boarding shops, and comic book stores.

97. The Commission found little evidence of toys being used to market R-rated films – in contrast to PG-13 films – to teenagers or pre-teens. Although some action figures are based on characters in R-rated movies, most of these are marketed to adult toy collectors. Some, such as action figures based on characters from the film *The Matrix*, state on the packaging that they are

intended for adult collectors.

98. One marketing plan for a PG-13 film explicitly targeted boys 4-14 with movie-related retail merchandise, including toys sold at Toys “R” Us and Kmart. These items were scheduled to hit retail shelves simultaneously with the launch of the media blitz for the film, approximately three weeks before the film’s release. Other retail items licensed from this film include Halloween costumes and masks. Because the Halloween costumes and masks were not scheduled to be released until three months after the film’s theatrical release and no other details were given in the marketing plan, it does not appear that this was part of a campaign to generate interest in the film among children 11 and younger; instead, it appears to be a method of capitalizing on the interest already generated.

The marketing plan for a film from another studio included a toy give-away with every Burger King Kids Meal. Because of the nature of the film, a card at the Burger King counter offered parents an alternative toy: “While Kids Meal toys are suitable for children of all ages, [name of film] may contain material that is inappropriate for younger children. Parents should consult movie rating. An alternative toy is available upon request.”

A third studio featured a children’s meal with toy premiums at Taco Bell, which contributed a multi-million dollar advertising campaign that significantly increased interest in the film among young children.

99. Some films examined did not use radio advertising. For other films, the information on radio advertising is not complete enough to make a determination as to whether it was used to market to those under 17.

100. One studio’s plans routinely cited as the rationale for choosing radio its “Good delivery of teens.” This studio did not even attempt to use radio to try to attract those over 17 to two of those films, noting, “The daypart mix for spot radio is designed to utilize the most effective dayparts against a key demo of P12-17.” A second studio made repeated references to purchasing advertising on teen radio stations. Three other studios purchased radio advertising based on a station’s ratings among people aged 12-24.

101. *See* Appendix I.

102. “Planet Report Inc. is the nation’s largest provider of corporately sponsored bookmarks and newspaper posters. Distributing [sic] over 100 million bookmarks in 95% of the nation’s schools.” *Schools Help Boost Rugrats’ Box Office Success*, PR Newswire, Nov. 23, 1998. “Planet Report’s ad sponsored newspaper posters reach an audience of 12 million grade school and high school students each day of the school year.” *35,000 Teens Speak Out on Everything from Anti-Smoking Ads to Nike*, PR Newswire, July 17, 1998. “[T]he Planet Report Campaign [is] an informational poster serviced to 41,000 high schools.” Carrie Bell, *RCA Looks Beyond Top 40 Base for Sweden’s Robyn*, 109 *Billboard*, Nov. 8, 1997, at 5. In addition, studio marketing material refers to Planet Report’s circulation as 8,000. Planet Report indicated to the Commission that studios have stopped using its services following the Columbine shootings.

Planet Report also has a separate circulation to elementary schools where it will advertise PG-13-rated films. While several PG-13-rated films noted the use of Planet Report in their media plans, they did not indicate whether it was the high school or elementary school circulation.

103. See Frank Green, *Fast and Deep; Tabloid Gives Teens Hard-Nosed News*, San Diego Trib., Apr. 11, 1991, at D-1 (“Most of the 3,500 instructors who use Fast Times to teach current events make it mandatory reading in class.”).

104. Examples of sites specifically mentioned to appeal to teens are mtv.com, gamespot.com, happypuppy.com, glossy.com (targeting teenage girls), ubl.com (listed in a marketing plan as the number two teen site after mtv.com), bolt.com, and chickclick.com. Many of these sites were identical to the sites used by the electronic game industry to promote M-rated games to teens, including interactive game sites. See Appendix I.

105. For example, eonline.com is an independent site with links to movie sites; however, horroronline.com, a site devoted to horror films that also provides trailer downloads, is operated by Universal Studios.

106. Under the motion picture industry’s self-regulatory system, a film’s Web site, like its other advertising, should be limited to what the Advertising Administration determines is acceptable for general audiences. The ready accessibility of restricted trailers on Web sites would thus appear to be inconsistent with the MPAA’s standards. As technology advances and movies may be downloaded in their entirety from the Internet on home computers, restricted materials may become even more accessible to children.

107. The definition of the R-rating category states that “under 17 requires accompanying parent or adult guardian.” This raises two issues for the box office: (1) how to define “accompanying”; and (2) how to define “parent or adult guardian” to determine what categories of adults other than parents (such as the parents of a child’s friends) are acceptable guardians.

Each theater has adopted its own policies to answer these questions. Four of the eight major theater chains contacted interpret “accompany” to mean that the underage patron must be physically accompanied, for the duration of the film, by a parent or guardian; in other words, the adult must view the film with the child. Strict enforcement of this policy has caused these theaters a degree of difficulty, as some parents complain that their consent should be sufficient and that requiring parents to accompany their child is a ploy to sell more tickets. Indeed, the other four chains allow the parent or guardian to purchase the ticket and not actually accompany the underage patron into the auditorium.

Nor do the major chains have a uniform interpretation of “parent or adult guardian.” Three of the chains interpret the restriction to limit admission to underage moviegoers who are accompanied by the child’s actual parent or legal guardian, and will not allow admission to underage patrons who are accompanied by a sibling or friend who meets the age requirement. The others interpret parent or adult guardian to be any adult over the age of 18 or 21, regardless

of the adult's relationship to the underage patron.

108. NATO, *Theatre Owners Announce National Movie Ratings Enforcement and Education Campaign*, June 8, 1999 (press release).

109. NATO provides its members with a training video concerning the rating system and how it can best be enforced.

110. Doing so would make it easier and more efficient to restrict access to an entire section of the multiplex, rather than individual auditoriums.

111. This discussion of home videos encompasses sales and rentals of movies that are available on digital video discs (DVDs), which will account for a growing proportion of home movies in the future and may become the successor technology to movies in VHS format. *See* Appendix D, text accompanying notes 11, 30-31.

112. *See* Blockbuster Membership Application (form dated Mar. 15, 2000). The form states that, "You must be 18 years of age or older for membership," and includes a statement of Blockbuster's policy:

Blockbuster policy is to refuse rental or sale of "R" rated movies, "M" rated games or other product designated as restricted to youths under the age of 17 unless parental consent is given. If you wish to allow youths under the age of 17 to rent or purchase restricted product you MUST check the box below, otherwise it is Blockbuster policy to refuse rentals and sales to youths as stated above.

Hollywood Video requires members to be at least 18 years old and to present two forms of identification, one of which must be a driver's license or state-issued ID. *See* www.hollywoodvideo.com/stores/facts.htm (visited Aug. 3, 2000).

113. *See* Membership Application dated 3/15/2000.

114. *See supra* note 112.

115. This retailer, which requires that members be 18 or older to open a rental account, reports that most of its store managers have policies against selling adult pornographic videos and magazines to minors, but do not appear to have policies restricting the sale or rental of R-rated movies to minors. Only a few managers reported that they have express policies against selling or renting R-rated movies to minors. In particular, one supervisor of two California stores informed his employees that: "Since the shooting in Colorado, there have been a lot of senators and even the President talking about legislation for the sale of music, movies, and games. With this said, we need to do our part and enforce that no minor purchase anything they should not . . . [This] means no one under 17 should be renting or purchasing a rated R movie and 18 for Mature 18+ or X rated."

116. In addition to analyzing the online policies of the seven retailers with “bricks and mortar” stores that also sell online, the Commission requested information from two exclusively online retailers of home videos.

117. In addition to displaying the MPAA rating on the product information page, Hollywood Video’s e-commerce arm, www.reel.com, provides detailed information about each movie through its “Movie Anatomy” feature, which rates movies from 1-10 (with 10 the highest) on 14 elements including sex, violence, action, humor, and family appeal, based on typical audience responses.

118. See *RIAA Parent’s Page-Background* [hereinafter *RIAA Parent’s Background*], www.riaa.com/Parents-Advisory-1.cfm (visited July 24, 2000).

119. RIAA is a trade association that represents the creators, manufacturers, and distributors of over 90% of the sound recordings produced and sold in the United States. See *RIAA About Us-Who We Are*, www.riaa.com/About-Who.cfm (visited July 24, 2000). The RIAA first announced its labeling system on behalf of many of its larger members in 1985. See Parents’ Music Resource Center, *PMRC, PTA and RIAA Agree on Recorded Lyrics Identification*, Nov. 1, 1985 (press release). The two parents’ groups that pushed the industry to provide information about recordings with explicit lyrics were the Parents’ Music Resource Center (“PMRC”) and the National Parent Teacher Association (“NPTA”). The PMRC was founded in 1985 to promote a consumer labeling plan for music recordings that contain explicit sexual or violent references. See William Raspberry, *Filth on the Air*, Wash. Post, June 19, 1985, at A21. See Appendix D for a detailed history of the recording industry’s parental advisory labeling program.

120. See *RIAA Parent’s Background*, *supra* note 118.

121. See Memorandum from the RIAA to the Federal Trade Commission, *The Voluntary Parental Advisory Program: What It Is and What It Is Not* [hereinafter *RIAA Parental Advisory Program Memorandum*] (July 2000), at 8. In 1996, the RIAA and the National Association of Recording Merchandisers (“NARM”) increased their efforts to educate consumers about the parental advisory label, providing posters and other display materials to music retailers and wholesalers to increase public awareness of the labeling system. See *The RIAA Bolsters Its Parental Advisory*, www.riaa.com/News_Story.cfm?=-106 (visited July 24, 2000); *Parental Advisory Merchandise Order Form* [hereinafter *Order Form*], www.narm.com/programs/merch/parent.htm (visited July 24, 2000). This point-of-purchase material, printed in deep yellow, explains to consumers that “The Parental Advisory is a notice to parents that recordings identified by this logo may contain strong language or depictions of violence, sex, or substance abuse. *Id.* In addition, NARM makes available another version of this material containing the additional language, “This store reserves the right to restrict sales to children of product carrying the Parental Advisory.” *Id.* NARM provides these posters free of charge to its retailers, charging only for shipping and handling.

Individual recording companies have relied on the RIAA and NARM to educate the public about this labeling program and have not taken any independent steps toward consumer

education. In May 2000, the RIAA highlighted the labeling program on its revised Web site and, on June 8, 2000, joined with the MPAA and ESRB in announcing a Web site, www.parentalguide.org, that provides links to the different industry associations involved with rating or labeling systems.

122. See *RIAA Parent's Background*, *supra* note 118.

123. Two of the major recording companies that submitted information to the Commission emphasized that they are committed to using the advisory as a means of informing parents about recordings with explicit content. Another recording company noted that “[i]t is not in [the company’s] interest to send unstickered product to outlets [such as Wal-Mart or Kmart that do not sell labeled recordings] only to have it sent back because the outlets find it to contain objectionable content. Accordingly, [the company] is “generally conservative when making the stickering decision so as to avoid displeasing its retailers.”

124. This Report uses the term “labeled recordings” – also known as “stickered recordings” – to indicate a recording with a parental advisory label. In addition, to avoid confusion, this Report uses the term “recording companies” rather than the common industry term “record label” to refer to the music recording firms themselves.

125. The amount of marketing materials provided to the Commission varied substantially from recording to recording. For most recordings (47 of 55), the companies submitted materials showing their plans to promote a specific recording in a variety of media (*e.g.*, print, television, the Internet, and street marketing). For eight of the recordings, however, the companies provided less comprehensive marketing information, materials that usually discussed promotions in only one or two media.

126. The Commission initially sought to focus its inquiry only on recordings that received an advisory label because they contained *violent* lyrics (*e.g.*, excluding from review recordings labeled only for use of expletives or sexual references). Because the recording companies do not keep track of the reasons why any particular recording was labeled, however, all companies agreed instead to produce information about the top-selling recordings that received the advisory label *for any reason* (language or references to sex, violence, or substance use). The Commission did not attempt to evaluate which recordings contained violent lyrics.

127. Moreover, common sense suggests that the “parental” advisory is meant for parents of minor children.

128. See *RIAA Parental Advisory Program Memorandum*, *supra* note 121, at 16.

129. One of the companies stated:

The decision whether to sticker an album is made at the [recording] label level. The procedures followed to make that decision differ to some degree from label to label. In general, during the process of listening to or reviewing lyrics from an

album, a determination is made by one or more individuals as to whether stickering is appropriate.

130. A recent New York Times article referred to one or more of the music companies using “review boards” to analyze the explicit content of each music recording released. *See* Neil Strauss, *Recording Industry’s Strictest Censor Is Itself*, N.Y. Times, Aug. 1, 2000, at A1. Neither the RIAA nor the individual recording companies disclosed the existence of such review boards in their submissions to the Commission, although, as suggested in Section VIII below, standardized labeling procedures would help to provide a self-regulatory program in which the public could have confidence.

131. As one recording company explained:

In determining whether to sticker a particular album . . . record labels initially examine and evaluate the use of expletives in the album. Once it is determined that the use of expletives in a song on an album warrants a sticker, the inquiry ends and the record labels do not further proceed with the inquiry with respect to the remainder of the album.

Although this company also pointed out that “since the decision to sticker is made on a case-by-case basis and the basis for each decision to sticker is not memorialized, it is possible that in some cases particular individuals might exercise their editorial judgments to sticker a recording for reasons other than use of expletives.”

132. This company stated:

Most often the decision [to label] is made on the basis of explicit language, i.e., ‘dirty words.’ Of course, once that decision is made, there is no need to analyze further whether the album contains any other form of explicit content because the RIAA system involves a single sticker that goes on ‘explicit’ records – there is no ‘language’ sticker, ‘sexual content’ sticker, ‘violent content’ sticker, or ‘reference to drug use’ sticker.

133. *RIAA Parent’s Page-Parental Advisory Label, Usage Guidelines for Audio and Music Video Product* [hereinafter *RIAA Parent’s Usage Guidelines*], www.riaa.com/Parents-Advisory-6.cfm (visited July 24, 2000).

134. *Id.* None of the companies provided any additional written policies or procedures, aside from the RIAA guidelines, regarding the format of the label. One company stated that it follows the RIAA guidelines, unless the cover artwork will be adversely affected. Another company reported that the size, format, and placement of the logo “is made entirely on a case by case basis, depending in large part on the artwork presented on the CD’s cover and the intent to make the parental advisory visible.”

135.

Company	# of CDs	PAL on Packaging		Removable Sticker		Smaller Size		Fully Comply	
		#	%	#	%	#	%	#	%
A	10	7	70%	3	30%	3	30%	4	40%
B	12	11	92%	1	8%	3	25%	8	67%
C	11	11	100%	0	0%	1	9%	10	91%
D	9	0	0%	9	100%	7	78%	0*	0%
E	13	12	92%	1	8%	8	62%	5	38%
TOTAL	55	41	75%	14	25%	22	39%	27	50%

*This company produced the marketing materials for nine labeled CDs, along with copies of the CDs. All nine of these CDs placed the advisory on a removable sticker rather than incorporating the label into the CD packaging. However, Commission staff has observed other labeled CDs distributed by this company that did incorporate the advisory into the CD's packaging.

136. The Commission examined the advisory label on 25 top-selling explicit recordings, as determined by Billboard magazine for the week of July 15, 2000. Only nine of the 25 advisories (36%) fully complied with the RIAA-suggested guidelines. Thirteen of the 25 advisories (52%) were smaller than the recommended size; four of the advisories (16%) were removable stickers rather than a logo that was a permanent part of the packaging. Three of the advisories (12%) stated "Explicit Lyrics" rather than "Explicit Content."

137. Forty-five of the 55 labeled recordings provided by the companies were also available in edited versions. Other companies noted that, in addition to the edited version available for sale, they also may create separate edited versions of one or more songs suitable for radio play, listening stations, or in-store play.

138. Two major retailers, Kmart and Wal-Mart, do not carry any explicit-content labeled recordings, stocking only the edited versions of these recordings. *See RIAA Parental Advisory Program Memorandum*, supra note 121, at 15. Several other major retailers stock both the explicit and the edited versions, especially in their online stores.

139. The companies provided unit sales information to the Commission for 25 recordings with both explicit and edited versions. As a percentage of total unit sales, explicit versions accounted for the vast majority of sales, ranging from a high of 99.5% to a low of 78%. For 19 of the 25 recordings (78%), sales of the explicit version accounted for 90% or more of total unit sales.

140. Another company noted:

[It] typically will produce an edited version of a stickered recording if a large volume of the stickered version is sold and demand is anticipated for an edited

version. In such cases, the applicable record label will solicit the artist's interest in producing an edited version of the stickered album, and if the artist is willing to create an edited version, the applicable record label will assist the artist in the creation of such version.

A third company stated that the "decision of whether to produce an edited version of a stickered recording depends on a variety of factors," including whether an edited version is important for promotions, sales, or radio airplay.

141. See also Anthony DeCurtis, *Eminem's Hate Rhymes*, Rolling Stone, Aug. 3, 2000, at 17-18 (stating that "[t]he clean version of the album – which carries no parental-advisory label and is sold at Wal-Mart and Kmart – bleeps the profanity, drug references and most of the violence from the lyrics; the homophobic and misogynist content remains intact.")

142. One company noted that "where one song cannot be sufficiently edited . . . [it may] be removed completely to create an edited version."

143. In at least one of the CDs submitted to the Commission, the packaging for both the explicit and edited versions showed the same image of a figure dripping with blood.

144. See www.riaa.com/Parents-Intro.cfm (visited July 24, 2000).

145. In its 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 (visited July 31, 2000), the American Academy of Pediatrics advocates that "[t]he public, and parents in particular, should be made aware of sexually explicit, drug-oriented, or violent lyrics on compact discs, tapes, music videos, and the Internet. The music industry should develop and apply a system of specific content-labeling of music regarding violence, sex, drugs, or offensive lyrics." *Id.* The National PTA also has recommended a rating system for music recordings and "urge[d] recording companies to put a label on record, tape, and cassette covers rating the material contained within and require that such a rating label would read 'profanity,' 'sex,' 'violence' or 'vulgarity,' if applicable." NPTA Resolution reviewed by the 1998 Conventions Resolutions Committee, page XIV.2. Barbara Wyatt, the president of the Parents' Music Resource Center, has testified that, "There are standardized labels, but no standards," and advocates making the "labels more specific as to content, similar to television ratings." *Labels and Lyrics: Do Parental Advisory Labels Inform Consumers and Parents?: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 105th Cong. 59, 60 (1998). See also Appendix G Part III.

146. The parental advisory label may appear on an album with only a few expletives and no other explicit content, as well as on an album with repeated references to graphic violence and/or sex.

147. See *RIAA Parental Advisory Program Memorandum*, supra note 121 at 9.

148. Studies show that parents' concerns vary with children's age. See discussion in Appendix B Part II (citing *Media in the Home 2000*, *supra* note 15, at 41 and Roper Starch Worldwide, *1999 Roper Youth Report* at 47 (1999)).

149. According to consumer research conducted by the industry, parents had difficulty understanding the lyrics on many rap and hard rock recordings without a printed lyric sheet. Once parents became aware of the lyrics from reading the lyric sheets, many expressed revulsion and exhibited a greater concern about the music their children were buying.

150. See *RIAA Parent's Usage Guidelines*, *supra* note 133.

151. See Appendix F.

152. *Id.*

153. See *Children and Violence*, *supra* note 67.

154. *Id.* The poll indicates that 84% of parents polled believed that the amount of violence that children are exposed to in popular music is a moderately serious to extremely serious problem.

155. MP3, which stands for Moving Pictures Experts Group Level 3, makes high-speed transmission of CD-quality music possible by compressing computer files to almost one-tenth their original size. See *MP3 Revolutionizing Music Business*, www.cnn.com/TECH/computing/special/mp3 (visited Apr. 7, 2000); Rob Walker, *Between Rock and a Hard Drive*, N.Y. Times Mag., Apr. 23, 2000, at 74-75. It is currently the most widely accepted standard for digital audio – with close to a billion MP3 files traveling the Internet in 1999 – but has been criticized by the recording industry as being unable to protect against unlimited copying, thereby threatening artists' copyrights. See Gordon Masson, *How Do Net Pirates Distribute Music?*, *Billboard*, Apr. 1, 2000, at 104, 104; Walker, *supra*, at 77.

156. Although digital music can be transferred in any number of ways, one of the most successful to date has been through a program called Napster, which has allowed any user's MP3 files to be part of a worldwide database that is available to any other user. See Noah Robischon, *Free for All*, *Entertainment Wkly.*, Mar. 31, 2000, at 72, 72; Ed Christman & Brian Garrity, *Web Worries: Downloads, Customer Info*, *Billboard*, Mar. 11, 2000, at 1, 92. Approximately 13 million consumers have used Napster and similar programs to download 500 million songs. See David Segal, *An Upside to Music Downloads*, *Wash. Post*, June 22, 2000, at A1. Napster has been so popular among college students that many universities have banned it because it is such a drain on their computing resources. See Robischon, *supra*, at 72; Walker, *supra* note 155, at 77. A similar product is Gnutella, an openly developed program that provides a decentralized method of sharing files. See Segal, *supra*, at A1. The ease with which Napster and Gnutella have made almost any song available, free, to anyone has led some to predict the end of the music business as it now exists. See Don Clark & Martin Peers, *Music Companies Fight Back, Hoping Downloads for Fees Can Prove as Popular as Free*, *Wall St. J.*, June 20, 2000, at B1 (quoting Avram Miller, former Intel Corp. Vice President); Ann Donahue, *MP3 Search Site: Piracy Made*

Easy, Variety, Mar. 20-26, 2000, at 40, 40. As one Internet retailer put it: “Kids don’t look at music as something they buy; it is something they get.” Christman & Garrity, *supra*, at 92 (quoting Jason Fiber, Vice President of digital strategies for Wherehouse Music/Checkout.com).

157. According to a recent report published by the Annenberg Public Policy Center, “71% of households with kids 8-17 now have computers and 67% of those households connect to the Internet. In all, then, 48% of U.S. households with kids 8-17 have online connections.” Joseph Turow & Lilach Nir, *The Internet and the Family 2000: The View From Parents/The View from Kids* [hereinafter *The Internet and the Family 2000*] 7 (Annenberg Pub. Policy Ctr. U. Pennsylvania 2000) (citing Roper Reports and the 1999 Current Population Survey (CPS)). In addition, according to the 1999 Roper Youth Report, 26% of 8- to 17-year-olds polled use the Internet to sample and listen to music, up from 17% in 1998. *See 1999 Roper Youth Report*, *supra* note 148, at 167 (1999). Commission research also showed a high use of the Internet by children surveyed for listening to music (65%) and downloading music (22%).

Forecasters have predicted that in the next two years, more than 16 million teens will be on the Internet, where they will spend \$1.2 billion on a variety of products, the most popular of which will be music. *See* Michiyo Yamada, *Market Spotlight: Today’s Teens, Tomorrow’s Net Consumers*, Indus. Standard, June 14, 1999, www.thestandard.com/research/metrics/display/0,2799,9901,00.html (visited Aug. 3, 2000). By 2003, 14% of music is expected to be sold online. *See* Maryann Jones Thompson, *Tracking the Internet Economy: 100 Numbers You Need to Know*, Indus. Standard, Sept. 13, 1999, www.thestandard.com/research/metrics/display/0,2799,9801,00.html (visited Aug. 3, 2000).

158. Believing that digital distribution of music is inevitable, many recording companies have tried to create their own system of digital music distribution so that they can maintain control over, and profit from, their music. *See* Clark & Peers, *supra* note 156, at B1; Michael Grebb, *Labels Jump On Digital Rights Bandwagon*, Billboard, Mar. 11, 1999, at 67, 67. A vice-president at BMG states: “Longterm, digital distribution will only expand revenues for the music business.” *Id.* at 77 (quoting Kevin Conroy, senior vice president of worldwide marketing and new technology). Sony, EMI, and Universal recently established their own digital music delivery mechanisms. *See* Eileen Fitzpatrick, *ARTISTdirect Quietly Buys Mjuice, Which May Benefit Major Labels*, Billboard, Mar. 18, 2000, at 6, 6; Martyn Williams, *Sony Establishes Online Music Retailing Venture*, Apr. 7, 2000, www.cnn.com/2000/TECH/computing/04/07/sonet.music.idg/index.html (visited Aug. 3, 2000).

Some retailers even argue that the availability of free music downloads can be an effective marketing tool. *See* Christman & Garrity, *supra* note 156, at 92. At least one musician agrees: “We could care less about the older generation’s need to keep doing business as usual. We care more about what our fans want, and our fans want music on the Internet.” Don Waller, *Dr. Dre Joins Fray, Files Napster Suit*, Apr. 26, 2000 (quoting Fred Durst, lead singer of Limp Bizkit), www.variety.com/article.asp?articleID=111778093 (visited Aug. 17, 2000).

In addition to developing their own delivery systems, the music industry has challenged

many alternative delivery systems in court. The RIAA, along with some artists, sued Napster alleging that it fosters music piracy. *See id.*; Walker, *supra* note 155, at 77. That litigation is ongoing. Recording companies also sued MP3.com over a digital music storage system run on MP3.com's Web site and won an initial victory when a district court judge ruled that part of MP3.com's system violated copyright laws. *See* Walker, *supra* note 155, at 77; David Segal, *MP3.com Is Loser in Copyright Case*, Wash. Post, Apr. 29, 2000, at E1. MP3.com has settled the lawsuit with three of the record labels, agreeing to pay damages and license fees for any albums used; discussions between the remaining recording companies and music publishers are continuing. *See* Clark & Peers, *supra* note 156, at B1 and sidebar at B4; *MP3, EMI Reach Truce*, July 28, 2000, cnfn.cnn.com/2000/07/28/technology/emi_mp3 (visited Aug. 17, 2000).

159. *See RIAA Parental Advisory Program Memorandum*, *supra* note 121, at 2.

160. As one company noted, the advisory label "is primarily a point of sale device designed to assist parents, not an advertising device." This company also stated that print and television advertisements "generally do not include the sticker or any other indication that the explicit version of the album itself contains explicit content."

161. Most of the recording companies have not independently taken steps to ensure that the explicit-content label appears in advertising for their labeled CDs. One company states that its divisions "endeavor to make certain that recordings containing explicit content are not advertised or marketed without displaying the [advisory label]."

162. Like the recording companies, these retailers have not instituted policies or guidelines for the use of the advisory label in advertising for labeled albums. Instead, they depend upon the recording companies to inform them which titles contain explicit lyrics and to provide the pictures of the recordings for use in their ads. The retailers do not monitor whether such artwork contains the advisory label or make efforts to obtain artwork with the label. As a result, the retailer advertising submitted only sometimes shows the advisory. Typical retailer ads, placed in magazines or newspapers, or on the Internet, often display reduced versions of the cover art (a picture of the CD cover) for numerous labeled recordings.

163. The Commission examined advertisements for recordings placed in *Blaze*, *GamePro*, *Electronic Game Monthly*, *Metal Edge*, *Right On*, *Seventeen*, *Teen People*, *Thrasher*, and *Vibe*. *See* Appendix I.

164. A review of 39 artist Web sites or Web pages shows that only four of the 39 sites examined provided the advisory label on the recording cover art in a readable form.

	YES		NO	
	#	%	#	%
Does the site contain album cover art?	33	85%	6	15%
Does the PAL appear on the cover art?	15	45%	18	55%
Is the PAL readable?	4	27%	11	73%
Are there audio clips?	34	87%	5	13%
Are there video clips?	27	69%	12	31%
Is the record offered for sale?	29	74%	10	26%
Is there other information about explicit content?	14	36%	25	64%
Are there age restrictions on listening or purchase?	0	0%	39	100%

See Appendix H. In addition, a separate examination of 14 artist Web sites also showed that 13 of the sites displayed photographs of the CD cover art, but only three of the 13 pictures also showed the advisory label. *Id.*

Moreover, a review of the Web sites of five major music retailers showed that while the advisory label appeared in promotions for explicit-content labeled recordings approximately 50% of the time, the advisory was almost never readable. The review showed, however, that several retailers make additional text disclosures that state “Explicit Content” to inform consumers about the content before they purchase the recording. See Appendix H.

165. See www.cashmoney-records.com.

166. See www.amazon.com.

167. See www.cdnow.com and www.twec.com. Another retailer uses a disclosure stating “clean” near the edited versions, but places no disclosure, such as “explicit,” near the explicit versions that are also for sale. This approach may be confusing to consumers who would not necessarily understand that the version with no disclosure contained explicit lyrics.

168. Commission research indicates that 36% of the children ages 11-13 surveyed, and 74% of the children ages 14-16, decide which music to purchase. See Appendix F. Similarly, according to the 1999 Roper Youth Report, when buying CDs and pre-recorded music, 27% of children between the ages of 8 and 12, and 72% of teenagers between the ages of 13 and 17, make such purchasing decisions without consulting their parents. Also, in the Commission’s undercover shopper survey, unaccompanied children ages 13-16 were able to buy explicit content recordings 85% of the time. See discussion *infra* Section V.C. and Appendix F.

169. According to one company, cooperative advertising involves the recording companies providing funding to their customers (the distributors, wholesalers, and retailers of recorded

music) for these entities to arrange advertising in a variety of media or to provide in-store promotional displays that feature a particular recording.

170. For example, one marketing plan states that “[t]he team is promoting heavily at the local high schools and colleges” and that “[c]olleges, high schools, and community centers are the focus off are [sic] attack.” Another plan states, “We are approaching lifestyle and high school indie marketing companies to aid in awareness and visibility.”

Two marketing plans discuss promoting labeled recordings at sporting apparel stores because of these stores’ popularity with children under 17. One of these plans included distribution of a music video for a song on one of the explicit recordings to “Foot Action” stores because “Foot Action is a key marketing outlet for male rap music buyers. Nearly two thirds of the volume sold in these stores is bought by males teens [sic] ages 12-17 and rap music is ranked #1 as favorite music among this demographic.” *See also infra* note 184.

Other marketing plans referred to placing ads for explicit recordings in “teen” magazines or television shows. One plan stated “We will service the album . . . in June to all teen and television urban shows.”

171. For example, one company produced no marketing information identifying a target audience for any of its labeled recordings.

172. The companies did not provide any information about print advertising placement for six of the 55 labeled recordings.

173. The marketing documents submitted to the Commission discussed placing ads in numerous magazines that have a substantial or majority under-18 readership, including: *Blaze, Electronic Gaming Monthly, GamePro, Heckler, Hit Parader, Jump, Metal Edge, Right On!, Seventeen, Teen, Teen People, Thrasher, TransWorld Skateboarding, Vibe, Warp, and YM*. *See Appendix I*.

174. *See supra* note 163.

175. MTV and BET air music and related programming, such as music videos and events, interviews, documentaries, and news specials. The Box Music Network uses technology allowing the home audience to select music videos on a market-by-market basis. “MTV targets viewers from the ages of 12 to 34” and “The Box Network targets viewers from the ages of 12 to 34.” *See* Viacom Form 10-K [hereinafter *Viacom 10-K*], at I-3, for the year ending Dec. 31, 1999.

An advertisement for MTV states that for three years MTV has “been the #1 cable network for 12-24 year olds.” *See* Advertising Age, May 22, 2000, at 49; *see also* Advertising Age, Apr. 3, 2000, at 25. Similarly, an advertisement for The Box states that it is the “#1 cable network for teens 12-17 VPVH in monday-sunday prime.” The Hollywood Reporter Movies & the Media Special Issue, May 16-20, 2000, at S-21. Other demographic data provided to the Commission by two of the companies indicates that 42% of MTV’s audience is between the ages

of 12 and 17, and that 83% of the audience of The Box is between the ages of 12 and 34. *See also* Jeffrey D. Stanger & Natalia Gridina, *Media in the Home 1999: The Fourth Annual Survey of Parents and Children*, at 11 (Annenberg Pub. Policy Ctr. U. Pennsylvania (2000) (indicating that over 50% of children ages 10-17 watched MTV each year from 1996 through 1999)); Appendix I.

According to an interview with Curtis Gadson, Senior VP of Entertainment Programming for BET, the core BET audience is viewers between 12-34 and this group is its primary target. Barry Garron, *Novel Ideas*, *Billboard/Hollywood Reporter*, Apr. 25, 2000, S-10, at S-11. In addition, one of the recording companies stated the advertising that it placed for the explicit-content labeled recordings on BET reached an audience 12-24. Demographic information produced by another company indicates that during the 4:30 to 7:30 p.m. time slot on BET, 369 viewers per 1000 viewing households were between the ages of 12 to 17 and 359 viewers per 1000 viewing households were between the ages of 18 to 34. *See also* Appendix I.

VH-1, MTV's sister music cable channel, also shows music videos, but, in contrast, "presents music and related programming directed at an audience aged 25 to 44." Viacom 10-K, at I-5. Only two of the marketing plans for explicit-labeled recordings submitted to the Commission mentioned obtaining any exposure on VH-1.

176. Because almost all the marketing materials for explicit-labeled recordings referred to the placement of music videos on these channels, it would appear that the music videos, even if edited to remove some explicit content, play a key role in promoting the sale of explicit recordings to an under-17 audience. Neither MTV nor BET requires a disclosure on music videos that the song appears on a recording with explicit content. Nor did the Commission's monitoring indicate these channels restrict the airing of advertisements for labeled music recordings. In addition, some violent content may remain in the music videos shown on these channels. *See* Robert H. DuRant, *Violence and Weapon Carrying in Music Videos: A Content Analysis*, 151 *Archives Pediatr. Adolesc. Med.* 443-48 (May 1997).

177. The Commission reviewed advertising placed on MTV and BET during popular teen programs such as "Rap City" and "Total Request Live," which are shown during the after-school time slot. Four episodes of each program were reviewed and at least one advertisement for a labeled recording was shown during each episode.

178. *See* Appendix I. In addition, as reported by a popular news magazine, *The Simpsons* was among the top five favorite television shows for 12- to 15-year-old boys and girls, while *South Park* was among the top five favorite television shows of 12- to 15-year-old boys. Barbara Kantrowitz & Pat Wingert, *The Truth About Tweens*, *Newsweek*, Oct. 18, 1999, at 62 [hereinafter *The Truth About Tweens*].

179. As cited above, 48% of U.S. households with kids 8-17 have online connections. *See The Internet and the Family 2000*, *supra* note 157, at 6 (citing Roper Reports and the Current Population Study for 1999). This study also reports that 45% of the 13- to 17-year-olds and 21% of 10- to 12-year-olds polled described their frequency of Internet use as "a lot." *Id.* at 9., tbl.3.

One of the companies stated that it attempts to limit children's access to explicit materials on its Web sites by registering its sites with the Recreational Software Advisory Council. This company stated:

This service allows the registering party to indicate the type of content contained on the site, for example, coarse language. Parents who have purchased parental control software, Net Nanny, can program it to block children's access to web sites registered as containing various categories of content. Alternatively, some labels within [the company] . . . regularly register sites directly with parental control companies.

180. *See supra* note 157.

181. Although two of the recording companies stated that they attempted to use only edited versions of the labeled recordings on their Web sites, the Commission found examples of audio samples from explicit recordings on these and other company Web sites. For example, in November 1999, an entire recording, labeled for explicit content, was made available for audio streaming online. Another marketing plan recognized the need to provide "clean" promotional materials to an underage segment of its audience, yet provided a Web site address that contained explicit material from a labeled recording. Another company promoted an explicit recording on an artist's Web site, featuring an online "After School Special," with audio and video broadcasts.

182. See Appendix I for information from PC Data Online Reports on the share of children ages 12 to 17 that visit: enimem.com, limpbizkit.com, korn.com, sonymusic.com, peeps.com, mtv.com, ubl.com, cdnow.com, launch.com, sonicnet.com, farmclub.com, and wallofsound.com.

183. One plan stated "an aggressive street marketing campaign will be key." Others plans similarly stated that "an aggressive street team campaign will be in effect to support and complement our set-up"; "We will plan to initiate an aggressive street marketing campaign to maximize visibility"; and "This type of guerilla marketing through these web sites will bring enormous visibility to . . . audio and video releases."

184. One marketing plan stated "[n]early two thirds" of the volume sold in Foot Action stores is bought by males ages 12-17 and rap music is ranked as the favorite music among this demographic. Another plan stated that "[e]xposure in their [Foot Action] stores will consist of: 2 pages in their magazine; 3 months video play on their in-store network; and a direct mail piece to 3.3 million of their consumers."

185. The Commission requested information from the following eight music retailers about their in-store and online practices: Amazon.com, Inc. (www.amazon.com, exclusively online), Best Buy Co., Inc. (Best Buy stores and www.bestbuy.com), CDNow, Inc. (www.cdnow.com, exclusively online), MTS, Inc. (Tower Records stores and www.towerrecords.com), Musicland Group, Inc. (includes several different retail stores and www.musicland.com, www.samgoody.com, www.mediaplay.com, www.oncue.com, www.suncoast.com), Target Stores, Inc. (Target stores and www.target.com), Trans World Entertainment Corp. (includes

several different retail stores and www.twec.com), and Wal-Mart Stores, Inc. (Wal-Mart stores and www.walmart.com).

186. *See* Appendix F.

187. *Id.*

188. Entertainment Software Rating Board, *Is This Computer or Video Game Right for Your Home? Check the Rating* (1999) (brochure for parents on computer and video games ratings) (on file with the Commission).

189. *See* Appendix D.

190. *Video Rating System: Hearings Before the Senate Subcomm. on Reg. and Gov't Info. and the Senate Subcomm. on Juv. Just.*, 103d Cong. (1994) (testimony of Jack Heistand, Chairman, Interactive Digital Software Association), *reprinted at* 1994 WL 394774. The Interactive Digital Software Association serves the business and public affairs needs of companies that publish video and computer games for video game consoles, personal computers, and the Internet. Members of the IDSA collectively accounted for more than 90% of the \$6.1 billion in entertainment software sales in the United States in 1999. The IDSA offers services to entertainment software publishers including a global anti-piracy program, staging the Electronic Entertainment Expo trade show, business and consumer research, government relations, and First Amendment and intellectual property protection efforts. More information can be found at www.idsa.com.

191. An alternative rating system was developed by industry members headed by the Software Publishers Association (now the Software & Information Industry Association), a trade association representing developers, publishers, and distributors of personal computer software. In addition, a separate system for rating coin-operated video games was developed by the American Amusement Merchants Association and several other trade groups representing the coin-operated games industry. Both systems are described in Appendix D.

192. The ESRB also rates “finite” entertainment Web sites and Web pages, defined as sites “structured in a manner which allow for no interaction between the site and the user.” Additionally, the ESRB, through its ESRBi Rating System, rates “Entertainment Interactive Arenas,” defined as “free space areas that provide for user participation and/or feedback” The ESRB established the ESRBi Rating System in 1998 to address entertainment Web sites where content can change due to user input (like chat rooms, bulletin boards, or multi-player gaming sites). The ESRBi system is similar to the ESRB system, with requirements for the display of rating icons and rating descriptors on those sites, as well as a required disclosure that “the content of this site may change due to interactive exchanges.” The “i” (interactive) icon is intended to caution visitors to the site that the user can exchange information with other users who may have differing or controversial opinions, or who may influence game play. *ESRBi – About the ESRBi Ratings System*, www.ersb.org/esrbi/about.html (visited Aug. 6, 2000). Unlike the ESRB system, however, this system is not yet widely used by industry members. In fact, the

ESRB lists, on its Web site, only 52 sites and online games that have been rated by ESRBi. *Sites and Online Games Rated by ESRBi*, www.esrb.org/esrbi/ratings.html (visited Aug. 6, 2000). Only three of these are rated Mature. *Id.* Thus, the implementation and use of the ESRBi system is not a focus of this Report.

193. As a condition for obtaining a rating for their games, industry members agree to comply with the requirements of both the IDSA Adcode and the ESRB Ad Principles.

194. The Commission requested marketing plans for specific game titles that the ESRB has rated as containing violent content. The scope of the Commission's requests for marketing plans included sequels to the game title and expansion packs (software that adds additional levels of gameplay to the game). (A sample request letter is reproduced in Appendix E.) The companies also produced plans for games rated for violent content that the Commission did not specifically request. Though the companies did not produce marketing plans for a few games requested, ultimately the Commission received plans for more than 200 games rated as containing violent content. These plans included highly detailed marketing plans, creative briefs, media plans, and ad dissemination schedules. The marketing information for the various games ranged from scant to extensive.

195. The Commission did not contact industry members who had not published any, or had published only a few, Mature-rated games. All of the 11 companies contacted are IDSA members (the IDSA Web site currently lists 32 members), and several officials from those companies serve on the IDSA's Board of Directors. For a list of IDSA members, see *Member Links*, www.idsa.com/members.html (visited July 27, 2000).

196. Raters are paid a fee for each rating session in which they participate. Training for raters includes viewing excerpts from over 100 video games previously rated by the ESRB. *See also News & Info: How Does a Product Get an ESRB Rating?*, www.esrb.org/news.html (visited July 26, 2000).

197. *Id.* To obtain a rating, the game publisher submits either a working version of the game or a video tape containing the most extreme scenes in the game, along with a description of the content of the game using the ESRB's Product Submission Form and Questionnaire. The submission form asks detailed questions about the game, including whether: it contains violent content; the player is rewarded for completing or avoiding acts of violence; the player can hurt, damage, destroy or kill humans or creatures; or the game depicts blood. After the game is rated (typically within five to seven business days), the ESRB requires each company to submit a final copy of the game and its packaging before it is released, so that the ESRB can verify that the content is consistent with what was originally submitted.

198. The ESRB reviews the findings of the raters, and grants the final rating and descriptors. The ESRB then notifies the company of the game's rating and any applicable descriptors. The developer or publisher can accept the rating, change the game and ask for a re-rating, or appeal. If the company accepts the rating, the ESRB issues a Rating Certificate containing the rating and any descriptors for the game. To date, the submitters have accepted nearly all ratings, although

in several instances, the submitters edited games to eliminate certain scenes and resubmitted them to achieve a lower rating. In no instance has anyone appealed the rating.

199. Before January 1, 1998, the Everyone category was called the “Kids to Adult” or “K-A” category. *Ratings Categories & Content Descriptors*, www.esrb.org/rating.html (visited July 26, 2000).

200. *Id.*

201. When packages are printed for use in promotional advertising before ESRB determines the rating, the RP icon must appear on the package. However, once the company ships the packages for retail sale, it must include the actual rating on the packaging. Further, when a company places advertising before the game is rated, the RP icon must appear in the ad, and “to the extent practical Companies should place ads for that title only in publications or outlets whose audiences would be appropriate for the content portrayed in the title.” Once the ESRB issues a rating, game publishers must revise any print advertising to include the rating.

202. *News & Info: How Does a Product Get an ESRB Rating?*, www.esrb.org/news.html (visited July 26, 2000). Sales data from several major game publishers reveals that M-rated and T-rated games account for far more than 7% and 19%, respectively, of the revenue of those game publishers. Additionally, a May 1999 article in *Forbes* commented on the growth in marketing of M-rated games: “Spending on mature-content games rose nearly 50% from 1997 to 1998.” Ben Pappas, *Video Games Generate Billions in Revenue – and Controversy. Do They Go Too Far?*, *Forbes*, May 31, 1999, at 54.

203. The ESRB defines the rating categories as follows:

EC titles have “content suitable for children ages three and older and should not contain any material that parents would find inappropriate.”

E titles have “content suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language.”

T titles have “content suitable for persons ages 13 and older. Titles in this category may contain violent content, mild or strong language, and/or suggestive themes.”

M titles have “content suitable for persons ages 17 and older. These products may include more intense violence or language than products in the Teen category. In addition, these titles may also include mature sexual themes.”

AO titles have “content suitable only for adults. These products may include graphic depictions of sex and/or violence. Adults Only products are not intended to be sold or rented to persons under the age of 18.”

RP titles are awaiting a final rating from the ESRB. *Ratings Categories & Content Descriptors*, *supra* note 199.

Most of the rating icons previously contained an age designation descriptor. The icon for a Mature title formerly stated, “Ages 17 +,” the Teen icon stated, “Ages 13 +,” the Kids to Adult rating (now the Everyone rating) stated, “Ages 6 +,” and the Early Childhood rating stated, “Ages 3 +.” The ESRB reports that the age descriptor was removed to avoid customer confusion in the event two age designations (one placed by the ESRB and one included by the game publisher) simultaneously appeared on the same product – *e.g.*, a product could have contained an ESRB rating icon with an age descriptor for six years and older, while the publisher could have indicated that “for maximum playability, a player should be at least eight years old.”

204. *Rating Categories & Content Descriptors*, *supra* note 199. According to a Commission survey, nearly half of parents who restrict the video games their children can play, do so based on the game’s violent content. *See* Appendix F. Moreover, violent content is the leading reason that parents tell their children not to play a particular game. *Id.*

205. This descriptor means that the game “[c]ontains scenes depicting cartoon/animated/pixelated characters in unsafe or hazardous acts or violent situations.” *Rating Categories & Content Descriptors*, *supra* note 199.

206. This descriptor means that the game “[c]ontains scenes depicting characters in unsafe or hazardous acts or violent situations or photographic detail.” *Id.*

207. This descriptor means that the game “[c]ontains scenes depicting activities characterized as slapstick or gross vulgar humor.” *Id.*

208. This descriptor means that the game “[c]ontains depictions of aggressive conflict involving cartoon/animated/pixelated characters.” *Id.*

209. This descriptor means that the game “[c]ontains realistic or photographic-like depictions of aggressive conflict.” *Id.*

210. This descriptor means that the game contains “[a]nimated/pixelated or cartoon like depictions of mutilation or dismemberment of body parts.” *Id.*

211. This descriptor means that the game contains “[r]epresentations of blood and/or gore in realistic or photographic-like detail.” *Id.*

212. This descriptor means that the game contains “[a]nimated/pixelated or cartoon like depictions of blood.” *Id.*

213. This descriptor means that the game contains “[r]epresentations of blood in realistic or photographic-like detail.” *Id.*

214. As expected from a technology-based product, electronic games have evolved considerably from the monochromatic blips and rectangles moving across a television screen in early games like Pong. Many games now have the feel and production values of both a well-produced motion picture and a record album. They follow a rich storyline and have developed characters who display emotions and facial expressions, utter dialogue, and face conflict, all accompanied by sound effects and a musical score. But such games differ from movies and music in one significant respect – they are interactive, permitting the game player, or “gamer,” to control, or even assume the identity of, a digitized game character. See Kelly Anders, *Marketing and Policy Considerations for Violent Video Games*, 18 J. Pub. Pol’y & Marketing 270, 270 (1999) (“Video games have become increasingly sophisticated since their inception in the 1970s. The games have gone from bouncing a little white ball from side to side on a screen to games of virtual reality in which the player has an active role within the game.”)

215. As one commentator has noted:

The violence [in a segment of the electronic game market] has evolved with the technology, from early shooting games blasting mostly spaceships out of the sky to the most gory violence found today, in which characters literally tear one another apart with all the realistic details accompanying the act. Many of these games require the use of violence, often in increasing intensity, to advance through the various levels, thus using violence as a problem-solving technique.

Id. at 271. Further, it is now common for violent games to put the gamer in a first-person perspective (permitting game play through the eyes of a game character) and to equip the simulated enemies with artificial intelligence, rendering the simulated threats more unpredictable and, therefore, more realistic.

216. A recent example involved the rating of the game *Syphon Filter*, which received a T rating, and its sequel *Syphon Filter 2*, which received an M rating. A recent letter to the editor of *GamePro* magazine asked why the two games received different ratings given that “both have lots of violence and blood.” *Editor’s Letter: Buyers Beware*, *GamePro*, July 2000, at 24. An ESRB representative was quoted as responding, in part, “The full-motion videos in *Syphon Filter 2* contained more killing scenes and a higher volume of blood than the first *Syphon* did. The sequel also included suggestive sexual themes, like a woman undressing who reveals her underwear. . . .” *Id.* Despite these differences, the games have identical content descriptors – “Animated Blood” and “Animated Violence.” *Browse/Search Product Index*, www.esrb.org/search/index.html (visited Aug. 7, 2000) (search for “*Syphon Filter*”).

217. According to the Commission’s survey of parents, more than three quarters of parents who are at least slightly familiar with the rating system for video games believe that the system does at least a fair job of informing them about the level of violence in video games. See Appendix F.

218. Some industry members permit a parent to eliminate blood and/or gore from a game by including a “content lock” with the game. The extent to which enabling the blood/gore content lock reduces the game’s violent content is not clear, however. The game *Soldier of Fortune*, for

example, has an M rating and an “animated violence” descriptor regardless of whether the parent purchases the version with the lock permanently enabled or the version that leaves it to the user to enable the lock; the un-locked version merely has an additional content descriptor for “animated blood and gore.” See *Browse/Search Product Index*, www.esrb.org/search/index.html (visited July 30, 2000) (search for “Soldier of Fortune”).

219. The requirement to disclose content descriptors in print ads took effect on January 31, 2000.

220. The requirement for a voice-over also took effect on January 31, 2000.

221. When clicked with the mouse, banner ads transport a Web surfer to Web pages promoting and selling game titles. According to a 1998 draft marketing plan, “Banners and other advertising buys on sites that reach secondary and tertiary target markets create broad awareness early on. Banners and buttons on gaming sites 30 days prior to product launch peak awareness and demand in time to effect the sell-in.” The ESRB indicates that banner ads may not have enough space to include rating information, and that generally the consumer will get rating information on the Web site linked by the banner ad. However, the Commission’s review suggests banner ads have ample room for this information.

222. Additionally, a number of ads ran showing the Rating Pending “RP” icon months after the ESRB had rated the game. For example, one company advertised a game with an RP icon in the July 1999 issue of *Computer Gaming World*, even though the game had been assigned an M rating more than four months earlier.

223. Typical situations include the failure to include any rating information on the packaging; failure to include the rating icon on the game cartridge, compact disc, or floppy disk; failure to include any descriptors or the correct descriptors on the back of product packaging; and the display of rating icons in magazine ads or in television ads that are not readable to the naked eye or that do not satisfy the IDSA Adcode’s size requirements.

224. There was at least one instance when a rating for one popular action game was changed from Teen to Mature. At the ESRB’s request, the game company sent letters to most of the major retailers stating “[the company] urges [the retailer] to resticker any existing inventory with the enclosed stickers.” However, a June 2000 review of product packaging in one store in the Washington, D.C. metropolitan area showed that packaging for the game in question still displayed the Teen rating.

225. See *News & Info: About the Entertainment Software Rating Board*, www.esrb.org/news.html (visited July 5, 2000).

226. Sixty-one percent of the parents surveyed are aware of a rating system for video games, with 20% of those parents claiming to be “very familiar” with the system, 41% claiming to be “moderately familiar,” and 30% claiming to be “slightly familiar.” See Appendix F. In contrast, 73% of all children stated that they are aware of a rating system. *Id.* Children also are more

aware of the particular ratings that comprise the IDSA/ESRB system than their parents. *Id.*

227. *See* Appendix F. Of all the parents surveyed, only 28% reported using the rating system at least some of the time. Of only those parents who are aware of the system and at least slightly familiar with it, the responses broke down as follows:

<i>Do you use the video game's rating when (name of CHILD) wants to play a game:</i>	
All or nearly all of the time	20%
Most of the time	18%
Some of the time	14%
Rarely	15%
Never	29%
Don't know	4%

228. *See* Appendix F.

229. *See* ESRB Survey, *supra* note 65.

230. *Kaiser Survey*, *supra* note 30, at 2.

231. *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).

232. *See* Appendix F.

233. *Kaiser Survey*, *supra* note 30, at 2.

234. *See* ESRB Survey, *supra* note 65.

235. *See* Appendix F. Twenty-two percent of such parents stated that the system does a fair job of informing them about the level of violence in video games, and 6% said the system does a poor job. *Id.*

236. *See Children and Violence*, *supra* note 67.

237. *See* IDSA, *Entertainment Software Group Creates Independent Council to Oversee Video Game Advertising*, Oct. 13, 1999 (press release), www.idsa.com/pressroom.html [hereinafter *IDSA News Release*].

238. Ad Principles at 5.

239. *Id.* at 4. Anyone may submit a complaint or concern regarding an advertisement. Unless ARC dismisses the complaint, the advertiser will be given 10 business days to submit a written response. *Id.* at 7-8. At the conclusion of the investigation, ARC will determine the merits of the complaint. Either party may appeal that determination to a five-member panel appointed by the ESRB's president and consisting of one member of the public, one member of the advertising industry, one member of the publishing and/or media industry, and two members of the interactive entertainment industry. If ARC finds that an advertiser has violated the ESRB Ad Principles, ARC has the power to impose penalties, including, but not limited to, the revocation of the ESRB product rating, recall of the product, restickering of the product, or the payment of fines. ARC also may refer the matter to the "appropriate outside agency"; release information regarding the referral to the press, the public, and to the media in which the advertising at issue appeared; and publish on the Internet and in print a detailed report regarding such advertiser's action. *Id.* at 9-12.

240. Examples would include using an advertisement with a tag line that states: "banned by the ESRB" or "a 'T' rating has never been pushed this far." *Id.* at 5.

241. The scope and weight of each factor varies in accordance with the demographic for which each product, and its associated advertising, is intended and in relation to the advertising medium involved. *Id.* at 5.

242. Other guidelines on violent content are whether the ad includes: (1) graphic and/or violent depictions of the use of weapons; (2) allusions to or depictions of acts of verbal or physical abuse toward children, women, or animals; (3) allusions to or depictions of torture, mutilation, or sadism; (4) violence toward a political or public figure; or (5) allusions to or depictions of acts of arson or fire play. *Id.* at 6.

243. In at least one instance ARC contacted a company regarding the content of an ad, *i.e.*, the use in advertising of ad copy that might be considered offensive. Another company's creative brief for an M-rated game discusses the impact of the new ESRB Ad Principles on the content of its advertising: "Consider new ESRB guidelines for violence in video game advertising. Requires us to communicate message without being overtly gory or violent."

244. *See GamePro* (May 2000); *Computer Gaming World* (Apr. 2000).

245. *See IDSA News Release, supra* note 237. These publishers are: Imagine Media (which publishes *Next Generation*, *PlayStation Magazine*, *PC Accelerator*, *PC Games*, the *Official Dreamcast Magazine*, *N Gamer*, and the Daily Radar.com Web site); Ziff-Davis (which publishes *Computer Gaming World*, *Electronic Gaming Monthly*, the *Official US PlayStation Magazine*, and *Expert Gamer*); and IDG Games Media Group (which publishes *GamePro*). *Id.*

246. *Editor's Letter: Evil Is as Evil Does*, *GamePro*, Apr. 2000, at 26 (brackets added). The editor's suggestion to "find a pal" reflects common practice. Thirty-four percent of the children

surveyed by the Commission indicated that one of the ways they get video games to play is to borrow them from a friend. *See Appendix F.*

247. IDSA Adcode IV.B (June 30, 1999). The IDSA Adcode contains two other general advertising provisions. First, companies must not represent in their advertising, directly or indirectly, that a title is appropriate for persons under the age for which the game has been rated. *Id.* For example, any users depicted in an ad for a Teen-rated game should actually be age 13 or older. Second, the content of a game displayed in an ad should be an accurate representation of the actual game. *Id.*

248. *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce*, 106th Cong. (1999) (testimony of Douglas Lowenstein, President, IDSA), *reprinted at* 1999 WL 266745.

249. The Commission is aware of at least two instances in which the IDSA looked at possible violations of the prohibition against marketing software to children under the age for which the game was rated as appropriate. In both instances, the IDSA determined that no violation had occurred, but in doing so made clear that placing advertising for M-rated games in magazines or on television programs directed at a teen audience would likely be prohibited by the IDSA Adcode. In seeking information from one of the companies about that allegation, the IDSA described its concerns as follows:

[I]f in fact [name omitted] did target teens in its [M-rated game] advertising and marketing, it would appear to be a direct violation of the IDSA Advertising Code of Conduct which prohibits under Section IV B the targeting of advertising for entertainment software products . . . to consumers for whom the product is not rated as appropriate. . . . The anti-targeting provision is important to the integrity of the rating system and is meant to ensure that young people are not encouraged to play games that are not suitable for them.

250. According to a 1999 study, television advertising and gaming publications are the top two sources of information about upcoming titles for gamers; gaming magazines are the number one source for gamers age 17 and under. *See Anderson & Associates Videogame Snapshot* (Dec. 1999) (analyzing data from interviews with 1,000 console gamers) (on file with the Commission).

251. In-store promotions typically consist of game ads in the store circulars, in-store rebates, and various types of visual media promoting the game, such as floor graphics, banners, shelf signs, standees, end caps, counter cards, and an in-store video of game play.

252. Most companies plan to place demo disks for M-rated games – containing one level of interactive game play or a non-interactive movie of game play – in gaming magazines popular with teens. They also plan game giveaway sweepstakes through the magazines, and often pitch their games to the editors in hope of having the game featured on the magazines' covers or discussed in previews or reviews. The companies similarly attempt to woo the online media by

making screen shots, sound files, and videos of game clips available for display by game-oriented Web sites; this same type of information, as well as downloadable demos, often is found on the companies' Web sites as well, or on Web sites dedicated to the particular game title.

253. Online promotional efforts also often include advertising on the Web for individuals willing to playtest a game before its release (so-called "beta testers"), provide feedback and identify any problems with the game, and potentially promote the game over the Web to other gamers; the use of "evangelists" and "message-seeding" to promote the game among hardcore gaming groups and game-oriented newsgroups; the creation and solicitation of hyperlinks between the game Web site or Web page and other game-oriented Web addresses, such as 3D shooter game sites; and the registration of game titles on popular Internet search engines.

254. The marketing plans, media plans, ad dissemination schedules and/or creative briefs of these 60 M-rated games contained express statements of age targeting. Invariably, these documents used the word "target" or some derivation thereof. For example, a 1998 marketing plan defined the game's "primary target" as "M 12-25 N64 and PSX owners" and the "secondary target" as "M 9-35 who are owners or potential owners of N64 an [sic] PSX." Another 1998 plan stated, "Communication Target: Primary: males ages 18-24 Secondary: males ages 12-17." A plan for a 2000 game stated under the "Target Audience" section, "Primary: Males, 12-24." A 1997 print plan information sheet contained the caption, "Target Audience: Males 12-24." A creative brief for a 1999 game stated under the "Target Audience" section, "Core gamers – males ages 12-24."

For purposes of this Report, a marketing or media plan was not deemed to target an under-17 audience unless the target age specified in the plan was 15 years old or younger; plans for four games targeted teenagers 16 and older.

255. Counting game sequels and expansion packs as distinct games, the Commission received marketing plans for approximately 64 M-rated console games (*e.g.*, games playable on the Playstation, Nintendo 64, Super Nintendo, Dreamcast, or Saturn systems) and for approximately 54 M-rated games playable on a personal computer ("PC"). Forty-six of those 64 console plans, or 72%, expressly targeted an under-16 audience; plans for two other console games were ambiguous regarding whether they targeted an under-16 audience, and therefore, were not counted as instances of express under-16 targeting. Fourteen of the 54 PC game plans, or 26%, targeted an audience under age 16. The lower incidence of underage targeting by plans for PC games likely reflects the older demographic of PC gamers. According to a 1998 study, 78% of console gamers are under age 25 versus 32% of PC gamers.

256. Of the remaining 35 games, the marketing documents for seven did not identify any magazines or television shows where advertisements would be placed. The remaining 28 games that did not appear to be targeted at under-17 publications or television shows were all PC game titles, again demonstrating the lower incidence of under-age targeting for PC games.

257. Marketing documents for only two of the games studied suggested plans to market to females, and even in those instances, females were not considered part of the primary target

audience. One company not contacted by the Commission recently announced its plans to target teenage girls with *Gals Fighters*, an E-rated fighting game with an animated violence content descriptor. See *Retail Buyer Guide*, GameWeek, Mar. 6, 2000, at 17; *Browse/Search Product Index*, www.esrb.org/search/esrb_search.cgi (visited Aug. 8, 2000) (search for “Fighters”).

258. Several of the companies’ narrative responses to the Commission’s requests for information stated that they do not target teens for any M-rated games:

[Company] does not consider teens a target market for any ‘M’ rated games. Thus, [company] does not market its games specifically to teenagers for any games with an ‘M’ rating or above.

[Company] endeavors not to market and/or promote titles to persons outside of the target audience based on that title’s ESRB rating.

[Company] uses its best efforts to limit promotion of its games to a game’s core audience and to refrain from promoting any game which is deemed inappropriate by (company) and/or the ratings system(s) utilized to inappropriate age groups, whether teenagers or children, depending upon the specific game.

Nevertheless, each of these companies submitted marketing documents or made ad placements suggesting otherwise.

259. See *supra* note 254 (listing examples of age target language from marketing documents).

260. One company’s joint marketing document for several M- and T-rated games noted under the target section, “Age in line with ratings – Teen rated: M, 13-25 Mature rated: M, 18-35.”

261. More recently, a creative brief for one game in 1999 identified the target audience as “Core gamers – males ages 12-24,” while noting that the icon for an M rating should appear on the game’s packaging.

262. In many instances, the marketing documents submitted did not indicate whether a described ad placement occurred as planned.

263. Based on the documents submitted to the Commission, radio does not appear to be a major medium for marketing electronic games. Nevertheless, four of the companies appeared to have used radio to promote M-rated games to an under-17 audience. Overall, seven of the 11 companies produced at least some information on marketing M-rated games over the radio, usually involving contests for free copies of the game. Four of those companies expressly targeted a 12-17 or a 12-24 demographic and planned promotions for their M-rated games on radio stations falling into one of the following formats: Contemporary Hit Radio, Urban Contemporary, Rap/Hip Hop, Adult Contemporary, Young Urban, New Rock, Album Oriented Rock, and Rock. One of those companies detailed plans to air radio contests and giveaways of an M-rated game during the morning and afternoon drive times, apparently because these are key

times to reach students; many of its documents contained the notation, “AM DRIVE IS 6A - 8A (PRIOR TO SCHOOL).” The same company’s radio marketing plan for a different M-rated game targeted to males 12-24 stated, “We will use the top Teen stations in each market.” Although one company’s marketing plans targeted children as young as 14, its separate radio marketing plan was specifically targeted to males age 18 to 24.

264. In several instances, the advertising plans for these Mature games did a better job at reaching the 12-17 age group than the 18-34 age group. For example, a 1999 advertisement for an M-rated game showed superior reach for the males age 12-17 demographic, even though the marketing plan indicated that the target audience for that game was males age 17-25; in at least one instance, an ad placement for this game had broadcast ratings nearly twice as high for males age 12-17 than for males age 18-34. A 1999 advertisement by the same company for a different M-rated game showed superior reach for the males age 12-17 demographic, even though the plan listed males age 18-34 as the “core target” and males age 12-17 as a secondary target. A second company ran an advertising campaign in 1999 where the gross rating points were approximately 40% higher for the males age 12-17 demographic compared to the males age 18-34 demographic. This same company planned to run advertisements in 2000 for an M-rated game on the MTV network and on World Wrestling Federation programming such as *Raw*, *War Zone*, *Smackdown*, *Live Wire*, *Metal*, *Superstars*, *Sunday Night Heat*, and *Jacked*; the ratings for this programming were up to two-and-a-half times greater for males 12-17 than for males 18-34.

265. This chart primarily reflects data provided by the companies on marketing activities planned for 1997 through 1999, although some information was provided for marketing activities planned for 1996 and early 2000. Additionally, the data reflect the documents that the companies provided in response to the Commission’s requests; therefore, the data’s completeness is contingent on the companies’ document retention practices and their responsiveness to the requests.

266. One company provided marketing documents targeting children under age 16 for 17 separate game titles; another targeted 16 games to an under-16 audience. All but one of the remaining 10 companies produced plans to target children under 16 for one to six games. At least five of the companies produced plans to target children in 2000.

267. This row combines data showing that the company planned to advertise, and actually did advertise, in magazines with a majority under-18 readership.

268. This row combines data showing that the company planned to advertise, and actually did advertise, on television shows popular with teens aged 17 and under. “N/A” indicates that the company documents did not show plans to use television to advertise M-rated games.

269. One company’s marketing documents did not indicate whether it planned to advertise its M-rated games on the World Wide Web.

270. In the July 2000 issue of *GamePro*, the Readers’ Choice for Best Adventure Game was *Resident Evil 3: Nemesis* (M) and the second runner-up was *Metal Gear Solid: VR Missions* (M).

Your Final Answer, GamePro, July 2000, at 48. The Readers' Choice for Best Shooter Game was *House of the Dead 2* (M), while the runners-up were *Turok: Rage Wars* and *Quake II* (both M). *Id.* According to GamePro's media kit, 62% of its readers are under 18. See Appendix I.

In the July 2000 issue of *Kidscreen*, 100 teens, ages 13 to 16, reported on their "summer wish lists" for a variety of products, including video games. For games, the boys named *Tony Hawk Pro-Skater* (T-rated), *Pokemon* (E-rated), *Resident Evil II* (M-rated) and *Diablo II* (M-rated); the girls named *Pokemon* and *Resident Evil II*. Kid Think Inc., *The Teen Scene in the Summertime*, Kidscreen, July 2000, at 33.

271. See Appendix F. The children were asked, "Which three video games are currently your favorites?" Of the 93 children identifying specific games by title, 22 children named at least one M-rated game.

272. See The NPD Group, Inc., *NPD's Annual 1998 & 1999 Consumer Purchase Data for the Video Games Industry* (on file with the Commission).

273. Several of the companies provided studies on younger teens and "tweens" in response to the Commission's request for any consumer research on particular games. In one study, a company asked 27 males between the ages of 12 and 24 to playtest a demo for a new game that ultimately received an M rating from the ESRB. It asked participants to rate the game for several characteristics, including gameplay and enemy interaction. The report noted that the teens (12-17) "rated all categories higher than the 18-24 year olds." This playtest occurred a few days before the game was submitted to the ESRB for a rating.

274. One company compared the demographics of *Electronic Gaming Monthly* to those of *Next Generation*, another popular game-enthusiast magazine, as follows: "Basically, the two publications capture very different audiences. . . . *Next Generation* is skewed slightly older and is an industry focused book. It would be more effective in reaching PC gamers, and not console gamers." According to its "Reader Profile," 34% of *Next Generation's* readership is under 18.

275. See Appendix I. Marketing documents from three companies also showed plans in 1999 to place advertisements for M-rated games in *Nintendo Power*, a magazine with a readership 75% age 17 and under. Game companies continue to use popular teen publications to promote M-rated games. For example, one company not contacted by the Commission recently was reported as planning to advertise an M-rated game in three of these magazines – *GamePro*, *Electronic Gaming Monthly*, and *Expert Gamer*. See *Retail Buyer Guide*, GameWeek, June 19, 2000, at 14.

276. *GamePro's* readership is 62% 17 and under; *Electronic Gaming Monthly's* readership is 59% 17 and under. See Appendix I. An October 18, 1999 article in *Newsweek* included *GamePro* and *Electronic Gaming Monthly* in a list of the 10 most-read magazines by 12- to 15-year-olds. *The Truth About Tweens*, *supra* note 178, at 62. The editors of *GamePro* described its readership this way:

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. So not only does everybody want to be a GamePro, but everybody wants to advertise in *GamePro*, too.

Editor's Letter: I'll Take GamePro to Win, GamePro, Apr. 2000, at 26.

277. This review looked for placement of ads for any M-rated game, regardless of whether the M-rated game included violent content. Nonetheless, virtually all of the ads were for M-rated games that had a descriptor indicating violent content.

278. Although several of these other companies are not IDSA members, their participation in the ESRB rating system obligates them to avoid targeting M-rated game advertising to children.

279. In preparing the chart, RP ads were included in the rating category that the game later received. The IDSA Adcode provides that RP ads should "to the extent practical" be placed "only in publications . . . whose audiences would be appropriate for the content portrayed in the title." IDSA Adcode at V.D. The chart does not include 18 ads for games that as of August 2000 had not yet received their final rating. Also, in one instance, the ESRB changed a game's rating from Teen to Mature after ads referring to a T rating began to run. Later ads were changed to include the M rating. For purposes of this chart, instead of counting all ads for that game as ads for an M-rated game, ads with the Teen rating were counted as ads for a T-rated game.

280. Industry members may assert that they use magazines like *GamePro* and *Electronic Gaming Monthly*, which are geared specifically to the console game consumer, to promote M-rated console games to *young adult* console players. Yet it is inevitable, given the young demographics of console game players and the corresponding young demographics of the readers and subscribers of these magazines, that this advertising will also reach younger teen and pre-teen game players in substantial numbers, regardless of whether companies consciously intend to target younger teens or children with their ads. Indeed, IDSA's president has publicly acknowledged the substantial percentage of 12- to 18-year-olds who play console games and read *GamePro*, noting that this magazine is targeted at kids, albeit not "exclusively" or "directly." See *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (1999) (testimony of Douglas Lowenstein), *reprinted at* 1999 WL 278161.

281. Grouped together, the companies' marketing documents show plans to air ads for M-rated games on more than one third of the programs that are or were among the 25 network, cable, and syndicated shows most popular with teens 12 to 17 and boys 12 to 16. See Appendix I; Simmons Market Research Bureau, *STARS 1998: Simmons Teen Age Research Study* (underlying data on file with the Commission). In general, regardless of whether their marketing documents expressly targeted an under-17 audience, companies that advertised their M-rated games on television planned to place their advertisements on numerous teen shows.

282. Information from the Video Monitoring Service ("VMS") confirmed the placement of numerous ads for M-rated games on these television shows in 1998, 1999, and the first six

months of 2000. The Commission’s review of ads on several television shows during March and April 2000 revealed that five of nine popular teen shows (*Baywatch*, *Beat Suite*, *South Park*, *Total Request Live*, and *WWF Smackdown*) contained ads for M-rated games.

283. According to one company’s marketing plans for two M-rated games, the way to reach the 12 to 24 age group was to advertise on the following cable networks and programming slots: Comedy Central (run of schedule, *South Park*), MTV (*Beavis & Butthead*, *Daria*, *Singled Out*, and *Weekend Stunt*), TBS/TNT (*Wrestling*, *WCW Thunder*, and *Babylon 5*), and USA (*Baywatch*, *Saved By The Bell*, *Up All Night*, *USA High*, and *Wrestling*). Attached to the media plan was a list of “[a]pproved networks with target allocations”:

Network	GRP Allocation
MTV	60%
Sci Fi	10%
Comedy Central	10%
TBS/TNT	10%
USA Network	10%
Total	100%

A second company’s marketing plan for an M-rated game states, in part:

TV Ads

Target: M12-24

...

Programming:

– Youth-targeted National Cable: MTV, Comedy Central, Sci-Fi, USA, TBS Wrestling, etc.

– Youth-targeted syndication: Hercules, Xena, A. Gladiators, Wrestling, Baywatch, etc.

284. The marketing plans for the eleventh company revealed an intent to promote its M-rated games on the World Wide Web through the creation of game-specific Web pages. However, the company revealed no plans to place banner ads online. Indeed, the only M-rated game for which a marketing plan even mentions banner ads states that “[n]o online banner ads” would be placed.

285. During a recent four-month period, the audience share of persons ages 17 and under ranged anywhere from 32.4% to 41.7% for gamespot.com, from 32.6% to 45.9% for ign.com, from 24.4% to 41.9% for mtv.com, and from 27.6% to 48.8% for happypuppy.com. See Appendix I.

286. One of these games was the T-rated, Game Boy version of an M-rated game, and was targeted to ages seven to 15. Generally, the Commission received little information on the marketing of games for the Nintendo Game Boy, which is a hand-held game console with more rudimentary graphics and sound capabilities than television consoles, such as Nintendo 64 and Playstation, or personal computers. Most Game Boy titles are rated E, appropriate for everyone age six and older. *Browse/Search Product Index*, www.esrb.com/search/platform.cgi (visited Aug. 14, 2000) (search for “Game Boy”). Nevertheless, some E-rated Game Boy titles have been criticized as “playable advertisement[s]” for their M-rated counterparts – a means of introducing consumers as young as six to the characters of violent, M-rated games. Daphne White, *It’s Not Just a Toy, It’s an Indoctrination*, Wash. Post, Aug. 13, 2000, at B3. *See also* Appendix G (*Third-Party Views and Suggestions for Improvement of Entertainment Media Rating and Labeling Systems*) at 3.

287. A marketing plan was not deemed to target an under 13 audience unless the target age specified in the plan was 11 years old or younger. Seventeen marketing plans for T-rated games targeted children ages 12 and older.

288. Five of the 10 plans came from one company.

289. For example, nine of the companies produced plans to advertise 16 T-rated games in anywhere from three to 11 of the same magazines, and on anywhere from 12 to 34 of the same television shows, that they used to advertise their M-rated games.

290. Nielsen Media Research, 3Q ’99. One plan discussed the value of advertising on the Nickelodeon Network: “Though [game title] has a T rating, I have asked Nickelodeon sales to help get an approval so that the product can air on the network. (Nick airs 27 of the top 30 cable shows against our target demo B9-17).”

291. *See* Appendix I. The Commission has not confirmed that advertisements for these games ran in these magazines as planned.

292. *See, e.g.*, David A. Walsh, National Institute on Media and the Family, *1999 Video and Computer Game Report Card* (released Nov. 23, 1999), www.mediaandthefamily.org/research/vgrc/1999-1.shtml; Daphne White, *From Teletubbies to Mortal Kombat in 3 Easy Steps*, 2 *The Lion & Lamb Project Newsletter* 1 (Winter/Spring 1999), www.lionlamb.org/news_2_2_1.html (visited July 31, 2000).

293. Action figures generated over \$1 billion in sales in 1999, a 13% growth from 1998, with 96% of sales generated from licensed products. Star Wars action figures dominated the field, taking first and second place in sales, with Power Rangers, Wrestling figures, and Pokemon ranking third, fourth, and fifth. No action figures based on an M-rated game placed in the top 50 in either year. *See* The NPD Group, Inc., *NPD TRSTS 1999 Traditional Toy Industry Review*. Characters from several popular M-rated games, such as *Duke Nukem*, *Dungeon Keeper*, *Metal Gear Solid*, *Mortal Kombat*, *Quake*, *Resident Evil*, and *Turok*, have been licensed as action figures.

294. This action figure was purchased at a Toys “R” Us retail store on August 1, 2000.

295. *Action Figure News & Toy Review*, for example, includes a price guide for action figures, including G.I. Joe and Star Wars. *Action Figure News & Toy Review Price Guide*, Feb. 2000, at 91. The magazine *Action Figure Digest* includes numerous ads from dealers targeting action figure collectors. See e.g., *Action Figure Digest*, Sept. 1999, advertisement at 2. Several Web sites have been created for collectors or to track news of the latest figures coming onto the market. See, e.g., www.hasbrocollectors.com; www.figures.com.

296. Jeff Jensen, *Adult Toys, the “Matrix” Action Figures Have Arrived. But the New Toys Aren’t Recommended for Children*, Ent. Wkly. Online (Jan. 28, 2000), www.pathfinder.com/ew/daily/0,2514,2533,matrixactionfigureshave.html.

297. See ESRB, *ESRB Launches National Campaign to Increase Awareness of Computer and Video Game Rating*, Nov. 9, 1999 (press release) [hereinafter *ESRB News Release*]. The Video Software Dealers Association (“VSDA”) also has adopted a similar program, “Pledge to Parents,” which applies to both electronic games and movie products, and urges retailers “not to rent or sell videotapes or video games designated as ‘restricted’ to persons under the age of 17 without parental consent, including all movies rated ‘R’ by the Motion Picture Association of America and all video games rated ‘M’ by the Entertainment Software Rating Board.” *Pledge to Parents*, www.vsd.org/consumer/pledge.html (visited Aug. 6, 2000). VSDA’s program was first adopted in 1991 and renewed in 1999, following the events at Columbine. No retailer submitted documents pertaining to its involvement in VSDA’s program.

298. The Commission requested information from the following retailers about their in-store and online practices: Amazon.com (exclusively online), Babbage’s (www.gamestop.com), Best Buy, Blockbuster (www.blockbuster.com), Electronics Boutique (www.ebworld.com), eToys, Inc. (www.eToys.com, exclusively online), Hollywood Video (www.hollywoodvideo.com and www.reel.com), Musicland (www.musicland.com, www.samgoody.com, www.mediaplay.com, www.oncue.com, www.suncoast.com), Target (www.target.com), Toys “R” Us (www.toysrus.com), Trans World Entertainment (www.twec.com), and Wal-Mart (www.walmart.com).

299. In answer to a recent call for increased enforcement of restricted access to adult-rated products, two game retailers not contacted by the Commission for this study (Sears and Montgomery Ward) announced plans to remove M-rated game titles from their shelves. Curtis Lawrence, *Retailers Reject Violent Video Games*, Chi. Sun-Times, May 9, 2000, at A12.

300. It is unclear, however, whether this retailer has implemented this policy because its retail outlets and online Web site still carry versions of games, such as *Mortal Kombat Trilogy*, *Resident Evil Director’s Cut*, and *South Park Rally*, that contain some of these descriptors.

301. Electronics Boutique has “EBKids” stores.

302. Stocking practices may vary for games, music, and movies even within the same company. For example, one retailer does not stock explicit-labeled recordings but does stock and sell M-rated video games. Another markets and sells M-rated games on its Web site, but does not offer explicit-labeled music or movies rated above PG.

303. ESRB has stated that the four retailers are Toys “R” Us, Babbage’s, Funcoland, and Electronics Boutique. *See ESRB News Release, supra* note 297. Similarly, in recent written testimony submitted to Congress, the IDSA spoke of retailers who have adopted policies to uphold the rating at the point of sale by not selling Mature or Adults Only games to persons under 17. According to the IDSA, “(s)uch national chains as Toys ‘R’ Us, Babbage’s, Electronics Boutique, and Funcoland all agreed to either actively restrict sales of ‘M’ rated games to persons under 17 or use their best efforts to prevent such sales.” *Impact of Media Violence: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (2000) (testimony of Douglas Lowenstein, President, IDSA), *reprinted at* 2000 WL 306533. One of those retailers, however, indicated to the Commission that it had not adopted any formal, written policy to restrict sales, but does encourage store managers to use “sound judgment” regarding sales to minors. Funcoland, which recently merged with Electronics Boutique, was not contacted as part of the FTC’s study.

304. *See* Toys “R” Us, *Toys “R” Us Launches Rating Symbols Initiative in Stores Nationwide*, Nov. 9, 1999 (press release), www.shareholder.com/toy/news/19991109-11933.htm.

305. Blockbuster follows the same “Youth Restricted Viewing” policies with respect to the sale of M-rated games as it does for R-rated movies. *See supra* note 112. Aside from Blockbuster, Hollywood Video is the only other company contacted by the Commission that rents games. Electronics Boutique is currently testing a rental program in some stores.

306. Only 15% of the shoppers were asked their age. *See* Appendix F.

307. At one retailer, 21 of 22 were allowed to purchase; at another, 23 of 27; at a third, five of six; and at the last retailer, 15 of 24 shoppers were allowed to purchase.

308. IEMA represents 28 of the top 30 retailers in the interactive entertainment industry. *About the IEMA*, www.theiema.org/about.html (visited July 30, 2000).

309. Some industry members have raised concerns that collective action to restrict youth access to rated or labeled products would violate the antitrust laws. As discussed in Appendix K, *Application of Antitrust Principles to Voluntary Industry Efforts to Restrict Marketing and Sales of Violent Entertainment to Children*, the Commission believes it is feasible to develop and implement industry codes in this area without running afoul of the antitrust laws.

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