



Marketing Violent Entertainment to Children:

A Sixth Follow-up Review of
Industry Practices in the Motion Picture,
Music Recording & Electronic Game Industries

A Report to Congress

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Contents

EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
A. Commission Reports on Marketing Violent Entertainment to Children	1
B. Sources of Information for this Report	2
II. MOTION PICTURES	2
A. Restrictions on Marketing to Children: Ad Placement	3
1. Overview	5
2. Television ads	5
3. Promotional marketing	6
4. Print ads	8
5. Internet marketing	8
B. Disclosure of Ratings and Reasons for Ratings	9
1. Disclosures in advertising	9
2. Disclosures on DVD packaging - the Commission's 2009 study	10
C. Industry Efforts to Enforce Rating System in Theaters and at Point-of-Sale	13
1. Box office enforcement of the rating system	13
2. Retailer enforcement of the rating system	14
3. Gift card purchases	14
4. DVD vending kiosks	15
5. Other purchase and rental options	15
D. Unrated DVDs	15
1. Marketing practices	15
2. The Commission's 2009 survey on unrated DVDs	16
E. Analysis of Current Industry Practices	18
III. MUSIC RECORDINGS	19
A. Restrictions on Marketing to Children: Ad Placement	19
1. Television ads	20
2. Print ads	20
3. New media and marketing methods	20
B. Disclosure of Advisory Labels and Reasons for Labels in Ads	21
C. Industry Efforts to Enforce Rating System at Point-of-Sale	22
D. Analysis of Current Industry Practices	22
IV. ELECTRONIC GAMES	23
A. Restrictions on Marketing to Children: Ad Placement	24
1. Television ads	24
2. Print ads	24
3. New media and marketing methods	25
B. Disclosure of Ratings and Reasons for Ratings	26
1. Advertising review	26
2. Rating summaries	27

C. Industry Efforts to Enforce Rating System at Point-of-Sale	27
1. Mystery shop	27
2. Gift card purchases	28
3. Mobile phone games	28
D. Analysis of Current Industry Practices.....	29
V. CONCLUSION	30
Appendix A: Mystery Shopper Survey	A-1
Appendix B: The Commission's Mall Intercept Survey on Disclosure of MPAA Rating Information on DVD Packaging	B-1
Appendix C: FTC Telephone Survey on Parental Awareness of and Attitudes About Unrated DVDs	C-1
Appendix D: Internet Surveys	D-1
Appendix E: Data Collection Methodology and Television, Print, and Internet Demographics...	E-1

EXECUTIVE SUMMARY

This is the seventh Commission report on the marketing to children of violent entertainment products by the motion picture, music recording, and electronic game industries.

The Commission's initial report, released in September 2000, examined the structure and operation of each industry's self-regulatory program, parental familiarity with and use of those systems, and whether the industries had marketed violent entertainment products in a manner inconsistent with their own parental advisories. The 2000 Report found that industry members routinely targeted children in their advertising and marketing of violent entertainment products and that children under age 17 could purchase these products relatively easily. The Commission called upon the industries to strengthen their self-regulatory programs by: (1) prohibiting target marketing to children and imposing sanctions for violations; (2) improving self-regulatory programs at the retail level; and (3) increasing parental awareness of the ratings and labels.

The Commission has continued to monitor industry self-regulation in this area, mindful of First Amendment considerations. It has released five subsequent reports, all finding that the movie and electronic game industries had made progress in limiting marketing of R- and M-rated products to children, but that the music recording industry had not significantly changed its marketing practices since the Commission's initial report. In its 2007 Report, the Commission specifically recommended that all three industries strengthen restrictions on online and viral marketing to children and more effectively communicate rating information, particularly on packaging. The Commission also called on the movie industry and DVD retailers to ensure that the marketing of unrated, "Director's Cut" DVDs does not undermine the self-regulatory system.

This report documents the current state of marketing of violent entertainment products to children based upon a review of documents from industry members and Commission monitoring of television, print, and Internet advertising. It also assesses pertinent revisions to industry self-regulatory policies since the last report. In addition, it reports on the results of two consumer surveys related to movies released on DVD – one on the adequacy of rating disclosures on DVD cases and one on the marketing of unrated DVDs. This report also provides the results of the Commission's 2009 undercover shopping survey on the progress of the three entertainment sectors in enforcing policies restricting children's access to R-rated movies and unrated DVDs, music with Parental Advisory Labels, and M-rated games.

All three industries generally comply with their own voluntary standards regarding the display of ratings in advertising and labeling, although these standards should be strengthened to increase prominence of the rating and to display more information about the reasons behind the rating. Industry standards against targeting teens and younger children in the marketing of violent entertainment products have not sufficiently curbed marketing that reaches a large youth audience, particularly in online media. These standards need to be tightened and more strictly enforced.

Movies

The Commission's review of internal marketing documents for selected R-rated movies revealed no express targeting of the under-17 market, although the Commission's own monitoring revealed significant television and Internet advertising likely to appeal to and reach a substantial teen audience. Internal marketing documents and Commission monitoring for PG-13-rated movies exposed explicit and pervasive targeting of young children, both directly in advertising on children's cable networks, and indirectly through promotional tie-ins with foods, toys, and other licensed products. Studios even conducted marketing research for PG-13 films on children under 13, in one case on children as young as 7 years old.

Although the Motion Picture Association of America ("MPAA") has issued new rules restricting ad placements based on the type and amount of violence and other content shown in the ad, it has not adopted any new rules prohibiting inappropriate targeting of R-rated and PG-13-rated films to teens and younger children. In addition, the revised rules appear to permit studios to run "green tag" theatrical trailers that contain stronger content, not necessarily suitable for all ages, as long as the trailers are targeted to "appropriate audiences," although the MPAA reports that this is not how it interprets or applies the new rules. Increased posting of more explicit "red tag" trailers for R-rated movies on major video hosting websites also raises new concerns.

The industry continues to do a good job of displaying the MPAA rating in advertising, although ratings are not always prominent and rating reasons are often difficult to read or sometimes omitted altogether. Rating information on DVD cases and other packaging continues to appear in small font on the back panel with rating reasons particularly difficult to read. Results of Commission research confirm that larger, front-panel placement of the rating symbol and reasons would be much more effective in communicating rating information to parents.

The Commission's undercover shop showed mixed results for the movie industry on rating enforcement. Movie theaters significantly improved their performance from 2006, allowing about three in ten children under age 17 able to gain admission, unaccompanied, to R-rated films. In contrast, retailers who sell R-rated DVDs allowed shoppers under age 17 to purchase these movies slightly more than half the time, with a similar record on the sale of unrated DVDs. Individual theater and retailer performance varied widely. Use of gift cards for online purchase of DVDs and online download to mobile devices were newly identified by the Commission as avenues for easy access to R-rated movies by shoppers under age 17.

Unrated DVD versions of films rated R or PG-13 for theaters are more prevalent than in past years and dramatically outsell rated versions by as much as an eight to one margin. A Commission survey shows that many parents are either unaware that movies can be released as unrated DVDs or are unaware that they may contain additional adult/explicit content. The survey also shows that nearly six out of ten parents are concerned about this practice. Although the MPAA has revised its rules to require disclosure of the original rating and of the presence of additional unrated content, it does not require studios to resubmit DVDs for rating. In addition, the disclosure of the original rating is required only

in print ads and on packaging. The Commission found many examples of television and radio ads with no disclosure, including some that even hype the lack of an MPAA rating. It also found examples of packaging that does not include the required disclosure. The industry has not taken adequate steps to inform parents or to give them a way to assess the appropriateness of unrated DVDs for their children.

Music

The music industry's Parental Advisory Label ("PAL") alerts parents to explicit lyrics in music recordings, but provides no information about the specific type of explicit content. In addition, the industry has declined to implement rules restricting the marketing of explicit-content labeled music to children. The Commission's review of internal marketing documents and its own ad monitoring provided no indication of specific targeting of children but revealed many examples of ads for explicit-content music on television shows popular with teens. Paid advertising in print and Internet venues popular with teens was less widespread. In some, but not most, instances unpaid viral marketing online drew large tween and teen audiences.

Disclosure of the PAL logo in advertising is still inadequate in nearly all advertising media, most notably on official artist and company websites, where the PAL was readable only 20% of the time. Television ads display the PAL only 50% of the time, and usually the label is not clear and prominent. Only music CD retailers and online download sites did an excellent job of prominently displaying the PAL.

The Commission's undercover shop found that it is relatively easy for underage shoppers to purchase explicit-content music, compared to movies and electronic games. Music retailers sold labeled music to 72% of the undercover shoppers in 2009, compared to 56% in 2008. Parental controls on music download sites allow parents to limit children's access to explicit content.

Electronic Games

Of the three entertainment sectors, the electronic game industry continues to have the strongest self-regulatory code. It prohibits the target marketing of M-rated games to teens and T-rated games to children under 13 and enforces its code with fines and other sanctions.

Based on the Commission's review of internal marketing documents, its own ad monitoring, and reporting by the Entertainment Software Rating Board ("ESRB"), the Commission found that industry did not specifically target M-rated games to teens or T-rated games to younger children and that compliance with the ESRB code was high in all media. There were only a few instances of M-rated game ads on television shows popular with teens and, compared to the last report, far fewer ads for M-rated and T-rated games on websites popular with teens or younger children. In addition, the ESRB now requires stronger age gates to restrict those under 17 from viewing a demo or trailer of M-rated or AO-rated games on game company websites.

The electronic game industry also performed well with respect to prominent disclosure of rating information in ads and retailer websites, although 60% of game sites required visitors to scroll down to

view the rating and content descriptors. The game industry requires prominent, front-panel display of the rating on game packaging, although content descriptors continue to appear only on the back panel. The ESRB has also instituted a new policy of providing rating summaries on its website, for games rated since July 2008, to help inform parents about the level of violence and other content in games.

The Commission's undercover shop found that retailers are strongly enforcing age restrictions on the sale of M-rated games, with an average denial rate of 80%. Only Toys 'R' Us lags far behind on enforcement (56%). Nearly all retailers use systems to prompt cashiers to request photo ID. Use of gift cards to buy games online, however, represents one potential gap in enforcement against underage purchase.

Finally, the proliferation of game applications available for mobile devices, coupled with the fact that most wireless carriers and content providers do not rate these applications with the ESRB system, is potentially confusing for parents. It is not clear how robust or reliable these other rating systems will prove to be. Age-based parental controls on what games can be downloaded to mobile devices offer another tool for restricting children's access to mature content.

Recommendations

The Commission recognizes that the movie and electronic game industry in particular have devoted substantial attention to their rating systems and enforcement. Nevertheless, as in prior reports, the Commission recommends that the three industry sectors take the following steps to further strengthen self-regulatory programs restricting the marketing of violent entertainment to children:

- The movie industry and the music industry should develop specific and objective criteria to restrict marketing of violent movies and music to children. The movie industry should implement restrictions not only for advertising R-rated movies in venues reaching a substantial under-17 audience, but also for the advertising of PG-13 movies in venues reaching a substantial under-13 audience. These criteria should apply both to direct advertising of the movie and to indirect promotion of the movie through tie-in advertising of foods, toys, and other licensed products appealing to children. Similarly, the music industry should implement restrictions for all PAL-stickered music in venues reaching a substantial under-17 audience. The criteria implemented by the movie and music industries should include not only the percentage of the underage audience, but other factors like the absolute number of children reached, whether the content is youth-oriented, and the youth popularity and apparent ages of the characters and performers.
- All three industries should evaluate their restrictions and tighten them as necessary, paying particular attention to online and viral marketing, to ensure that advertising is not placed in venues reaching large underage audiences.
- The movie industry should increase enforcement efforts against online posting of "red tag" trailers without adequate age-based restrictions on access.

- The movie industry should carefully examine the content of “appropriate audience” trailers for consistency with the feature films they will precede.
- The movie industry should place all rating information prominently on the front of DVD cases and other packaging for home releases of movies and should make disclosure of both rating and rating reasons prominent in all advertising venues.
- The music industry should display the Parental Advisory Label more prominently in advertising, particularly in television and online venues and should provide information about the specific type of explicit content.
- The electronic game industry should include content descriptors with the rating on the front panel of game packaging and should continue to provide more detailed rating summaries for parents online.
- The movie industry should take steps to better inform parents about additional adult content in unrated DVDs and should give parents a way to assess the appropriateness of unrated versions for their child. Specifically, the industry should either re-rate DVD releases that contain additional content or, at a minimum, extend the new disclosure rule regarding the content of unrated DVDs to all forms of advertising and improve the level of compliance with the rule.
- Retailers and theater owners should continue to strengthen enforcement efforts restricting the sale of tickets to R-rated movies, R-rated and unrated movie DVDs, PAL-stickered music, and M-rated games to children, paying attention to possible enforcement gaps created by the use of gift cards for online purchase.

Given important First Amendment considerations, the Commission supports private sector initiatives by industry and individual companies to implement these suggestions. The Commission will continue to monitor the marketing of violent entertainment products, with particular attention to emerging technologies and new marketing techniques. The Commission will also continue to work with industry and others to encourage efforts to provide parents with the information they need to decide which products are appropriate for their children. Following a reasonable period of monitoring industry practices and consumer concerns, the Commission will issue another report.

in the near term, responsibility falls on wireless carriers and individual publishers to provide content information and effective parental controls.¹⁸⁹

The Commission examined the websites of AT&T, Apple, Nokia, Sprint, and Verizon Wireless¹⁹⁰ to assess the types of rating information provided for the advertised mobile games. All of the websites offered mobile games that contain violent content; some games were mobile versions of titles to which the ESRB had assigned an M-rating for their home console version. AT&T, Sprint, and Verizon did not offer any rating information for their mobile games.

Nokia displayed the age-based rating and content icons used by the Pan European Game Information (PEGI) system.¹⁹¹ In the example below, the icon provides a designation of age appropriateness (12+) and the image of a fist to denote violent content.



Currently, Apple assigns games age-based designations (*e.g.*, "Rating 4+," "Rated 9+," "Rated 12+," "Rated 17+") and content descriptors (*e.g.*, "Frequent/Intense Realistic Violence"). In June 2009, Apple released a new operating system for the iPhone and iPod touch¹⁹² that upgrades the parental control features to restrict downloadable movies based on MPAA rating and applications based on Apple's age-based designations.¹⁹³ With the release of the new parental controls, the App Store now offers applications that carry a 17+ rating.¹⁹⁴

Although mobile game sellers should be commended for instituting rating systems for their products, the proliferation of different systems has the potential to create consumer confusion with the ESRB ratings, a system with which parents are already familiar. Further, it is important that these alternative systems be credible and comprehensive.¹⁹⁵ For the time being, however, these new systems, coupled with effective parental controls, should assist parents in monitoring the content their children play on mobile devices.

D. Analysis of Current Industry Practices

As documented in past reports, the video game industry continues to do an excellent job of clearly and prominently disclosing rating information in television, print, and Internet advertising and on product packaging, although the industry still does not require that television ads disclose content descriptors nor that content descriptors appear on the front of the package. Further, the ESRB has been regularly enforcing its advertising code, particularly for the few instances of inappropriate target marketing. The Commission found no evidence of M-rated game ads on television programs with a substantial youth audience that aired prior to 10:00 p.m. and a decrease in the number of M-rated game ads on websites highly popular with teens or children. Nevertheless, a handful of M-rated games were advertised on television shows and Internet sites highly popular with teens. Overall, the Commission uncovered little evidence of inappropriate target marketing through the traditional media.

Major game retailers continue to prevent most children from being able to purchase M-rated games without parental permission. Still, the ESRB should monitor other avenues through which children may be able to obtain M-rated games without their parents' knowledge or consent, including through the use of retailer gift cards.

The ESRB followed the Commission's recommendation to conduct research into why, according to the Commission's 2006 study on video games, some parents felt the system could do a better job of informing them about the level of violence, sex, or profanity in some games. Based at least in part on such research, the ESRB now offers online ratings summaries that provide a more detailed explanation of the content that factored into a game's rating. This new online tool should prove useful to parents.

Finally, the Commission will monitor developments in the rating mechanisms employed for mobile games. In the meantime, carriers and publishers should continue to provide content information about mobile games and parental controls. Parents can use this rating information to assess the content of games that their children want to play.

V. CONCLUSION

The Commission finds that the video game industry has made great strides in restricting the marketing of violent M-rated games to children. Although there remains room for improvement – particularly in the area of Internet advertising – the video game industry outpaces the movie and music industries in the three key areas that the Commission has been studying for the past decade: (1) restricting target-marketing of mature-rated products to children; (2) clearly and prominently disclosing rating information; and (3) restricting children's access to mature-rated products at retail.

Target-Marketing

The Commission found a few ads for M-rated games on television shows popular with children and teens airing before 10:00 p.m. (although none of these ad placements violated ESRB rules); these placements, however, appear to be the exception. By contrast, many more ads for R-rated movies and explicit-content music ran on television programs that disproportionately attract children and teens. The marketing of R-rated movies on such shows is inconsistent with the rating, which indicates that the movie contains some adult material and advises that children under 17 cannot be admitted without a parent or guardian. Similarly, the marketing of explicit-content music on television shows with a substantial number of child viewers is inconsistent with the PAL, which advises parents that some material may not be appropriate for children. Thus, the movie industry needs to do a better job of policing the shows on which ads for R-rated movies are permitted, and the music industry should establish objective marketing standards to limit the placement of ads for PAL music.

All three industries have done a good job restricting advertising of their mature-rated products in print publications with a significant child readership. These industries, however – especially the movie industry – can do a better job of limiting ads placed on websites that disproportionately attract children and teens. In addition, the movie industry has permitted red tag trailers containing restricted content to proliferate on major video hosting websites that either lack age gates limiting access to the

content or have age gates that are far too easy to bypass. Finally, because of potential confusion over the MPAA's revised rules regarding the new "appropriate audience" trailers, studios and theater owners need to be especially careful when assessing whether such trailers are consistent with the content of the feature films they precede.

Based on the marketing plans the Commission reviewed and the ad placements it tracked, it is apparent that movie studios directly and pervasively market PG-13 movies to children under 13 on television, in print, and on the Internet, even though the rating is supposed to represent a strong caution to parents that some material may be inappropriate for children under 13. The Commission reiterates that this practice is an "end run" around the parental review role. The MPAA should adopt an explicit policy against marketing any PG-13-rated movie directly to children, as the ESRB has done for T-rated games. That policy should include objective criteria about the content and placement of advertising in various media – television, print, the Internet, and other venues popular with young children. Further, the MPAA should broaden its rules to encompass marketing through promotional partnerships with other industries, such as packaged foods, quick service restaurants, and toy manufacturers.

Ratings Disclosure

All three industries generally do a good job disclosing rating information in television and print advertising, although video game content descriptors generally do not appear in television ads, and movie rating reasons and the PAL often are difficult to read, especially in television and newspaper ads. Further, the movie and video game industries are doing a good job with online disclosures. Not so with the music industry, where only half of the official artist and record company websites reviewed by the Commission displayed the PAL logo, and most of those were not legible; music retailers and online download sites were the exception. The Commission commends the ESRB for its new online ratings summaries, which provide a more detailed explanation of the content that factored into a game's rating. This tool should enhance parental understanding of the ratings and the ratings process.

As to disclosures on product packaging, Commission research confirms that parents would benefit from more prominent display of rating information on DVDs. The Commission again recommends that the MPAA require the rating symbol and rating reasons be displayed prominently on the front panel of DVD cases and other packaging in a specific format and size. Although the PAL and ESRB rating information on packaging is clear and prominent, the Commission renews its recommendations that the ESRB place the content descriptors on the front of the package and that the entire music industry follow the lead of Sony Music Entertainment and use an enhanced PAL that provides additional information about the explicit content (*e.g.*, "Strong Language" or "Sexual Content").

With respect to unrated DVDs, the MPAA should either re-rate DVD releases or, at a minimum, require that all forms of advertising (not just print ads and packaging) disclose the movie's original rating and rating reasons and that the unrated version contains material different from the rated version. The movie industry also needs to rein in DVD packaging that blatantly hypes the lack of an MPAA rating as a selling feature. This practice disparages the MPAA system. Further, the Commission's research shows that many parents do not realize, and are concerned, that unrated DVDs may contain