

Seeking Truth in Video Game Ratings: Content Considerations for Media Regulation

JASON TOCCI

Annenberg School for Communication
University of Pennsylvania

Recent years have seen the video game industry come under increasing scrutiny for the content of games rated by its Entertainment Software Rating Board (ESRB). This paper offers an analysis of the specific reform proposals made in U.S. legislation between 1999 and 2006, examining how lawmakers have conceptualized games and assessed the need for regulatory intervention. This analysis suggests that lawmakers have characterized game content as analogous to movie content, but incapable of thematic relevance, less fully reviewed by raters, and more powerful in negative effects on viewers. Accordingly, legislation has been crafted to regulate games more strictly than other visual media, including proposals to restrict sale to minors or to circumvent or replace the industry's self-regulatory processes. As with other media-oriented moral panics, however, this approach represents a disproportionate degree of scrutiny on games relative to other media, considering how game play actually works and how the current regulatory system functions. In the interest of promoting a more technically informed approach to assessing game content, this article offers four formal properties of video game content for consideration: variability, repetitiveness, expandability, and directionality. The article concludes by suggesting alternative regulatory options for concerned parents, policy makers, and the ESRB itself.

In the summer of 2006, U.S. Congressional Representative Cliff Sterns proposed the "Truth in Video Game Rating Act" (H.R. 5912). The act would require every video game to be played "in its entirety" before being assigned a rating, presumably bringing game rating processes more in line with movie rating processes. This approach may seem reasonable in theory — but as anyone who has ever played *Pac-Man* can attest this makes more sense for some games than for others. This bill exists alongside other, more obviously restrictive techniques to further regulate game content, including a number of bills that have sought to prevent the sale of certain video games to minors altogether.

Jason Tocci: jason.tocci@gmail.com
Date submitted: 2007-05-30

Copyright © 2008 (Jason Tocci). Licensed under the Creative Commons Attribution Non-commercial No Derivatives (by-nc-nd). Available at <http://ijoc.org>.

Like the Hollywood film industry, the American video game industry rates and labels games under a system of its own making, the Entertainment Software Rating Board (ESRB). As controversy surrounds a number of particularly graphic games, such as *Manhunt 2* and the *Grand Theft Auto* series, the ESRB's effectiveness as a regulator is called into question. In an effort to assess the potential need for regulatory reform, this paper presents an analysis of bills proposed at the state and federal level between 1999 and 2006 which would codify, intervene with, or circumvent the game industry's self-regulatory practices. Having considered how lawmakers have conceptualized games and the need for regulatory reform in the U.S., this study illustrates that most such legislative proposals conceptualize games as if they were especially dangerous movies, all the more powerful and incapable of meaningful content because of their "interactive" nature. The ESRB, meanwhile, faces criticism for not rating game content by the same techniques used to rate movies, which leads to threats of investigation and potentially replacement with a universal content rating system. The result is a set of proposals built around a moral panic surrounding media violence.

A more technically informed view, taking into consideration the formal properties of video games as a medium, may instead suggest that video game content should not be legally conceptualized as especially dangerous films. Video games are formally different from other visual media, and content rating systems can reflect this. The present study thus recognizes that the ESRB system is imperfect, but suggests that it may be premature to abandon or circumvent that entire system with the government regulation proposed to date. Uninformed regulatory efforts run the risk of endangering adult access, stunting artistic development, and further stigmatizing audiences, rather than addressing valid and substantive concerns among parents and consumers.

To be clear, this paper does not argue that media content regulation is unnecessary or unworkable, or that industry self-regulation is inherently superior to government regulation. At issue here is not so much *who* does the regulating, but what informs regulatory processes and how practical those processes are to implement. Well-informed regulatory reform based on specific improvements to the current system may prove more useful to consumers than legislation which faces legal hurdles, and which comes at the recurring expense of taxpayers. Following the main analysis, then, this article concludes with practical and policy recommendations for those whose needs may not be adequately met by legislation or by the ESRB's current system.

Media Violence and Moral Panic

Before discussing the specific workings of a regulatory system, it is worth reflecting on what function that system is supposed to serve. Media regulation may seem to some a delicate balancing act between concern for public health on the one hand, and the right to free speech on the other. Concern for public health may lead one to conclude that industry self-regulation is no more appropriate for media content than for pollution or tobacco. This belief, however, is predicated on at least two key assumptions: that media content presents a comparable health risk to toxic agents, and that government intervention would be more effective than the systems already in place. Neither of these points may be safely assumed.

Interpreting Game Violence Research

Though most of the research on the effects of mediated violence has been conducted with television and film, a growing body of studies suggests that video games contribute to aggression in children (Anderson & Bushman, 2001; Anderson & Dill, 2000; Dill & Dill, 1998). The researchers behind such studies suggest that video games may be particularly dangerous compared to other media, as players interact with games not only as spectators, but as actors themselves. In light of such evidence, the American Psychiatric Association, American Psychological Association, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, and the PTA issued a joint statement in July 2000 to announce, "we are convinced that repeated exposure to entertainment violence in all its forms has significant public health implications" (quoted in Block, 2007, p. 12). One researcher suggests that, among a number of commonly recognized health threats considered in his study, "The only effect slightly larger than the effect of media violence on aggression is that of cigarette smoking on lung cancer" (Heusmann, 2007).

However, mediated messages, which do "not have a uniform effect on viewers" (Federman, 1998, p. 4), are much more open to interpretation than chemical agents. Despite the consensus claimed by some, other researchers offer considerable objections to the conclusions drawn from media violence research to date. These include criticisms that game violence research has involved overreaching or miscalculated statistical claims (Block & Crain, 2007; Freedman, 2002), and has lacked or faced contradiction from longitudinal evidence (cf. Williams & Skoric, 2005), as well as poorly defined and operationalized "aggression" (Jenkins, 1999; Sherry, 2006). Thus, the effects found may not represent what they have been purported to represent. Even the claim that games have more pronounced effects than film because of their "interactivity" has been questioned by both researchers (Galloway, 2006) and regulators. A study sponsored by the British Board of Film Classification prompted BBFC Director David Cook to note: "far from having a potentially negative impact on the reaction of the player, the very fact that they have to interact with the game seems to keep them more firmly rooted in reality" ("Playing Video Games," 2007).

Moreover, while researchers have given less attention to the potential effects of deprivation of violent media images (cf. Block, 2007), U.S. courts have found that minors have a constitutional right to consume such images. Such experiences, some have argued, "are essential to shaping children's understanding of the world," and shielding children from violent images until the age of 18 may actually do them a disservice (*Entertainment Software Ass'n. v. Blagojevich*, 2005, p. 34).

Moral Panic and Media Regulation

Thus, rather than framing media regulation as a debate between public health and free expression, it may be more productive to discuss media content ratings in terms of empowering consumers, offering "a reasonable middle ground between censorship, at one extreme, and providing no help to parents, at the other" (Bushman & Cantor, 2003, p. 130). This, then, raises the question of whether the rating system in place for video games is markedly more tainted by profit motives than other industries' self-regulatory systems, thereby requiring government intervention. As history has shown,

however, both government regulation and industry self-regulation can be unduly harsh when directed at a particularly vilified medium. No regulatory reform is necessarily superior for its harshness when it is disproportionate to the risk, as such regulation can have its own detrimental effects.

When a phenomenon is marked by widespread concern, hostility, and some degree of consensus (often backed by scientific evidence), but ultimately disproportionate to its actual threat, social and cultural researchers refer to the phenomenon as a "moral panic" (Goode & Ben-Yehuda, 1994). Concerns expressed by journalists and politicians can "amplify" the discourse surrounding certain issues (Hill, 2001, p. 215), which may, for example, "highlight the need for more studies to discover 'risk factors' and universal causes of teen violence, while conveniently forgetting larger social and spatial complexities" (Aitken, 2001, p. 599).

As some researchers have argued, video games have figured prominently in moral panics related to fears of effects on violence. Williams's (2003) content analysis of 30 years of news coverage of electronic games illustrates that attitudes toward the medium and players themselves have followed the somewhat predictable patterns of optimism and pessimism seen in earlier media-related moral panics, such as those surrounding film and television. Dwyer and Stockbridge (1999), meanwhile, suggest that Australian political elites have only intervened in the processes of game industry self-regulation when it has served political needs, not necessarily when that intervention reflected broader public discontent. The Senate Select Committee on Community Standards (1994) commissioned research that it subsequently appeared to ignore in upholding state regulation, "presumably because it did not support assumptions of necessary negative effects and the research findings contradicted the assumptions on which the legislation was based — particularly parental incompetence and level of concern about the media, including games" (p. 238).

While it is beyond the scope of this article to consider whether regulatory reform might constitute a response to moral panic or its active construction as a political maneuver (cf. Dwyer & Stockbridge, 1999; Jenkins, 2000; McRobbie & Thornton, 1995), the long-term effects of misguided regulatory reform are still worthy of speculation informed by historical precedent. The state of heightened concern and hostility associated with a moral panic can seem to quickly appear and disappear, but institutional and cultural forces may still remain in place (Goode & Ben-Yehuda, 1994), as in the case of the Australian regulatory intervention described above.

Regulatory policies based on moral panics can potentially have far-reaching effects on the development of media and social construction of audiences. Even Pyle (2003), a supporter of legislation that would restrict sale of games to minors, cautions that vaguely worded or overreaching laws "would not only shield children from access but would also place substantial burdens on adult access as well, thereby reducing the level of discourse to that which is fit for children only." Moreover, the perceived threat of censorship can encourage similarly restrictive industry self-regulation. In the early 1950s, senate investigation into violent comics prompted publishers to establish the Comics Code Authority based on the film industry's Production Code. By prohibiting disrespectful depictions of authority figures, sympathetic portrayal of criminals, and the use of words such as "horror" and "terror," the Code effectively eliminated the production of material deemed unsafe for juvenile boys. Some states succeeded in passing laws to

prevent the sale of "harmful" comics to minors, but the Code left nothing on newsstands subject to restriction (Nyberg, 1998, p. 134).

In essence, the Code had a "chilling effect" on comics content: No publisher sought to produce potentially objectionable material out of a legitimate fear of not meeting Code approval, and thus not having access to any viable market. Comics, already stereotyped as a children's medium more so than film, became stunted as an expressive form. Even today, comics fans are often labeled as socially maladroit "geeks" beginning at a young age, leaving many feeling like part of a marginalized subculture into adulthood (Lopes, 2006; Pustz, 1999; Sabin, 1996). As video games carry similar stereotypes of juvenility, potential parallels between game legislation and the fate of comics have not been lost on fans and scholars (e.g., Gladstone & Jenkins, 2003).

Ratings and Industry Self-Regulation

In a process analogous to the establishment of the Comics Code Authority, the formation of a system to regulate games came in response to congressional hearings led by Senators Lieberman and Kohl. This has been widely associated with public concern over graphic violence in games such as *Mortal Kombat*. The Entertainment Software Association, the video game industry's main trade group, now funds a non-profit organization, the Entertainment Software Rating Board (ESRB), to assign and enforce ratings, and to monitor the industry's marketing and online privacy practices. It is the first of these functions, the handling of ratings, that has attracted the most praise and criticism from government officials to date.

Generally speaking, there are two typical approaches to media content rating systems: evaluative and descriptive. Evaluative rating offers age-based guidelines or cutoffs, such as the PG-13 rating for movies. Descriptive rating offers somewhat more detail about content, such as when a television show is preceded by a note that it includes "brief nudity." In a pair of meta-analyses of national polls and experiments, Bushman and Cantor (2003) find that parents generally prefer descriptive ratings over age-based ratings, though both can attract children's interest when indicating adult material, especially for boys over 11.

Based on their findings, Bushman and Cantor recommend the use of simple, descriptive ratings, with public review and access to ratings criteria, and with support from media industries in explaining ratings to parents (p. 139). As the following description of ESRB practices illustrates, the system for rating video games meets with some of these recommendations, but does not meet with others.¹

¹ ESRB ratings have developed since their inception in 1994, and the description here indicates the system in its most recent form as of this writing. For details about changes made in the process, see the "Chronology" at ESRB.org.

The ESRB Ratings

The ratings most relevant to this paper are the approximate equivalents of the Motion Picture Association of America's "Restricted" (R) and "No Children Under 17" (NC-17) ratings: "Mature" (M) games, which "have content that may be suitable for persons ages 17 and older," and "Adults Only" (AO) games, which "have content that should only be played by persons 18 and older" (Entertainment Software Rating Board, "Game ratings and descriptor guide"). Additional ESRB ratings include "Teen" (T), "Everyone 10+" (E10+), "Everyone" (E, recommended for ages six and older), and "Early Childhood" (EC, recommended for ages three and over). These ratings are listed on the front of all game packaging.

The ESRB also assigns "content descriptors" to games, which are listed alongside the rating on the back of game packaging. These short descriptive phrases "may have triggered a particular rating and/or may be of interest or concern," but may not be exhaustive in explaining all relevant content in a game. Games rated E, for example, may contain "minimal cartoon, fantasy, or mild violence and/or infrequent use of mild language," while games rated E10+ may have more of these sorts of content, and also potentially "minimal suggestive themes" (Entertainment Software Rating Board, "Game Ratings"). At present, the ESRB lists 30 content descriptors on its Web site, including several degrees of violence and bloodiness.

The Rating Process

The ESRB employs six full-time raters who undergo "three to six weeks" of training on interpreting gameplay footage (Matthews, 2007, p. 4). The raters watch videos, read questionnaires, and review scripts or lyric sheets provided by publishers. Publishers are expected to describe and depict the most potentially objectionable content in their submissions, including hidden and "unlockable" content that may only be accessible by completing the game or entering cheat codes. If an alpha or beta prototype version of a game is available at this stage, then publishers may submit this as well (Entertainment Software Rating Board, "Ratings Process"). Based on this information, three or more raters will review a game and discuss what the rating should be. Context and consistency with previous rating decisions play a part in how scenes are evaluated, as well as whether scenes are "player-controlled" or "a cut-scene" that players watch (Matthews, 2007, p. 4).

Upon determining a game's rating, the ESRB notifies publishers of its decision. Publishers may appeal a rating, but no publisher has yet made use of the appeals process (see Matthews, 2007, p. 4). Rather, according to ESRB president Patricia Vance, "it's fairly common for publishers to revise and resubmit their games when they would prefer to release a game with a different rating than the one we assigned" (Matthews, 2007, p. 4). The ESRB does not officially indicate which content would have to be changed in order to change the rating. The changes that publishers make for re-rating are considered private by the ESRB, which has declined to publicly give details about what triggered a change in a game's rating at this stage.²

² Take2 Interactive, the publisher of *Manhunt 2*, publicly announced that its game had earned an AO rating and the game's release would be delayed. In every other case of an AO rating being changed to

ESRB raters play a "random" and "hand-selected" sample of completed games before release to verify that relevant content was reviewed (Entertainment Software Rating Board, "Enforcement"). This testing "usually takes around four hours, and the overall controversiality of a game is not a consideration in terms of how it is playtested" (marketing@esrb.org, e-mail to author, October 18, 2007). No further information is available as to which portions of a game are reviewed or which games are hand-selected.

Enforcing Ratings and Restricting Sale

The ESRB retains the right to penalize publishers for undermining the rating process by misrepresenting content or marketing to audiences younger than that indicated by a game's rating. It has levied fines and taken additional punitive measures for both types of infractions. The most well-known example is that of the "Hot Coffee" scandal, in which *Grand Theft Auto: San Andreas* was released with a hidden sex simulator that had not been disclosed during the ratings process. Publisher Take2 Interactive has claimed losses of \$24.5 million due to the actions taken by the ESRB, which included affixing an "Adults Only" label to existing versions and restocking the game to retailers who wanted M-rated versions (Brightman, 2006a). The FTC launched an independent investigation which eventually ended in a settlement with Take2, mandating no actions beyond those already taken by the ESRB besides potential penalties for future attempts to misrepresent game ratings (Federal Trade Commission, 2006). The most recent FTC report on the ratings and marketing practices of media industries states: "The ESRB continues to sanction companies. The most recent available data indicate that the ESRB has cited companies for numerous infractions of the rating disclosure and ad placement rules, with several of these infractions resulting in fines" (Federal Trade Commission, 2007, p. iv).

The ESRB system is further enforced with the cooperation of retailers and manufacturers. Most major retail chains have agreed to ask for ID when selling M-rated games, and to only sell games that have been rated by the ESRB, though may still carry unrated movie DVDs. The major console manufacturers only allow ESRB-rated games on their systems (Entertainment Software Rating Board, "Frequently Asked Questions"). Some major retailers, such as Wal-Mart, refuse to carry AO-rated games at all, drastically reducing the potential market for any title receiving the rating. Of more than 15,000 games rated to date, only 23 have been released with AO ratings (Matthews, 2007, p. 4).

Thus, following Hollywood's example, ESRB ratings may serve as a marketing tool to target different age demographics and to differentiate "safe," industry-approved content from especially controversial content (cf. Lewis, 2000). Unlike in film, however, which still sees a thriving pornography industry outside of mainstream Hollywood fare, the ESRB system and voluntary measures by console

an M rating, the publisher has opted not to make the original rating publicly known prior to the release of the game, potentially avoiding outcry and public demands to know how the game was modified for an M rating. This has raised inevitable questions about whether Take2 meant to boost sales through controversy or shame the ESRB into reform.

manufacturers effectively eliminate graphically advanced, explicit sexual content in games sold through retail channels.

Effectiveness of ESRB Ratings

Over time, the ESRB has made a number of adjustments to its system and has taken measures to promote ratings awareness among parents and consumers. The FTC described it as "the most comprehensive" rating system of those used by the video game, music and movie industries (Federal Trade Commission, 2000, p. 37). A fifth follow-up report summarizes, "The ESRB continues to lead all three industries in providing clear and prominent disclosures of rating information in television, print, and online advertising." The report's major remaining criticism with the ESRB system is in recommending placement of "content descriptors on the front of game packaging," as content descriptors currently only appear on the back (Federal Trade Commission, 2007, p. iii). By comparison, movie DVDs typically lack ratings on the front of packaging and may not feature content descriptors on packaging at all.

Nevertheless, concerns over graphic material and the ESRB's questionable independence from the game industry have led some researchers to question whether the ESRB adequately identifies game content. A study by Funk and others (1999) noted that consumers generally agreed with one another and with the ESRB about the extremes in very violent versus nonviolent content, but consumers varied somewhat from the ESRB's idea of what counted as cartoon or fantasy violence. Consumers agreed that *Pac-Man* constitutes "fantasy violence," for example, though this result offers no obvious implications for whether the raters believe this warrants a more restrictive rating. A later study by Walsh & Gentile (2001) similarly compares parent-assigned ratings for games with ESRB ratings. These researchers note that parents agree with ESRB ratings deeming content unsuitable for children, but state that ESRB ratings "seem to be too lenient compared with how parents rate the same products" (pp. 1304–1305). The researchers thus recommend that a universal rating system replace the ESRB system.

Later studies utilized content analysis techniques to examine the amount of potentially offensive material present in games rated by the ESRB as "E" for "Everyone" (Thompson & Haninger, 2001), "T" for "Teen" (Haninger, Ryan & Thompson, 2004), and "M" for "Mature," recommended for players 17 and older (Thompson, Tepichin & Haninger, 2006). These three analyses suggest that violence is more frequent than might be expected or reported in E- and T-rated games, and that other types of offensive content, such as substance abuse and profane language, go unreported in M-rated games. The first two of these recommend a universal rating system, and the first and third recommend that the ESRB should play video games before rating. As the following analysis of legislation demonstrates, recommendations such as these may have informed how lawmakers have proposed regulatory intervention for video games.

The Entertainment Software Association has responded to such studies by criticizing methodology and interpretation. Walsh and Gentile's (2001) study, for example, used child development professionals for coders, and, the ESRB argues, the fact that 18% disagreed with ESRB ratings may just be an indication of slight differences in opinion (United States Senate, 2001). The ESRB also stresses that content descriptors are not necessarily exhaustive, but offer a glimpse at some potentially relevant factors

in the rating process (Entertainment Software Rating Board, "Frequently Asked Questions"). While such defenses merit consideration, this debate leaves open the door for reform.

Legislative Proposals for Regulatory Reform

As the formation of the ESRB itself demonstrates, legislative action is a particularly powerful method of effecting regulatory reform in a media industry. This study thus presents an analysis of bills proposed at the state and federal level which have sought to codify, reform, or intervene with the video game industry's self-regulatory processes in sales and rating. While some video game legislation has proven relatively uncontroversial and even met with support from the industry, laws selectively challenged by the Entertainment Software Association have been consistently struck down, leaving states to pay hundreds of thousands in legal fees (Calvert, 2005; Guzman, 2006). Even — or especially — failed laws offer a chance to understand how legislators have conceptualized games as material worthy of special attention.

Collecting and Categorizing Bills

The sample includes more than 80 bills proposed at the state and federal levels between 1999 and 2006,³ which represents every bill that could be located using the Internet sources described here.⁴ Many bills were located by searching on individual state legislatures' Web sites for bills mentioning "video game," "electronic game," "digital game," and "computer game" (referred to hereafter simply as "video games"). Not all legislatures' sites allow searches by keyword, so additional bills were located through consultation of the Child Responsible Media Campaign's site at www.MediaLegislation.org and articles at GamePolitics.com. Some states have also introduced new legislation since the period considered here. This sample may under-represent older bills, which may be more difficult to locate online, though recent years have indeed seen an increase in the number of bills seeking to restrict minors' access to games (Calvert, 2005).

For each bill located, a number of characteristics were recorded in a spreadsheet, including the bill's basic identifying information (legislative body, year of proposal, number), legal review history (committee referrals, passage as law, challenges in court), and, most pertinent to this analysis, the bill's main proposals.⁵ This latter item could include, for example, restricting sale of certain games to minors,

³ The sample follows the 1999–2006 calendar years, not legislative sessions, which vary from state to state.

⁴ An approximate number of bills is offered here because any other figure may be misleading. Some states do propose multiple distinct bills, such as Oklahoma, which passed a law in 2001 amending its existing obscenity law to include video games, and also passed a law in 2006 restricting the sale of violent games. Many states, however, propose what is essentially the same bill multiple times, or reintroduce a bill with small changes. When the same bill is proposed in both the house and the senate of a state at the same time, this counts this as one bill in the "over 80 bills" mentioned here.

⁵ The initial purpose behind assembling and analyzing this data was to assess which elements in the text of bills might lead to passage as law; more than one thesis emerged from the ensuing analysis, of which

mandating dissemination of ratings in stores, or replacing the ESRB with state-assigned ratings.⁶ From those bills that suggest or heavily imply regulatory intervention, each proposal is analyzed here with attention to the following: what specific measures were to be taken; what these measures imply about the current system's benefits or shortcomings, according to lawmakers; the probable legality of the proposed measures; and how video games are conceptualized by lawmakers relative to other media.

Analyzing Regulatory Reform Proposals

Between 1999 and 2006, Congress, the District of Columbia, and 30 states proposed bills to codify, intervene with, or circumvent video game industry self-regulation. Most of these bills died in or before reaching committee review, though a handful have been signed to law, and an even smaller subset of these has gone unchallenged in court.

Restricting Sale and Rental

In the U.S., every legislative body that proposed a bill to further regulate games has included among its proposals one or more attempts to restrict the sale and rental of certain games (usually) to minors. Bills to restrict sale have been most consistently defeated in court. Only nine states have signed such bills to law, with varying degrees of success. As of this writing, seven states (California, Illinois, Louisiana, Michigan, Minnesota, Oklahoma, and Washington) have seen laws struck down in court for violating of the First Amendment, though some intend to appeal (McCauley, 2007). The two states with laws that remain unchallenged (Tennessee and Maryland) specify restrictions in sexual content rather than violent content, and so avoid running afoul of legal precedent. Some other states have similarly updated existing obscenity law to include games alongside other media.

In most cases, such bills seek to make a punishable offense of selling games featuring violent content to minors. This would essentially treat depictions of video game violence in the same way that the law treats media depictions of pornographic sex, applying different obscenity standards to media for children and adults. Violent games would be presumed to appeal to children's "morbid" curiosity, devoid of any "serious literary, artistic, political, educational, or scientific value," as asserted in numerous bills. These bills frequently also state that scientific evidence indicates that children are endangered by violent video game content, and it is in the state's interest to protect them (cf. Pyle, 2003).

Most such bills offer their own definition of acts of violence that would be restricted, such as "actions causing death, inflicting cruelty, dismemberment, decapitation, maiming, disfigurement, or other

this article represents only one. Accordingly, additional characteristics of each bill were noted but not deemed central to this study. These include the parties of those who proposed bills, the penalties specified in bills, the definitions for harmful content noted in bills, and the reasons cited in bills for why legislation was needed.

⁶ This study did not consider bills that only referred to how video games could be displayed on the floor of retail establishments, or bills that specified restrictions of arcade games.

mutilation of body parts, murder, criminal sexual conduct, or torture" (Michigan SB0463, 2005, signed to law and later defeated). A few legislative bodies specify other sorts of content to be restricted, such as depictions of violence against law enforcement officials (South Carolina H4148, 2003; Washington HB2363, 2002, signed to law and overturned), depictions of "any violent felony" (Congress H.R. 4643, 2002; Congress H.R. 669, 2003), and depictions "containing racist stereotypes, derogatory language and/or actions toward a specific group or groups of persons" (New York S5160/A7470, 2005).

Congress and 13 state legislatures have also proposed bills restricting sale and rental based on the ESRB's own ratings, disallowing the sale of both M- and AO-rated games to purchasers 18 and under, even though M-rated games are recommended by the ESRB for players 17 and older or with permission of parents. With the exception of Georgia SB1378 (2002), which specified that ESRB content descriptors should be consulted to define violent content, bills generally presumed that the ESRB assigns M and AO ratings to games specifically for scenes containing violent content. A number of other content factors, however, including substance abuse and strong language, potentially inform such ratings. One Mississippi bill (SB3121, 2005), for example, restricts sale "to a juvenile which has a 'Mature (M)' or 'Adult (A)' [*sic*] rating for violence."

As noted earlier, all bills that have sought to restrict content that does not fit the traditional definition of pornography (as sexually explicit material meant to titillate) have been found constitutionally unsound when challenged in court by the Entertainment Software Association. Judge Kennelly, who issued the judgment on Illinois' failed law, offered a detailed statement that similarly applies to numerous other states' overturned laws. The judge noted that the law was so vague as to be unconstitutionally broad, which would likely lead to a chilling effect among game developers and publishers, and which would substantially limit adult access to restricted games. Given that many video games contain fantasy elements and that graphical capabilities improve gradually, for example, it would be difficult for states to classify (and for developers to knowingly avoid creating) games that include "realistic" violence against "humans." Moreover, the judge stated, a video game cannot be labeled as obscene based on the mere presence of objectionable content in individual scenes taken out of context: "Such a sweeping regulation on speech — even sexually explicit speech — is unconstitutional even if aimed at protecting minors" (*Entertainment Software Ass'n. v. Blagojevich*, 2005, p. 48). The judge further called the law's effectiveness (and lawmakers' motives) into question in light of FTC data (2000) reporting that the majority of violent game purchases were made by or in the presence in adults, while violent images in other media remain more easily accessible to minors (*Entertainment Software Ass'n. v. Blagojevich*, 2005, p. 39).⁷

Though some legislative bodies continue to introduce new bills proposing the restriction of violent game sales to minors, this avenue appears to be a legal dead end. The language of these bills, however, may still be indicative of many lawmakers' broader conceptualization of games, informing other proposals for regulatory reform. This conceptualization is one in which depictions of violence are meant to incite violence (actively appealing to "morbid curiosity"); depictions of violence that might have thematic

⁷ For more information on the constitutional issues of restricting the sale of violent games, see Carey (2004) and Pyle (2003).

relevance or educational relevance in other media (e.g., violence against police officers in film) are devoid of such relevance in games; and games are deserving of increased regulatory scrutiny, despite government-compiled data suggesting that games are already more strictly monitored than movies or music. Several of these bills, as noted above, also display a lack of understanding of ESRB rating processes and content descriptors.

Promoting ESRB Ratings

Looking beyond sales restriction, some states have sought other methods of strengthening game regulation. One such approach is to promote ESRB ratings awareness at the point of purchase. Six states (California, Georgia, Illinois, Michigan, Tennessee, and Washington) have passed laws which require retailers and the Entertainment Software Association to display, distribute, or otherwise promote ESRB ratings at retail locations. Every state that has proposed such a bill has passed it. These laws may remain unchallenged because the ESRB has already been conducting a number of awareness campaigns, and because they may pose no obvious constitutional threat. These laws came only after each of the states in question proposed legislation that would have restricted the sale of violent games to minors. In its implicit support of the ESRB system, this proposal is the exception to other alternatives to sales restriction.

Labeling Requirements

Some states' proposals suggest distrust in the ESRB's labeling practices for ratings. Proposed not as an alternative to sales restriction but as an additional measure to be taken alongside it, seven states' bills (including those signed to law in California and Illinois) also mandated that restricted games would need to be affixed with an additional warning sticker reading "18+." This, along with the sales restriction, has been ruled unconstitutional for infringing upon the publishers' speech rights and stigmatizing games rated for 17-year-olds (*Entertainment Software Ass'n. v. Blagojevich*, 2005).

The remaining proposals to be discussed, however, have less clear legal precedent for or against them. Among these is one bill proposed by Virginia (SB368, 2006), which would require a very large rating label (3x3 inches) on the front. This proposal also brings to mind the question of whether it would be legal to require the ESRB to take up more space on the front of packaging by including more prominent display of content descriptors, as the FTC has suggested, though no legislation has called for this to date. Such proposals may be less intrusive than restricting sale and rental, though they still indicate that legislators seek to single out video games over other media, despite the ESRB's already more extensive rating and labeling practices.

Hidden Content Penalties

In another proposal implying dissatisfaction with the ESRB's current policies, two relatively recent bills proposed in Congress seek to make hiding undisclosed content in games a punishable offense. The federal Video Game Decency Act of 2006 (H.R. 6120) declares it unlawful to hide content "with the intent of obtaining a less restrictive age-based content rating." This bill has since been reintroduced as the Video Game Decency Act of 2007 (H.R. 1531) upon its expiration with the 109th Congress. The federal Truth in

Video Game Rating Act (H.R. 5912), mentioned at the beginning of this paper, similarly prohibits publishers from “withholding or hiding” content or offering “gross mischaracterization” of content to raters.

Arguably, these proposals may indicate an understanding that hidden game content may not always be discernable during the rating process, but also implicitly assumes fraudulent intent on the part of publishers as well as negligence or softness on the part of the ESRB. The ESRB guidelines already specify that publishers are legally bound by contract to disclose hidden content, and ESRB penalties for misrepresenting content have met with FTC support.

Requiring Complete Play-through of Games

The Truth in Video Game Rating Act would also have gone several steps further than the Video Game Decency Act, directly changing the ESRB’s rating process. Raters would be required to play every game “in its entirety” before rating it. This is presumably meant as a corrective to incompleteness of review under the ESRB’s current system, in which not all games necessarily get played by raters, and only selected portions are viewed on-screen.

Such a proposal, however, implies an understanding of games in which they can and should be experienced “in [their] entirety,” as if game content were fixed, with a definite conclusion, like movie content. While no legal precedent may clearly exist for this, this proposal may be unconstitutionally vague for failing to address how it would apply to, say, games with no predefined ending, or other variations in content.

Investigating and/or Replacing the ESRB

Finally, some bills have proposed means to investigate the ESRB’s practices with a potential eye to replacing the system, or to replace the ESRB outright. While individual states may not be able to disassemble a system utilized nationwide, three states (Arkansas, New York, and Tennessee) have proposed instating their own rating systems to replace the ESRB’s. All such bills have been abandoned, perhaps in part because the benefit of a statewide rating system did not seem to merit the task of rating a back catalog of thousands of games. New York (S2715/A4464, 2005) further proposed the establishment of an advisory board to assess ratings’ accuracy, though no further actions in the case of inaccurate ratings were specified.

Congress, meanwhile, saw proposals for the Family Entertainment Protection Act (S2126, 2005) and the aforementioned The Truth in Video Game Rating Act (H.R. 5912, 2006), both calling for investigation of the ESRB and review of ratings processes. The latter bill, for example, calls for a study by the Comptroller General that would assess the “effectiveness” of ESRB ratings, “including content for on-line or Internet-based games”; whether the ESRB system should be peer-reviewed; whether the system should be independently operated, rather than voluntarily self-regulated; whether games are marketed to audiences below the age recommended by their ratings; and whether a universal system for “visual content” should be considered. This bill also died with the end of the 109th Congress, but has since been

reintroduced by Senator Brownback as S568 in 2007. While this bill does not directly call to replace the ESRB with another rating system some of the bills described above have done, this may be reasonably inferred as a potential goal or outcome.

These bills thus indicate an overt distrust of the ESRB's ability to accurately rate games and effectively inform consumers, again, despite praise from the FTC relative to other media industries' self-regulatory systems. The latter bill's recommendations, meanwhile, imply an understanding of game content as measurable in the same fashion as "visual content" in other media. Moreover, it is not clear which "content for Internet or online-based games" would need to be rated. Would this include visual material generated by users, existing on an online game's servers, after a game's initial publication? Games distributed online which never seek ESRB ratings, such as *Super Columbine Massacre RPG!* and *JFK Reloaded*? Such questions invite legal confusion.

As with some other vaguely-worded bills discussed here, such matters could potentially be clarified in a rewritten version of the bill. Nevertheless, the driving force behind such bills in the first place may be a moral panic that focuses disproportionate scrutiny on a stigmatized medium. This may raise questions of whether such proposals, as written, are even worth revising.

Theoretical and Practical Considerations for Game Regulation

As illustrated in the analysis of legislation above, lawmakers have approached video games as if they were exceptionally powerful and morally bankrupt films, and yet not reviewed for all of their visual material as films are. The ESRB is thus frequently assumed to be remiss in its duties of properly rating and labeling games, including overlooking inappropriate hidden content. But, as the earlier review of literature suggests, such attitudes may reflect a disproportionate level of scrutiny upon games and the gaming industry, indicative of a moral panic. Rather than attempt to revise bills crafted under such conditions, it may be worthwhile to first discuss how games function as a medium, so as to approach game regulation effectively and proportionally to other media.

The theoretical and practical considerations offered below thus suggest that the voluntary regulatory practices initiated by the video game industry indicate a greater understanding of how the medium actually works than is apparent among legislative reform proposals to date. Nevertheless, the ESRB system still has room for improvement. Thus, alternatives to the legislative proposals described above are suggested following this discussion, including tools for parents and suggestions for ESRB reform.

Four Properties of Game Content

To discuss how the regulatory reform proposals offered to date may misunderstand game content, it may be helpful to describe games in terms of some of their properties that challenge traditional approaches to measuring visual content. This is not to say that game content cannot be measured, but that different forms may simply require different approaches. Consider, then, four ways in which game content differs from other video content:

1. *Variability*: having content that changes even slightly from one play to the next;
2. *Repetitiveness*: featuring predictably repetitive activities, given said variability;
3. *Expandability*: being augmentable by designers unaffiliated with the developer;
4. *Directionality*: allowing a limited and potentially purposeful range of player control.

Each of these properties will be discussed in turn, with attention to how they complicate traditional approaches to measuring and critiquing visual content, including those implied in the legislative proposals described above.

Variability

As the ESRB states on its site ("Frequently Asked Questions"), the content of a game may change depending on how people choose to play. Even relatively simple games potentially offer dozens, hundreds, or even thousands of permutations in possible paths to take. Permutations may increase exponentially for games that feature procedurally-generated content, such as *Elder Scrolls IV: Oblivion*, which use algorithms to generate new content on the fly. The variability of games presents a potential roadblock to calls for complete play-through, depending on what that call is meant to achieve.

By presenting complete play-through as a proposal alongside penalties for withholding content from the ESRB, the Truth in Video Game Rating Act may imply that the goal of the proposal is to force raters to leave no stone unturned in the process of rating a game. The simple truth, however, is that if developers are determined to hide something from the ESRB during the rating process, no amount of playing on the raters' part will reveal that tidbit. Consider, for example, an "Easter egg" in *God of War II* for the PlayStation 2. By standing in a series of vaguely-marked spots in the correct order, within a 30-second time span, and pressing the R1 button on each spot (one of 12 buttons on the PS2 controller), the player discovers a cache of power-ups and sees the words "Now I am become death — the destroyer of worlds" written across the sky. Requiring complete play-through to unearth such scenes is not the functional equivalent of requiring movie raters to watch a whole movie; rather, it is more akin to requiring movie raters to go through a DVD backward and forward, a frame at a time, looking for hidden messages. This, of course, is why the ESRB already has stiff penalties for withholding undisclosed content.

Repetitiveness

If the goal of complete play-through is simply to get a general sense of what happens in the course of "beating" narrative games which offer a conclusion, the question may still remain of how many times a game's core mechanic needs to be played through. Many modern games feature fundamentally repetitive content for many hours — kill monster, gather treasure, repeat. Some games, such as Nintendo's *The Legend of Zelda: Twilight Princess*, may offer dozens of hours of game play just to complete the most basic tasks, even without further exploration of the game world. Some games, such as

the recent Xbox 360 titles, *Mass Effect* and *BioShock*, also offer multiple different conclusions. Meanwhile, some games feature no conclusion at all, such as *The Sims*, and most puzzle games and non-narrative games simply get progressively more difficult to the point where only expert players could complete the game. How many of *Pac-Man's* 256 levels must one play to rate it?

This understanding of variability and repetitiveness should not be taken to imply that measuring game content is impossible. Rather, this should illustrate that commanding raters to “just go through the whole thing” is not a practical approach. More appropriate, perhaps, would be to identify a representative sample of a number of “levels,” “rooms,” or “scenes” from a game, allowing reviewers to play for a pre-determined amount of time and calculate the average occurrence of certain types of content.

Expandability

In addition to the variability inherent to any digital game, many also vary in content based on player actions which the developers might never anticipate. Games which allow simultaneous play between live players, for example, often allow typed or spoken conversation. While not an inherent feature of the games themselves, such online interactions often include offensive speech (cf. Christensen, 2006).

Another form of expandability is in the form of modifications (or “mods”) and other user-generated content created by independent artists, programmers, and players. Some mods simply unlock content already present on game discs which should be reported as part of the ESRB rating process. In *The Sims*, for example, one mod can remove the black square covering characters’ genital area as they use the bathroom; the avatars have no actual genitals beneath the square, though, so this mod only reveals a figure resembling a Barbie or Ken doll. Other mods, however, actually generate new content. This type of mod, created by players in *The Sims*, can alter a character’s appearance so that it has genitals. Such examples of user-generated content were never created or approved by the publisher who submitted the game for rating. Moreover, some games and online environments also allow regular users, not just programmers, to create their own in-game objects, such as clothing and weaponry. Though not part of the original game sold at retail, such items may still be hosted on the publisher’s servers.

Such distinctions fail to be considered by the legislation proposed to date — or, for that matter, by the ESRB, which simply notes that “Game experience may change with online play.”

Directionality

Finally, the least widely understood property of video game content may be in the limited range of activity offered to players. While critics express the danger of allowing players to direct violent scenes rather than simply observing them, it is important to recognize that games do provide direction of their own that may place violent behavior in a meaningful context. This provides a strong counter to the notion that games are empty of theme or purpose, or that the “interactive” nature of games simply serves to make them more dangerous than viewing the same scenes in film.

It may be useful to consider the distinction between content that is *required* for advancement through a narrative game's basic plot, content that is *rewarded* or *punished* but not required for advancement, content that is *permitted* but not required or rewarded, and content that is *depicted* but not acted out by the character controlled by the player, such as in cinematic cut scenes. In comparison, most game legislation bills noted in the sample described here simply propose regulation based solely on the "depiction" of violent acts. As noted earlier, the ESRB does take into consideration whether violent content appears in a cinematic "cut scene" versus a scene that players play through themselves.

By way of example, consider the *Grand Theft Auto (GTA)* series in comparison with *Bully*, both developed by the same studio. *GTA* games often require players to commit criminal acts to advance through the plot. Some additional criminal actions, such as beating up innocent passers-by, are entirely optional but still rewarded (by giving the protagonist the victim's money) more than punished (as such crimes eventually attract police, but the police can be easily escaped). *Bully*, meanwhile, features a prep school troublemaker at "Bullworth Academy" who sometimes gets into fights with the real bullies. Picking on girls or younger kids is never required, and immediately attracts police or prefects who punish the protagonist.

In addition, games with thoughtful presentation of violence are not as difficult to find as critics may believe. Consider, for example, the espionage game *Metal Gear Solid 3*. The *Metal Gear* series has always emphasized stealth over combat skill, but this game also includes a potentially lengthy scene in which the protagonist is confronted with the ghosts of every living being he has killed throughout the game, including animals killed for food. The more the player chooses to kill, the longer this scene takes (see Miller, 2006). To consider another example, *Shadow of the Colossus*, a fantasy game, requires the player to inflict violence on sometimes docile creatures in order to advance the plot and revive the protagonist's deceased love. The game concludes with a sequence that allows the player to struggle, but not to "win" — no matter what the player does in these scenes, the ending is tragic, revealing that the protagonist's actions were inadvertently in service to a demon. The designers use traditional conventions of gameplay to reinforce themes of sacrifice, futility, and misguided heroism. As Lee (2003) suggests, playing through no-win situations may encourage contemplation and socio-political critique. It may follow, then, that even the concept of "Violence Required for Advancement," suggested earlier, cannot always encapsulate a game's potential "effect."

Violent content is not the only kind of content that may have meaningful potential. While New York's anti-racism in games bill may seem reasonable on the surface, applying the same rule to movies would restrict the sale of works such as *American History X*, a fairly didactic story about Nazi skinheads who suffer tragedy and learn tolerance. No mainstream game has yet approached such a touchy issue, but treating game content as inherently amoral would make it quite unlikely that such a game would ever be made at all.

The inclusion of moral or thematically challenging decision-making has been a feature of games for years, at least since the "virtue tests" the 1980 *Ultima*. Admittedly, many or most developers have no such aspirations; one would be hard pressed to describe fighting games such as *Mortal Kombat* as similarly meaningful. Nevertheless, presenting players with moral choices and forced actions demanding

reflection is becoming an increasingly common feature of popular, high-profile titles, such as *BioShock* and *Mass Effect*. Conceptualizing even M-rated games as needing blanket restrictions fails to recognize where the medium may actually be headed.

Practical Alternatives to Previous Regulatory Proposals

Game legislation faces some legal hurdles, but other tools remain available to parents. While there is room for improvement in the ESRB system, the proposals made to date have not taken the most informed approach. Considered here are some alternatives to the legislative proposals described here that could help consumers to be more informed and in control of game content.

Parental Controls

In the minority of cases where M-rated games purchases are made by purchasers younger than 17, parents still have the capability to restrict their children's ability to play those games. Each of the newest generation of home game consoles features some sort of parental control option. The Nintendo Wii, Microsoft Xbox 360, and Sony PlayStation 3 feature relatively straightforward systems that allow users to manage the highest ESRB rating of games that can be played on the console without entering a numerical code. These systems also allow some additional fine-tuning of settings, such as turning off voice chat functions for the PS3 and restricting daily or weekly playtime on the Xbox 360. Additional information about each of these features is available on the console manufacturers' Web sites.

Compared to regulatory intervention that would restrict sale to minors, this technology presents an option to restrict minors' ability to play games that is both potentially more effective and almost certainly less restrictive upon adults' ability to purchase games. Regulatory systems enabled by gaming technology itself have advantages that legal restriction of sale lacks. Notably, if most M-rated games are bought by or in the presence of adults, even young gamers who cannot obtain a game from their parents may be able to borrow a game from friends. Moreover, modern consoles and PCs tend to come equipped with internet capabilities and access to online stores where games can be downloaded directly to the user's hard drive. Only by restricting access on the gaming platform itself could parents ensure that games of a certain rating cannot be played in one's own household.

Unfortunately, such parental controls still rely on evaluative ratings rather than the descriptive ratings preferred by parents. Console manufacturers may do well to further develop these features in the future, perhaps by offering restriction of game use based on content descriptors instead of (and in addition to) ratings. Future research may find it useful to examine parents' awareness, ability to use, and desire for such features. Based on the results that follow, future policy efforts may focus on promoting awareness of these features, perhaps even in conjunction with promoting awareness of the V-chip installed in all American TV sets.

Informational Resources

For those parents who simply seek more information about games before making purchases, a number of Web sites offer parent-friendly reviews and advice. Some of these are linked from the ESRB's own "Resources for Parents" page (though not necessarily affiliated with or endorsed by the ESRB). GamerDad.com, for example, features reviews written by parents who are experienced video game players themselves and who also see the need to restrict their own children's access to certain games. Each review on the site explains what content seems to have inspired the ESRB's content descriptors, describes the game overall in greater detail, offers a more specific age-based ranking (e.g., "6+"), and concludes with a "Kid Factor" paragraph explaining whether the reviewer finds the game appropriate for children.

For parents who would prefer to go through a game, hidden content and all, with a fine-toothed comb, a number of Web sites offer unauthorized "walk-through" files created by experienced players. These documents typically detail what needs to be done to complete missions and access hidden content. GameFAQs.com, for example, allows users to search for titles by game and more narrowly by platform (PC, Xbox, PS2, etc.), in many cases offering multiple different free walk-throughs for the same game. Because of games' variability, as described earlier, these documents cannot predict everything that a player could potentially do — and thus, an exact measurement of violent or sexual content cannot necessarily be offered — but they can give an idea of what expert players expect to occur. Personal comments by the writers also give a glimpse as to how gamers themselves responded to certain scenes, such as when the writer of a *Splinter Cell: Double Agent* walk-through suggests that making certain moral choices in the game provides for a more enjoyable game experience (Barbee, 2007).

ESRB Reforms

The present study suggests that the ESRB may have been criticized less for its actual failings in measurement than for misunderstandings of how game content ought to be measured. Nevertheless, the ESRB's review process could indeed be more rigorous. Some of its changes over the years indicate recognition of the needs of consumers, such as its implementation of the most detailed content descriptor system in media ratings. Other changes may seem more like token gestures in the face of mounting criticism, such as in its recent decision to hire full-time raters rather than part-time raters — though still only keeping six raters on staff to review thousands of games. Additional, specific reforms may be worth particular consideration.

More precise content descriptors. As noted earlier in discussing the directionality of games, there may be a difference between actions that are rewarded, punished, or required to advance relative to those that are simply depicted. Such specificity has been described as part of the rating process, but it may also be worth integrating into content descriptors. Only so many (or so precise) content descriptors can reasonably fit on a package, and the ESRB notes that those listed on the package are not necessarily exhaustive of all content present, but games could potentially be encoded with a fuller list of descriptors for interface with improved parental control technology.

Potentially even more necessary is a replacement for the vague message accompanying the rating of all games with online play capabilities — “Game Experience May Change With Online Play.” The implication here, of course, is that the game may be rated T when played at home alone, but going online might expose one to language, mods, or other content from players that one would only find in an M- or AO-rated game. Rather than re-assessing such games as requiring a “Strong Language” content descriptor, some more specific content descriptors about the ways in which games are expandable might be of use to some parents, such as specifying “Chat Functions” or “Player-generated Imagery.”

More rigorous play-testing. Robust though the system may be in some areas, having only six trained raters, and omitting content descriptors for alcohol and drug use (Thompson, Tepichin & Haninger, 2006), suggests that there is room, and perhaps need, for more investigative playing.

The ESRB’s current process is designed around the property of repetition in games, coupled with faith in publishers to honor their contract and disclose any otherwise unpredictable activities. The ESRB relies on its own system of penalties for undisclosed deviations from predictable content. For many games, such as puzzle games, this likely remains quite sufficient. Even games with more detailed and linear narratives are often quite repetitive, with the majority of game time spent solving in-game puzzles and battling enemies. Should game narratives eventually become as sophisticated and unpredictable as complex film narratives, however, the ESRB may no longer be able to bank on a rating process which involves so little actual playing of games. Footage of a game being played may be sufficient to assign a rating early on, but the ESRB could demonstrate greater commitment to reviewing practices in the follow-up stage prior to a game’s release.

Increased time reviewing and playing games may thus be necessary specifically for those games that feature less repetition, such as dialog- and plot-heavy narrative games. This does not necessarily mean that games should be played “in their entirety,” which games’ variability complicates, but rather that the ESRB can reasonably claim that a representative sample of each game is played. To that end, the ESRB might consider hiring more raters, and raters could make use of cheat codes furnished by publishers to select scenes from various points in the game, in addition to spending some time playing through linearly as players at home would do.

If consumer demand warrants even greater scrutiny of game content, the ESRB might consider reaching out to players themselves for even more detailed review just prior to the release of games. The walk-through files on GameFAQs.com are written for fellow gamers, and may seem cryptic to the eyes of those who do not already play games. The ESRB may be able to recruit volunteers to write up more formal walk-throughs of certain games in return for free, early access to games, much as how publishers voluntarily send games to reviewers. This could offer a more comprehensive process — not necessarily as a validity check before games are released, but to provide more information to consumers shortly following releases.

Transparency. The play-testing process suggested above, involving cheat codes and a representative selection of levels to play, may in fact resemble the process that occurs now for the “random” and “hand-selected” games played just prior to release. This is hard to say, however, because of

the somewhat opaque nature of the ESRB process. This is not unlike other media rating processes, however; the MPAA movie rating process, for example, was the subject of a recent documentary, *This Film is Not Yet Rated*. Greater transparency and potential for public critique and review might be desirable, then, not just for the ESRB's rating process, but from media rating processes more generally. Such rating systems, after all, were created with the mandate to work for consumers, not just for the interests of media industries.

If legislators, voters, or courts were to ultimately decide that media rating systems would be better off in state hands than in private hands, the present study should help suggest considerations that video game raters would do well to consider. When elected officials proclaim that one particularly controversial medium deserves extra scrutiny, however, this should raise questions of whether the resulting policies adequately serve consumers' needs.

Conclusion

Legislative efforts to regulate the sale, rental, and rating of video games have demonstrated a distrust of the video game industry's rating system disproportionate to that of other media industries' systems. This is especially apparent given the relative thoroughness of ESRB labeling practices and (for better or worse) the effective elimination of unrated or "adults only" content that exists in other media. Such legislation has fundamentally misunderstood technical aspects of the medium, resulting in material so overly broad that the enforcement of many bills proposed to date would be detrimental to the development of innovative content and the accessibility of games to adults more broadly. Further, even if legislation to regulate games were to survive in court, bills crafted around a moral panic surrounding games would likely only restrict children's access to objectionable content insofar as they restrict everyone's access. For those who may be genuinely interested in monitoring the content of games played by children, the legal regulation described here is unlikely to be the most fair and effective approach available.

This is not to say, of course, that the ESRB system is flawless. Nor should this suggest that the solution is to simply craft more precise legislation to upend the game industry's self-regulatory system. If the video game rating system is to be called into question, let it be part of a process of calling all media content regulation processes into question. In the meantime, the analysis presented here is meant to encourage all interested parties — legislators, industry professionals, parents, and gamers alike — to consider what works in the present system, what might work better, and what avenues might be preferable to legislation that is not adequately designed or necessarily intended "to serve the proffered purpose" of looking out for children's interests (*Entertainment Software Ass'n. v. Blagojevich*, 2005, p. 39).

The recommendations made here may not all be reasonably implemented together; after all, only so many content descriptors can fit on a package without becoming overwhelming. Regardless of whether the ESRB system sees additional adjustments in the near future, critics may do well to recall how the system has evolved to be more in line with what research suggests consumers want. Proposals for reform are bound to influence an ongoing policy debate that has real implications in how taxpayer money and

lawmaker time are spent. Regulation of video game sales, rental, and rating processes must take the unique formal properties of games into consideration if it is to be not just legal, but even capable of being implemented.

References

- Aitken, S. (2001). Schoolyard shootings: Racism, sexism, and moral panics over teen violence. *Antipode*, 33(4), 593–600.
- Anderson, C. A. & Bushman, B. J. (2001). Effects of violent video games on aggressive behavior, aggressive cognition, aggressive affect, physiological arousal, and prosocial behavior: A meta-analytic review of the scientific literature. *Psychological Science*, 12(5), 353-359.
- Anderson, C. A. & Dill, K. E. (2000). Video games and aggressive thoughts, feelings, and behavior in the laboratory and in life. *Journal of Personality and Social Psychology*, 78(4), 772-790.
- Barbee, J. (2007). Xbox 360 FAQ/walkthrough: Double Agent edition. GameFAQs.com.
<http://www.gamefaqs.com/console/xbox360/file/926934/48419>
- Block, J.J. (2007). Lessons from Columbine: Virtual and real rage. *American Journal of Forensic Psychiatry*, 28(2), 1–27.
- Block, J.J. & Crain, B.R. (2007). Omissions and errors in “Media violence and the American public.” *American Psychologist*, 62(3), 252–253.
- Brightman, J. (2006a, June 8). Breaking: Rockstar, Take-Two settle FTC charges. GameDailyBiz. Retrieved December 1, 2006 from: <http://biz.gamedaily.com/industry/feature/?id=12906&rp=49>
- (2006b, October 10). ESA pres addresses E3, ESRB and health of the industry. GameDailyBiz. Retrieved December 1, 2006 from: <http://biz.gamedaily.com/industry/interview/?id=14060>
- Bushman, B.J. & Cantor, J. (2003). Media ratings for violence and sex: Implications for policymakers and parents. *American Psychologist*, 58(2), 130–41.
- Calvert, C. (2005). The First Amendment, the media and the culture wars: Eight important lessons from 2004 about speech, censorship, science and public policy. *California Western Law Review*, 41. Retrieved from LexisNexis.
- Carey, C. (2004). The blame game: Analyzing constitutional limitations imposed on legislation restricting violent video game sales to minors after St. Louis. *Pace Law Review*, 25(1). Retrieved from LexisNexis.

Christensen, N.C. (2006). Geeks at play: Doing masculinity in an online gaming site. *Reconstruction*, 6(1).

Dill, K.E. & Dill, J.C. (1998). Video game violence: A review of the empirical literature. *Aggression and Violent Behavior*, 3(4), 407–428.

Dwyer, T. & Stockbridge, S. (1999). Putting violence to work in new media policies: Trends in Australian internet, computer game and video regulation. *New Media and Society*, 1(2), 227–249.

Entertainment Software Ass'n. v. Blagojevich (2005). The United States District Court for the Northern District of Illinois Eastern Division. Case No. 05 C 4265.

Entertainment Software Rating Board. (2007). Chronology. Retrieved October 1, 2007 from:
<http://www.esrb.org/about/chronology.jsp>

----- (2007). Frequently asked questions. Retrieved October 1, 2007 from:
<http://www.esrb.org/ratings/faq.jsp>

----- (2007). Enforcement. Retrieved October 1, 2007 from:
<http://www.esrb.org/ratings/enforcement.jsp>

----- (2007). Game ratings & descriptor guide. Retrieved October 1, 2007 from:
http://www.esrb.org/ratings/ratings_guide.jsp

----- (2007). Ratings process. Retrieved October 1, 2007 from:
http://www.esrb.org/ratings/ratings_process.jsp

----- (2007). Resources for parents. Retrieved October 1, 2007 from:
<http://www.esrb.org/about/resources.jsp>

Federal Trade Commission. (2007, April). Marketing violent entertainment to children: A fifth follow-up review of industry practices in the motion picture, music recording & electronic game industries. Retrieved May 23, 2007 from:
<http://www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf>

----- (2006, June). Take-Two Interactive and Rockstar consent agreement. Retrieved December 1, 2006 from <http://www.ftc.gov/os/caselist/0523158/0523158Take-TwoInteractiveandRockstarConsentAgreement.pdf>

----- (2000, September). Marketing violent entertainment to children: A review of self-regulation and industry practices in the motion picture, music recording & electronic game industries. Retrieved December 1, 2006 from: <http://www.ftc.gov/reports/violence/vioreport.pdf>

- Federman, J. (1998). *National television violence study*, Scientific Papers, 1994–5; vol. 3, *Executive Summary* (April). The Center for Communication and Social Policy, Santa Barbara: University of California.
- Freedman, J.L. (2002). *Media violence and its effect on aggression: Assessing the scientific evidence*. Toronto and Buffalo: University of Toronto Press.
- Funk, J.B., Flores, G., Buchman, D.D., & Germann, J.N. (1999). Rating electronic games: Violence is in the eye of the beholder. *Youth & Society*, 30(3), 283–312.
- Galloway, A.N. (2006). *Gaming: Essays on algorithmic culture*. Minneapolis: University of Minnesota Press.
- Gauntlett, D. (1995). *Moving experiences : understanding television's influences and effects*. John Libbey: London.
- Gladstone, B. & Jenkins, H. (2003, June 27). Game wars. Interview by B. Gladstone (Host), *On the media*. NPR. Retrieved November 1, 2007 from:
http://www.onthemedial.org/yore/transcripts/transcripts_062703_games.html
- Goode, E., & Ben-Yehuda, N. (1994). Moral panics: Culture, politics, and social construction. *Annual Review of Sociology*, 20, 149–171.
- Guzman, P. (2006). States forced to pay legals. Video Game Law Blog. Retrieved December 4, 2006 from:
http://davis.ca/community/blogs/video_games/archive/2006/12/04/853.aspx
- Haninger, K., Ryan, M.S., & Thompson, K.M. (2004). Violence in Teen-rated video games. *Medscape General Medicine*, 6(1), 1. Retrieved from LexisNexis.
- Heusmann, L.R. (2007). The impact of electronic media violence: scientific theory and research. *Journal of Adolescent Health*, 41(6), S6–S13.
<http://www.jahonline.org/article/PIIS1054139X07003916/fulltext>
- Hill, A. (2001). Media risks: The social amplification of risk and the media violence debate. *Journal of Risk Research*, 4(3), 209–225.
- Jenkins, H. (2000, Winter). Lessons from Littleton: What congress doesn't want to hear about youth and media. *Independent School*, 59(2). Retrieved from EBSCO MegaFILE.
- (1999). Testimony before the U.S. Senate Commerce Committee. Retrieved December 1, 2006 from: <http://commerce.senate.gov/hearings/0504jen.pdf>
- Lee, S. (2003). "I lose, therefore I think": A search for contemplation amid wars of push-button glare. *Game Studies*, 3(2).

- Lewis, J. (2000). *Hollywood V. Hard Core*. New York: New York University.
- Long, R. (2005, December 4). Governor to fight video-game ruling. *Chicago Tribune*. Retrieved October 1, 2007 from NewsBank.
- Lopes, P. (2006). Culture and stigma: Popular culture and the case of comic books. *Sociological Forum*, 21(3), 387–414.
- Matthews, M. (2007, October 16). This game is not yet rated: Inside the ESRB ratings system. Gamasutra. Retrieved October 16, 2007 from: http://www.gamasutra.com/view/feature/1970/this_game_is_not_yet_rated_inside_.php
- McCauley, D. (2007, August 6). BREAKING: Schwarzenegger will appeal CA video game ruling. Retrieved August 6, 2007 from: <http://gamepolitics.com/2007/08/06/breaking-schwarzenegger-will-appeal-ca-video-game-ruling/>
- (2005, September 27). Why the video game industry is losing the culture war. Retrieved October 1, 2007 from: <http://biz.gamedaily.com/industry/myturn/?id=10660>
- McRobbie, A. & Thornton, S.L. (1995). Rethinking 'moral panic' for multi-mediated social worlds. *The British Journal of Sociology*, 46(4), 559–574.
- Miller, P. (2006). "Metal Gear Pacifist." *The Escapist*. Retrieved December 1, 2006 from <http://www.escapistmagazine.com/print/29/10>
- Nyberg, A.K. (1998). *Seal of Approval: The Origins and History of the Comics Code*. Jackson: University Press of Mississippi.
- O'Sullivan, T., Hartley, J., Saunders, D., Montgomery, M., & Fiske, J. (1994). *Key concepts in communication and cultural studies*. London and New York: Routledge.
- Playing video games: BBFC publishes research. (2007, April 17). BBFC.co.uk. Retrieved November 1, 2007 from: <http://www.bbfc.co.uk/news/stories/20070417.html>
- Pustz, M.J. (1999). *Comic book culture: Fanboys and true-believers*. Jackson: University Press of Mississippi.
- Pyle, S. (2003, Fall). Is violence really just fun and games?: A proposal for a violent video game ordinance that passes constitutional muster. *Valparaiso University Law Review*, 37.
- Sabin, R. (1996). *Comics, Comix & Graphic Novels*. New York: Phaidon Press.

Senate panel rates entertainment ratings (2001, July 25). CNN.com. Retrieved October 1, 2007 from:
<http://archives.cnn.com/2001/ALLPOLITICS/07/25/senate.ratings/index.html>

Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies, Parliament of Australia. (1994). *Report on overseas sourced audiotex services, video and computer games, R-rated material on pay TV.*

Sherry, J. (2006). Research on violent video games and aggression: A translation. In P. Messaris & L. Humphreys (Eds.), *Digital media: Transformations in human communication*. New York: Peter Lang.

Thompson, K. & Haninger, K. (2001). Violence in E-rated video games. *Journal of the American Medical Association, 286*(5), 591–598.

Thompson, K.M., Tepichin, K., & Haninger, K. (2006). Content and ratings of Mature-rated video games. *Archives of Pediatrics and Adolescent Medicine, 160*(4), 402–410.

United States Senate (2001, July 25). Testimony of Douglas Lowenstein, President, Interactive Digital Software Association before the Senate Committee on Governmental Affairs Regarding Entertainment Rating Systems. Retrieved December 1, 2005 from:
http://hsgac.senate.gov/072501_lowenstien.htm

Video Software Dealers Ass'n. v. Norm Maleng (2005). United States District Court Western District of Washington at Seattle. No. C03-1245L.

Walsh, D.A. & Gentile, D.A. (2001). A validity test of movie, television, and video-game ratings. *Pediatrics, 107*(6), 1302–1308.

Williams, D. (2003). The video game lightning rod: Constructions of a new media technology, 1970–2000. *Information, Communication & Society, 6*(4), 523–550.

Williams, D. & Skoric, M. (2005). Internet fantasy violence: A test of aggression in an online game. *Communication Monographs, 72*(2), 217–233.