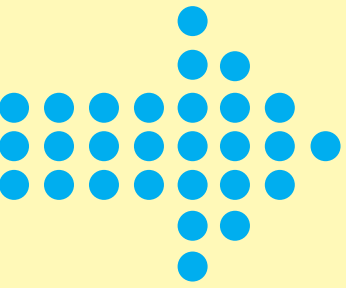




entertainment
software
association

annual report

FISCAL YEAR 2009 



A Message From Michael D. Gallagher

Dear Friends:

I am pleased to present the Entertainment Software Association's (ESA) Annual Report for Fiscal Year 2009. For 15 years now, the ESA has represented the entertainment software industry's business and public affairs needs. Our industry's growing role in society, particularly the economy, presents the ESA with an unprecedented array of opportunities and responsibilities. I strongly believe that the following report demonstrates the extent to which we embraced this new reality and worked to advance your objectives.

Before you read on, however, I would like to highlight a few of the activities of which we are most proud.

- In FY 09, the ESA welcomed seven new members: Southpeak Interactive, Natsume Inc., Trion World Network, XSEED Games, Crave Entertainment, Koei Corporation and Playlogic Entertainment.
- With a growing network of retained partners across the country, ESA State Government Affairs (SGA) effectively monitored, responded to and shaped industry-related legislation during the past year. While 43 bills sought to regulate content and/or access to video games, our actions ensured that no legislature enacted a law regulating game sales. Conversely, Alabama, Arkansas, Georgia, Michigan and Texas enacted into law tax incentives for game development; similar bills are pending in 17 other states. The Texas legislature also declared February 3, 2009, as “Entertainment Software Day” in the state.
- Continuing its involvement and visibility on Capitol Hill, ESA Federal Government Affairs (FGA) focused during the last year on a variety of issues, including content regulation and copyright/intellectual property (IP) protection. The ESA’s education efforts on content regulation discouraged Congress from taking any unfavorable action and generated favorable findings in the FTC’s latest Secret Shopper Report as well as The National Institute on Media and the Family’s (NIMF) annual “Report Card.” FGA staff also lobbied extensively on IP enforcement legislation, ensuring that bills strongly considered the industry’s views.
- Now boasting more than 160,000 members, the ESA-sponsored Video Game Voters Network (VGVN) played an active role during the last election season. In particular, the VGVN coordinated a robust letter-writing campaign that generated thousands of letters for the presidential candidates. The unprecedented efforts earned the organization several grassroots advocacy awards.
- In FY 09, the ESA’s Anti-Piracy Department continued to increase efforts against the growth in online piracy being facilitated by expanding broadband access around the world. The ESA sent takedown notices to ISPs covering more than 45 million instances of infringement of member company games in more than 100 countries worldwide. In the United States and seven other countries, including Canada, Mexico and Brazil (among others), the ESA procured and supported law enforcement investigations, raids and prosecutions against a number of game piracy targets. Productive training of law enforcement and IP education programs aimed at younger age groups during the past year also helped to address different facets of the game piracy phenomenon.
- Throughout the last year, the ESA’s Communications & Industry Affairs (C&IA) Department produced and distributed a variety of resources that facilitate a positive understanding of the video game industry among opinion leaders and the general public. For member companies, the ESA made available two communications toolkits and an online calendar that publicizes industry announcements and events. For the media and other stakeholders, the ESA distributed the 2008 *Essential Facts about the Computer and Video Game Industry*, background documents on the role of video games in daily life and a monthly HTML newsletter that highlights industry news.

A Message From Michael D. Gallagher

- C&IA continues to proactively conduct media relations efforts around association-specific announcements, government affairs activities and general industry news. For example, the ESA distributed and pitched 40 state-specific press releases in late 2008 urging parents to check Entertainment Software Rating Board (ESRB) ratings when purchasing video games as gifts. The releases, all of which contained a supportive quote from an elected official in that state, ultimately reached an audience of more than one million.
- Illustrating our industry's evolving role in society, the ESA commissioned a revealing study that shed light on the prevalence of video game-based recruiting and training in the workplace. The study found that 70 percent of major employers utilize interactive software and games to train employees, and that more than 75 percent of businesses and nonprofits already offering video game-based training plan to expand their usage in the next three to five years.
- The ESA organized and executed the 2008 E3 Media & Business Summit, which featured a keynote address from Texas Governor Rick Perry and achieved each of its internal goals. To more strongly represent the industry's recent growth, the ESA then worked with member companies, the board of directors and other stakeholders to revitalize for 2009 the Electronic Entertainment Expo (E3 Expo).
- The ESA displayed *Into the Pixel*, an art exhibit sponsored by the Academy of Interactive Arts & Sciences and the Los Angeles County Museum of Art, at SXSW's ScreenBurn Arcade. The ESA also arranged for video game experts and curators from the Los Angeles County Museum of Art and Getty Museum to judge the exhibit at the 2008 E3 Media and Business Summit. In both cases, *Into the Pixel* provided 16 published computer and video game artists with an opportunity for review and recognition from their peers and the public.
- In the last year, the ESA Foundation became more active than ever before in providing opportunities for America's youth. Through proceeds from its annual charity game pack and the industry's premier fundraising event, "Nite to Unite for Kids," the Foundation distributed an unprecedented number of grants and scholarships. Among other worthy organizations, the Foundation supported Web Wise Kids, the National Institute on Media and the Family and ThanksUSA, which offers need-based, postsecondary scholarships to the families of active-duty military personnel.

I would like to thank our member companies for their work during the past year. The creativity and innovative thinking that you continue to provide has convinced millions of Americans that computer and video games can positively impact our economy and society. I also want to express my gratitude to our Board members, ESA staff and the ESRB. Through your often unheralded efforts, the ESA has established a prominent voice for the video game industry that will protect our interests for years to come.



Michael D. Gallagher
President and CEO

FEDERAL GOVERNMENT AFFAIRS

In FY 09, the ESA continued its Capitol Hill involvement and visibility, actively participating in discussions on legislation impacting ESA members and hosting numerous events and briefings highlighting our members' products and industry.

The 2008 election brought substantial change to Washington, including 64 new faces in Congress and a new approach to governance. The House of Representatives strengthened its majority substantially, and the Senate now has the 60 votes necessary to move legislation. While greater oversight and increased regulation is widely expected under a Democratic Administration and Democrat-controlled Congress, large reforms such as climate change and health care will likely consume both Congress and the Administration well into the first half of the 111th Session (or through the end of 2009). That said, it will be more important than ever for the industry to highlight issues like rampant piracy in a stagnant economy and growth in the online marketplace to remain above the fold. FGA expects increased activity on broadband-related issues like expansion, network management and privacy in both the Administration and

Congress, and continued oversight on the industry's content. FGA will be conducting expansive outreach in 2009 to continue policies that foster growth in the industry and marketplace.

PRIORITY ISSUES

Content Regulation

In FY 09, congressional attention on the entertainment software industry focused at times on video game content and regulation. However, considerable positive progress was made this year as policymakers became increasingly informed about the ESRB rating system and the industry's self-regulatory practices. The following is a summary of key FY 09 developments in the area of federal content regulation:

- The National Institute on Media and the Family (NIMF) held its annual "Report Card" press event, where the video game industry received favorable grades. NIMF called for greater responsibility from parents;
- Representative Joe Baca (D-Calif.) introduced a bill calling for the Federal Trade Commission to study ESRB's effectiveness and require the General Accounting Office to study the effects of games on children. No action was taken on this bill;
- Senator Mark Pryor's (D-Ark.) bill introduced in FY 08 proposing an FCC Notice of Inquiry on the effectiveness of filters on "Internet platforms" to restrict access to mature content was signed into law at the end of FY 09; and
- Representatives Jim Matheson (D-UT) and Lee Terry (D-Neb.), along with Senator Roger Wicker (R-Miss.), introduced companion legislation that directly regulates video game sales. No action was taken on either bill.

In addition, in FY 09, the FTC released its latest Secret Shopper Report. The report included several favorable findings related to our industry partners in retail and the ESRB rating system.

federal government affairs

Intellectual Property Protection

The ESA's other priority area of focus in Congress was maintaining strong IP protection in the United States and abroad. FGA staff monitored several copyright-related initiatives that could have a significant impact on the entertainment software industry, but in particular FGA staff lobbied extensively on IP enforcement legislation.

The ESA also closely monitored and reported on developments related to patent reform legislation, which passed the House in FY 08. Senate action on patent legislation was expected in FY 09; however, it was pushed off the agenda and will most likely be reintroduced in FY 10.

Additionally, FGA's IP objectives included obtaining congressional support for strong IP provisions in free trade agreements (FTAs). FTAs languished in Congress in FY 09 after the successful signing of the Peru FTA in 2007. The Columbia, Panama and South Korea FTAs remain stalled. FGA and IP Policy staff also met with congressional staff in FY 09 as Anti-Counterfeiting Trade Agreement (ACTA) negotiations took place.

Immigration

In FY 09, FGA staff encouraged the ESA member companies to join the COMPETE America Coalition to prioritize the video game industry's immigration agenda, in particular expansion and availability of H-1B visas for high-skilled workers. While comprehensive immigration reform waned in FY 09 under the pressure of election-year politics, Congress made several attempts to pass a temporary legislative fix to the current green card system; in particular, a recapture of visas lost to bureaucratic delays. While the provision was brought before the Judiciary Committee on several occasions, it failed to garner enough support for full Committee review and floor action.

Internet Safety

In FY 08, Congress introduced multiple pieces of legislation in the House and the Senate directed towards increasing public awareness and providing education to children on safe use of the Internet. In FY 09, one of the many bills introduced in FY 08 was signed into law. This bill, introduced by Senate Commerce Committee Chairman Senator Daniel Inouye (D-HI) and the Ranking Member, Senator Ted Stevens (R-AK), resulted in the formation of an online safety and technology working group that will evaluate industry efforts to promote online safety through educational efforts, parental control

technology, blocking and filtering software, and age-appropriate labels for content. The National Telecommunications and Information Administration will lead this effort.

PRIORITY INDUSTRY EVENTS AND MEETINGS

In FY 09, FGA hosted a number of events in the ESA's offices to highlight various games for congressional staff including a Presidential Debate Watch for more than 80 congressional staff. FGA also hosted or participated in issue briefings and other technology events on Capitol Hill. All of these events generated a positive dialogue about the industry and were well-attended by members of key audiences.

In addition to the several congressional charity events FGA participates in every year, in FY 09, FGA staff also identified a charitable organization to work with. This charity, known as Comfort for America's Uniformed Soldiers (CAUSE), provides access to video games for the wounded in four U.S. military hospitals. On Veterans' Day, the ESA cosponsored, and FGA attended, CAUSE's annual benefit dinner to raise money for the purchase of video games and consoles.

Finally, FGA staff organized meetings for ESA member companies visiting Washington, D.C., or states where they have a constituent base, and FGA staff organized meetings for the ESA's president with key Members of Congress to further increase the visibility of the video game industry.

STATE GOVERNMENT AFFAIRS

The ESA's state and local government affairs program has four primary goals:

- Stop potential or introduced bills seeking to regulate the sale of video games, including the imposition of taxes based on game content;
- Develop positive relationships with legislative leaders, governors and state attorneys general, to enhance the industry's access, influence and credibility;
- Secure tax incentives benefiting the video game industry; and
- Identify, defeat or amend legislation that increases legal liability of the industry and/or costs of computer and video games.

To accomplish these goals, the ESA has established a network of legislative advocates and allies across the country to help monitor, respond to and shape legislation that affects the entertainment software industry.

In FY 09, a total of 161 bills (80 in 2008 and 81 in 2009 to date) affecting computer and video games were introduced in 37 states. Of the bills pending at the state and local levels in 2008, none were carried over to the 2009 legislative session.

In FY 09, the ESA continued to face serious state government challenges, including attempts to regulate the sale or distribution of video games. Forty-three bills to regulate content and/or access to video games were introduced, but no laws regulating video games sales were enacted.

Bills providing tax incentives for game development were enacted into law in Alabama, Georgia and Michigan in FY 09. There are 17 bills pending to establish or increase existing tax incentives for video game production.

In the 2009 legislative session to date, 17 bills have been introduced in states like California, New York, Minnesota, North Carolina, Washington and Wisconsin to impose taxes on digitally transferred and downloaded products, which include video games. The ESA joined the Digital Goods Coalition, which monitors and is engaged in educating about the negative impacts of digital tax legislation.

The ESA has developed and enhanced relationships with national and state retailers who have weighed in to support the ESRB rating system and the ESA at legislative hearings. SGA has also worked with key legislative leaders, state attorneys general and opinion leaders across the country to educate them on positive industry efforts.

The following are highlights of state and local level efforts.

ALABAMA

The ESA supported legislation in 2009 to implement motion picture, video game and television production incentives. The bill has passed both the House and Senate, and was signed into law by Governor Bob Riley (R) on March 24, 2009.

ARIZONA

The ESA opposed legislation that imposed civil liability on the producers and distributors of "dangerous" material that someone claims resulted in the commitment of a felony. The bill passed the House, but was defeated in the Senate Judiciary Committee before the legislature adjourned in 2008. This bill was not reintroduced in the 2009 session.

Forty-three bills to regulate content and/or access to video games were introduced [in FY 09], but no laws regulating video games sales were enacted."

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ARKANSAS

The ESA is supporting 2009 legislation to implement incentives for film and digital product development, which specifically includes video games. The bill passed the House on March 13, 2009, passed the Senate on March 26, 2009, and was signed into law by Governor Mike Beebe (D).

CALIFORNIA

The ESA participated in a coalition that successfully stopped two bills that sought to impose taxes on digital property. Both of these bills have been reintroduced in the 2009 legislative session.

COLORADO

The ESA supported legislation introduced in 2009 offering film production (including video game) tax credits.

CONNECTICUT

Three bills have been introduced to cap the amount of film and video game production tax credits provided under the state's current incentive program. The ESA is working with other affected parties to preserve the current tax credit levels, and testified in support of the current tax credit program.

DELAWARE

The ESA continues to work with Delaware legislators to keep them informed about the industry's new tools and ongoing efforts to help parents when it comes to video game purchases for their families. Legislation to regulate video game sales was introduced in the previous session, but has not been reintroduced to date.

FLORIDA

The ESA continues to work with legislative leaders to increase incentives for digital media production in the state. Senator Mike Haridopolos (R) sponsored incentive legislation that passed the Senate Commerce Committee and Representative Steve Precourt (R) introduced companion legislation. On May 1, 2009, the Florida legislature adopted its annual budget providing \$10.8 million for the state film and digital production incentive program, of which up to five percent is for digital media production.

GEORGIA

The ESA backed legislation increasing the amount of tax credits available for film, video and digital media production that was signed into law.

HAWAII

The Honolulu City Council adopted an ordinance on January 28, 2009, that prohibited playing video games while operating a motor vehicle. Law enforcement opposed this ordinance as being unenforceable and too narrow. On February 13, 2009, Mayor Mufi Hannemann (D) vetoed the ordinance.

ILLINOIS

Legislation was introduced that sought to make technical changes to the Illinois harmful to minors law. This legislation erroneously amended the failed 2005 video game regulation statute. If the bill was passed, it would re-enact the violent video game statute invalidated in *ESA v. Blagojevich*. The ESA worked with Illinois legislators to introduce a new bill that would not have the unintended consequence of re-enacting the failed video game statute. HB 2513 passed both houses of the legislature and will soon be sent to Governor Patrick Quinn (D) for consideration.

The ESA also worked with legislators to introduce legislation (HB 617) addressing member company concerns over a previously enacted law related to Internet game service subscriptions. HB 617 requires Internet gaming sites to allow other methods for subscription cancellations as well as assure that Web-based cancellations include e-mail and online chat. HB 617 passed both houses of the legislature and is awaiting Governor Patrick Quinn's (D) signature.

KANSAS

Legislation that prohibited the sale, distribution and display of M- or AO-rated games to anyone under 18 was introduced during the 2008 legislative session. The ESA met with the Judiciary Committee Chair, expressing concerns about the constitutionality of the legislation. No action was taken on the bill before the 2008 session adjourned.

LOUISIANA

The ESA met with the Department of Economic Development, expressing the ESA's desire to see the state's incentive program for digital interactive media, which is set to expire in 2010, continued. The bills would increase the amount of tax rebate a digital interactive media project can claim and would remove the sunset date of 2010.

MARYLAND

Several bills offering film production, including video game production, tax credits were introduced in the General Assembly. The ESA submitted testimony in support of these tax credits in the Senate and House of Delegates. Ultimately, due to concerns about the fiscal impact on the state budget, neither bill moved from its committee before the legislature adjourned on April 13, 2009.

MASSACHUSETTS

On May 22, 2008, the Joint Revenue Committee introduced a bill providing for a state motion picture industry investment tax credit for a percentage of the expenses incurred for the construction, conversion or equipping, or any combination thereof, of a motor picture facility, television facility, digital media facility or post-production facility. On July 22, the bill was amended to include video games. On July 24, 2008, the bill was approved by the House (85-69), but was not taken up in the Senate before the end of the session.

During FY 08, Boston Mayor Thomas Menino (D) had a bill introduced by Rep. Linda Forry (D) to prohibit the sale of "violent" video games to minors, which was ultimately sent to a study committee where it died in the 2008 session. This bill was not reintroduced in the 2009 legislative session.

A video game tax incentive bill was filed for the 2009-2010 session. This legislation would make video game production incentives equal to the film production tax credit.

MICHIGAN

The ESA supported legislation to provide tax credits for film and digital media productions that was signed into law in April 2008.

NEW YORK

In FY 09, the ESA opposed 16 bills under consideration in 2008 that negatively impacted the video game industry and is opposing eight bills that have been reintroduced to date in the 2009-2010 session. In addition to video game regulation proposals, the bills include imposing taxes on video games, other entertainment media and soft drinks to fund programs to reduce childhood obesity.

As a result of the ESA's efforts in the 2007-2008 session, legislation strongly backed by former Governor Eliot Spitzer (D) and several key legislators was significantly scaled back to remove provisions that would have made it a felony for anyone to sell

an obscene and violent game to a minor. However, the remaining provisions that passed the legislature and were signed into law on July 21, 2008, create a state commission to examine the effects of violent video games on children and the accuracy and effectiveness of the ESRB; prohibit the sale of game consoles in the state if they do not provide technology to restrict certain content by September 2010; and require a label on all rated games.

In 2009, the Governor's budget proposal included a tax on digital products. The ESA worked with a coalition in opposition that was successful in its effort to remove this new tax as a part of the omnibus budget agreement between the Governor and state legislative leadership.

NEW MEXICO

The ESA led efforts in 2008 to successfully stop the "No Child Left Inside" bill. This bill would have imposed a one percent tax on video games and equipment and televisions to fund outdoor recreational programs. This legislation was not reintroduced in the 2009 session.

The ESA strongly supported legislation sponsored by House Speaker Ben Lujan (D) in 2009 to expand the state's existing film production tax credit, which would make game production and development eligible for the state's 25 percent tax credit currently provided for motion picture production.

NORTH CAROLINA

In the 2009 session, legislation prohibiting the sale of a "violent" game to anyone unless the game has a warning label on the front of the packaging was not reintroduced.

Senator Julia Boseman (D) introduced Senate Bill 525 in 2009 to provide tax credits for video game producers, which has been referred to the Senate Finance Committee for consideration.

Representative Pryor Gibson (D), reintroduced legislation in 2008 to provide tax incentives to encourage video game production. However, no action was taken on that legislation before the end of the session. On February 25, 2009, ESA member companies Electronic Arts and Epic Games, Inc., testified before the House Committee on Technology to help educate legislators about the industry's contributions to the state and in support of tax incentives for game development and production.

On November 14, 2008, the North Carolina Youth Obesity Task Force adopted a report that

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recommends actions to help prevent and reduce youth obesity in the state that was presented to the state legislature on January 15, 2009. This report was the result of legislation that established the Task Force and requires it to examine ways to prevent and reduce youth obesity including examining limits on television and video game screen time. As a result of the ESA's efforts to educate Task Force members on the positive attributions of video games, the Task Force adopted a balanced report as it relates to computer and video games and even includes research on their positive benefits to children, as well as a recommendation that schools explore partnerships with interactive digital media programs to promote physical activity and improved nutrition.

OHIO

In 2009, legislation that would provide tax incentives for motion picture production, which includes video games, was introduced in the House and the Senate. Both bills passed their respective chamber of origin and the issue is a part of the negotiations on the state's annual budget.

OKLAHOMA

Legislation in 2009 that would provide income tax rebates for motion picture production and development, including video games, was introduced. However, the bill allowed only games that are rated, or would be rated, "T" or lower to qualify for incentives. Similar restrictions were not applied to motion picture productions seeking rebates. The bill did not receive any action before the legislature adjourned for the session.

PENNSYLVANIA

The ESA participated in Pennsylvania's legislatively mandated Task Force on Violent Interactive Video Games, which was comprised of state legislators, state legal officials, industry representatives and academic researchers. After a thorough review of relevant research on adolescent violence and state efforts to regulate video game content, the Task Force released its report in December 2008, which recommended that Pennsylvania not pursue the types of legislation regulating content that have been struck down as unconstitutional in other states. Additionally, the Task Force recommended pursuing a publicly funded consumer education program about video games, as well as additional research examining both the positive and negative effects of video games and other modern media on children and young adults.

On March 6, 2009, the House Children and Youth Committee held a public hearing on "violent" video games in Philadelphia, at the request of Representative Ron Waters (D). During this hearing, participants from the Task Force on Violent Interactive Media reiterated the report's findings to Committee members. The ESA also submitted testimony highlighting the ESRB's education and outreach efforts. The Committee expressed interest in pursuing educational opportunities rather than legislative content restrictions. The ESA will continue to address any concerns expressed by Committee members.

PUERTO RICO

Legislation was carried over from 2007 to prohibit the sale or rental to minors of NC-17-rated movie DVDs and AO-rated video games, but no further action was taken on the bill in FY 09. Legislation was introduced to impose a tax on video games to fund youth recreational programs. Both of these bills died as a result of the legislature adjourning its four-year session in November 2008.

TEXAS

Governor Rick Perry (R) attended the E3 Media & Business Summit in June 2008, serving as the keynote speaker. His remarks addressed his desire to see more video game companies expand and create jobs in Texas. He also taped a short video for his Web site (<http://governor.state.tx.us/film/industries/games/>) touting Texas' video game industry and encouraging future investment in the state.

In 2009, Representative Dawanna Dukes (D) and Senator Bob Duell (R) introduced legislation, which would remove caps on grants available for motion picture, television, commercial and video game development and production. The ESA met with key legislators throughout the 2009 session, sharing information about the economic benefits of the video game industry and discussing how increased incentives would help build upon the existing base of video game companies in Texas.

The Texas House of Representatives and Senate both adopted resolutions naming February 3, 2009, Entertainment Software Day in Texas, honoring the contributions of the industry to the state. Governor Perry also issued a similar proclamation on February 3, 2009.

“The ESA also worked to issue holiday ratings awareness press releases with a total of 45 state legislators and officials in 39 states, Puerto Rico and the District of Columbia.”

Governor Perry signed the state's budget into law, including a \$60 million appropriation for the next biennium to fund grants for motion picture, television, commercial and video game development and production. This is a significant increase over the previously appropriated \$11 million per year.

UTAH

Legislation was approved in the final hours of the 2009 legislative session that amends Utah's Truth in Advertising Act (TIAA) by exposing retailers to legal action if they advertise that they do not sell a good or service labeled with an age restriction or recommendation, and then do so. The bill was amended to also cover Internet-based transactions, which raised concerns about violating the Commerce Clause of the U.S. Constitution, because of the burden it would impose on retailers for transactions that occur with consumers in other states. On February 23, the ESA testified in opposition to the bill in the House Business and Labor Committee, which approved the bill by a vote of 10-3. On March 12, 2009, the bill was approved by a vote of 24-5 in the Senate and 67-3 in the House.

The ESA also participated in numerous meetings that included top legislative leaders, bill sponsors, the Governor and his key staff. On March 26, 2009, Governor Jon Huntsman (R) vetoed the legislation, largely due to concerns over the Commerce Clause and how it would undermine the entertainment ratings systems for video games and movies and successful, voluntary efforts to keep mature content out of children's hands. The legislature had until May 11 to call a veto override session and ultimately did not do so, therefore allowing the legislation to die for the 2009 legislative session.

WISCONSIN

Governor Jim Doyle's (D) budget package has been introduced in the legislature. Part of his plan would sunset the existing tax credits available for motion picture and video game development, replacing them

with a significantly smaller grant program for film and digital media projects. There is concern in Wisconsin over inappropriate use of the existing program for film projects performed outside of the state.

Representative Tamara Grigsby (D) and Lieutenant Governor Barbara Lawton (D) developed a proposal to amend the current incentive program, closing loopholes that allowed the misuse of incentives for non-Wisconsin projects, and to create more jobs within the state.

In addition, a bill taxing electronically transferred products was signed into law. This was part of a larger economic stimulus package passed to address the state's budget shortfall.

RATINGS AWARENESS PROJECTS

The ESA developed partnerships with state officials to launch ratings education programs that include co-branded ratings information with the ESRB, and television and radio public service announcements. In FY 09, the ESA launched ratings awareness programs with the following leaders at the state level:

- New York PTA, Assembly Majority Leader Ron Canistrari (D) and Senate Education Committee Chairman Steve Saland (R);
- New Jersey Senate President and former Governor Richard Codey (D); and
- Nebraska Attorney General Jon Bruning (R), incoming President of the National Association of Attorneys General (NAAG).

The ESA also worked to issue holiday ratings awareness press releases with a total of 45 state legislators and officials in 39 states, Puerto Rico and the District of Columbia. These press releases encouraged parents and caregivers to check the ratings on video games before purchasing them as gifts.

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YOUTH INTERNET SAFETY PROJECTS

In conjunction with the ESA Foundation, the ESA partnered with state officials to bring Web Wise Kids (WWK) programs that teach kids how to stay safe online to communities across the country.

In FY 09, the ESA worked with the following officials to roll out these projects:

- Florida Lieutenant Governor Jeffrey Kottkamp (R)
- Arizona Attorney General Terry Goddard (D)

STATE CAPITOL DAYS AND OUTREACH

- The ESA hosted a reception showcasing video games for the State Government Affairs Council on November 23, 2008, in Dana Point, California. More than 60 state legislators from across the country attended the event.
- The ESA held a state lobbying day followed by a reception providing game demos for legislators and their staffs in Austin, Texas, on February 3, 2009.
- The ESA held a state lobbying day followed by a reception providing game demos for legislators and their staff in Sacramento, Calif., on March 24, 2009.
- The ESA continued working with California member companies to conduct tours of their facilities. These tours educate legislators about the positive contributions of the video game industry.

LITIGATION STATUS REPORT

Although litigation was generally quiet for the ESA in FY 09, the ESA achieved a significant victory in the Ninth Circuit, which affirmed a lower-court finding that a California law that sought to ban the sale of violent video games to minors was unconstitutional. In addition, the ESA received payment of an attorneys' fee award in Oklahoma after a favorable decision enjoining a violent video games law. In Minnesota, the state was denied its request for a rehearing en banc of the Eighth Circuit decision affirming the unconstitutionality of the state's violent video games law.

CALIFORNIA

In 2007, the U.S. District Court for the Northern District of California granted VSDA's and the ESA's Motion for Summary Judgment, permanently enjoining enforcement of AB 1179, which would ban

the sale of violent video games to minors. In 2008, the California Attorney General's Office paid the ESA \$276,000 plus interest in attorneys' fees related to the district court proceeding. Governor Arnold Schwarzenegger (R) then filed an appeal of this decision to the U.S. Court of Appeals for the Ninth Circuit.

On February 20, 2009, the Ninth Circuit issued a unanimous decision to affirm the District Court's permanent injunction against enforcement of California's violent video game law. After a thorough review of the evidentiary research and studies presented by the state, the Ninth Circuit ruled that there was no "substantial evidence that supports the legislature's conclusion that violent video games cause psychological or neurological harm to minors." The court further found that the "variable obscenity" exception to the requirement of strict scrutiny of speech restrictions was limited to sexual content only and did not extend to violence. The court noted that "there remain less restrictive means of forwarding the State's purported interests, such as the improved ESRB rating system, enhanced educational campaigns and parental controls."

On April 3, 2009, the ESA filed a petition for attorneys' fees incurred in connection with the Ninth Circuit appeal. As of April 16, 2009, the ESA and the State of California reached an agreement whereby California will pay the ESA \$94,000, plus interest, on or before October 1, 2009, in settlement of the ESA's fee petition. California reserved the right to petition the U.S. Supreme Court for a writ of certiorari, however, which it did on May 20, 2009. The state argues, in essence, that violence in video games should be equated with the sexually explicit materials that may constitutionally be barred from sale to minors under established Supreme Court precedent. Alternatively, the state argues that, even if violent video games enjoy full First Amendment protection, thus requiring "strict scrutiny" of the California statute, the legislature was entitled to conclude that violent video games pose a grave threat to children, based on scientific research on the subject. The ESA's opposition to the state's petition is currently due on July 22, 2009.

MINNESOTA

In 2006, the U.S. District Court for Minnesota permanently enjoined SF 785, a Minnesota law that sought to penalize minors for the purchase or rental of M- or AO-rated games. The state then appealed the District Court decision to the U.S. Court of Appeals for the Eighth Circuit. In 2008, the Eighth

Circuit affirmed the district court decision, ruling that the Act was presumptively unconstitutional. The Eighth Circuit expressed its disapproval of violent video games, however, and urged the state to seek “en banc” review of the Eighth Circuit’s ruling. The state then filed a Petition for Rehearing “en banc,” but its petition was denied by the Eighth Circuit on May 7, 2008.

OKLAHOMA

In 2007, the U.S. District Court for the Western District of Oklahoma permanently enjoined enforcement of HB 3004, an Oklahoma law that prohibited the sale of inappropriately violent video games to minors, finding that the law was unconstitutional. The district court ruled that video games are a form of creative expression entitled to protection under the First Amendment, and that there is no “substantial evidence” to support the claim that video games are harmful to minors. The district court approved a Stipulated Order agreed to by the ESA and the State Attorney General’s office, by which the State would pay the ESA \$56,367 in attorneys’ fees. That sum was paid to the ESA on July 3, 2008.

INTELLECTUAL PROPERTY POLICY

In FY 09, IP policy staff conducted member consultations to further refine the department’s operational mission and, in July 2008, members approved the following five business objectives as goals for our policy engagement:

- Improve online enforcement and ISP cooperation to reduce piracy;

- Reduce availability of circumvention devices through improved laws and enforcement against TPM circumvention;
- Improve conditions for digital delivery of game software, including no less favorable treatment of entertainment software delivered online;
- Improve IP enforcement generally (domestic and international); and
- Provide policy monitoring and reporting services in areas of member interest.

IMPROVING ONLINE ENFORCEMENT AND ISP COOPERATION TO REDUCE PIRACY

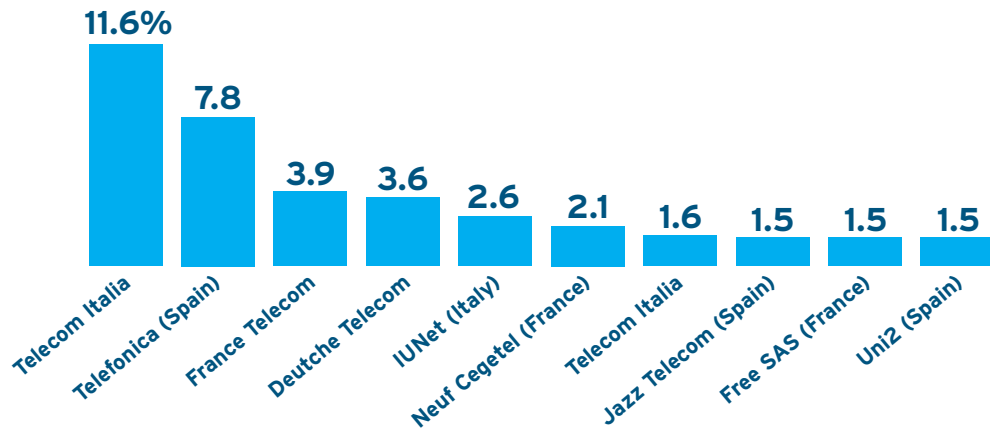
The large file size of games is no longer a barrier to widespread piracy of games on peer-to-peer (P2P) networks. P2P piracy of PC, console and handheld games is pervasive and growing. To promote greater awareness of the prevalence and impact of game piracy occurring through P2P networks, the ESA commissioned a download study in December 2008. The study estimated the number of downloads of 13 member-selected titles during a one-month period through the use of the BitTorrent and eDonkey P2P networks. During this period, consumers downloaded nearly 6.5 million illegal copies of games across 223 countries, regions or territories. The top two game titles accounted for 4.7 million of these downloads, a figure that far exceeds those games’ legitimate sales for that period.¹

¹ Leading downloader countries (shown in Figure 1, below) included Italy (17.1%), Spain (15.1%), France (7.9%), Germany (6.9%), and Poland (6.1%). Network resources provided by Telecom Italia (Italy) were implicated in 11.6% of these downloads, followed by Telefonica de Espana (Spain) (7.8%); France Telecom (France) (3.9%); Polish Telecom (Poland) (3.6%); Deutsche Telecom AG (Germany) (2.6%); IUnet (Italy) (2.1%); Neuf Cegetel (France) (1.6%); Jazz Telecom S.A. (Spain) (1.57%); Free SAS (France) (1.56%) and Uni2 (Spain) (1.53%) (see Figure 2).

FIGURE 1. TOP 5 P2P GAME PIRACY COUNTRIES



FIGURE 2. TOP 10 ISPS SUPPORTING P2P GAME PIRACY



ISP RESPONSIBILITY

The industry is becoming increasingly involved in discussions with ISPs and major telecommunications providers about how to address network misuse. The ESA continues to track the progress of these discussions internationally, as well as monitor and engage in legal reform efforts in several countries, including France, Italy, Spain, the United Kingdom, Brazil, Hong Kong and Mexico.

Beginning in July 2008, ESA staff developed, in cooperation with members, an industry statement of principles on ISP responsibility - a consensus document that has continued to guide industry positions to date. In addition, ESA staff has provided substantial assistance to game industry representatives in other countries:

- In October 2008, IP Policy staff assisted the Entertainment and Leisure Software Publishers Association (ELSPA) in developing and drafting an industry submission for the UK government in a consultation proceeding regarding the question of how to address P2P piracy (BERR Consultation);
- Mid-year, the ESA and the Interactive Software Federation of Europe (ISFE) representatives participated in the U.S. - France conference on Copyright and Counterfeiting in the Digital Economy to discuss potential solutions to P2P piracy, including a discussion of the French Elysee Agreement and its implementation;

- Through late 2008, the ESA has been participating in the "Tripartite Forum" in Hong Kong, which brings together ISPs, rights holders and the Hong Kong government on the matter of developing an ISP responsibility framework in the territory;
- In early December 2009, IP Policy staff circulated to Piracy Working Group members a draft plan for engagement on ISP Responsibility issues. The ESA continues to refine engagement plans in line with member input, and provide status reports and operational assistance to other interested game industry associations;
- In January 2009, IP Policy Staff participated in meetings of the ISFE Legal Affairs and Anti-Piracy Committees, at which staff discussed with ISFE members the genesis, development and continuing refinement of the ISP Responsibility Principles; and
- In March 2009, the ESA provided input to AEVSI (the Italian video game Association) on a draft legislative proposal to address P2P piracy and impediments to rights holders' ability to pursue enforcement actions against online infringements.

Multi-industry coalitions play a key role in helping the ESA raise awareness among U.S. and foreign governments of the severity of online piracy of games. These outreach efforts have included:

- In August 2008, through the IIPA coalition, the ESA provided comments to the U.S. government for its use in bilateral discussions with South Korea on draft legislation intended to improve South Korea's online enforcement framework;
- In September 2008, the ESA provided to local industry representatives an IIPA analysis of Malaysian ISP legislation currently under review by Malaysian industry groups; and
- Also in September, IIPA filed a submission in the Out-of-Cycle Review (OCR) process conducted by USTR, recommending that Taiwan be retained on the Special 301 Watch List pending adoption of a workable framework to address ISP liability.

ONLINE ACCOUNTABILITY

The Whois service is a collection of databases that keep track of ownership information related to Internet domain names. Whois plays a helpful role in supporting members' anti-piracy efforts. Ensuring continued access to the Whois service is one of the chief aims of the Coalition for Online Accountability (COA), of which the ESA is a member. The ESA uses reporting and summaries from the COA to advise members of pertinent Whois policy developments and related matters.

REDUCING THE AVAILABILITY OF CIRCUMVENTION DEVICES *through Improved Laws and Enforcement Against Technological Protection Measure (TPM) Circumvention*

The game industry successfully employed various forms of TPMs to deliver unique features to consumers and protect software products from unauthorized use or copying. The success of these measures, particularly in consoles, has created a lucrative market for technologies that bypass industry protections, including a variety of so-called "mod chips," "game copiers," and other hardware and software devices designed to defeat industry TPMs.

More than 60 countries (68 as of February 5, 2009) have joined treaties outlawing circumvention of TPMs, and more than 80 countries have implemented (or are implementing) laws prohibiting TPM circumvention and trafficking in circumvention devices. The ESA's IP Policy team performs analysis and enlists counsel and coalition resources to

monitor domestic and international developments and promote industry-favorable legal reform.

WIPO TREATIES IMPLEMENTATION

The ESA continues to promote access to and the effective implementation of the World Intellectual Property Organization (WIPO) Internet treaties - the WIPO Copyright Treaty (WCT) and Performances and Phonograms Treaty (WPPT). The treaties provide the necessary legal baseline for the protection of copyrighted works distributed via the Internet as well as the safe and healthy growth of e-commerce. Effective implementation of these treaty obligations results in enforceable prohibitions against circumvention activities, as well as the manufacture of and trafficking in circumvention devices, which directly aid enforcement efforts.

- Throughout 2007, the ESA staff and counsel engaged in extensive consultation with Hong Kong government officials, leading to passage of the country's first anti-circumvention law. The law was put to use in May 2008, when Hong Kong officials (in cooperation with and based on information furnished by the ESA) conducted a series of enforcement actions against a number of mod chip sellers.
- In July 2008, the ESA worked with ESA Canada (ESAC) to analyze and consider further improvements to proposed anti-circumvention provisions introduced in the Canadian Parliament in Bill C-61.
- In February 2008, IP Policy staff met with a delegation of Mexican legislators, encouraging the delegation to re-engage on WIPO Internet Treaties implementation in the country, specifically by providing for and enhancing the country's anti-circumvention provisions.

FREE TRADE AGREEMENTS

In addition to their market-opening features, recently completed U.S. Free Trade Agreements (FTAs) have been instrumental in achieving enhanced legal protections in many markets of significance to the game industry. Through the efforts of IP Policy staff and counsel, and through various coalition projects, the ESA monitored legal reforms brought about by the FTAs to ensure they actually result in effective implementation of treaty obligations in practice. These efforts extend to legal reforms that recently occurred in Singapore, Chile, Australia, Jordan, Morocco, Central America (CAFTA), the Dominican Republic, Bahrain and Peru. The ESA continues its

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efforts, both through association and coalition activity, to highlight the benefits of the U.S.-South Korea FTA and urge its ratification by Congress. Additional activities targeted to promote beneficial, FTA-style legal reforms include:

- In March 2008, the ESA filed comments with the office of the U.S. Trade Representative (USTR) offering guidance on subject matter to be included in negotiations of an Anti-Counterfeiting Trade Agreement (ACTA) with countries including Australia, Canada, EU, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, Switzerland and UAE;
- In October 2008, IP Policy staff met with Senate Judiciary staff to underscore industry support for strong TPM provisions and ISP responsibility provisions in trade agreements such as FTAs and ACTA; and
- In March 2009, IIPA and the ESA furnished commentary and testimony on U.S. plans to pursue a "Trans-Pacific Partnership Agreement" that can extend FTA-style trading relationships to Brunei, New Zealand and Vietnam (in addition to Singapore, Chile, Australia and Peru, which are already parties to FTAs with the United States).

MAINTAINING DOMESTIC PROTECTIONS

The Digital Millennium Copyright Act (DMCA) rulemaking process is an important feature of U.S. Copyright law. Since 2000, the ESA has engaged in the Copyright Office's Section 1201 rulemaking process, encouraging the Copyright Office to critically assess requested exemptions and ensuring that those exemptions deemed necessary do not interfere with the ability to enforce prohibitions against bad actors. Steps taken in preparation for the 2009 rulemaking included:

- In November, 2008, the ESA participated in a coalition of rights holder organizations that submitted a letter to the Copyright Office urging the Office not to stray from the statutory standards of review set down by Congress;
- In December 2008, the ESA prepared a detailed analysis of each of the proposed exemptions, their potential impact to the game industry and the likely positions of other copyright industries; and
- Throughout January and February 2009, the ESA worked with members and other coalition

participants to develop comprehensive responses to the 11 circumvention exemptions proposed during the current rulemaking cycle, including several requested exemptions that have a direct bearing on game industry business practices, which included;

- A proposed exemption that would permit circumvention of TPMs on computer games for the purpose of studying and correcting any PC security vulnerabilities created by the TPM; and
- A proposed exemption to circumvent authentication server TPMs where the server stops operating (for instance, where the publisher stops supporting a game).

The ESA suggested that such exemptions are unnecessary in light of current practice and await hearings scheduled for early May 2009, in Washington, D.C., and Palo Alto, California. In early 2009, IP Policy staff also led industry efforts to formulate common positions in preparation for FTC's Town Hall on DRM and in obtaining joint representation for the session (with other industries reliant on DRM).

IMPROVING CONDITIONS FOR DIGITAL DELIVERY OF GAME SOFTWARE

During 2008, the ESA worked to raise industry and U.S. government awareness of certain trade inequities facing entertainment software publishers and the entertainment software industry generally.

The ESA highlighted, for example, in advocacy with the U.S. and foreign governments, inequities in the disparity of tariff treatment afforded to PC and console hardware, and game software products. The ESA also used the opportunities afforded by the Special 301 process to bring to light the severe market access impediments erected and maintained by exorbitant tariffs and taxes on game consoles, handheld devices and software in countries such as India and Brazil. The ESA emphasized that these market impediments exacerbate already high piracy rates.

E-commerce transmissions that carry digital products, such as entertainment software, for consumption in other countries remain duty-free, by virtue of a moratorium voluntarily upheld by WTO members. During 2009, the ESA will work to enlist international game industry support for renewal of the WTO moratorium on duties for e-commerce

transmissions, including on sales of entertainment software via cross-border download.

TARIFF 22/24 PROCEEDINGS IN CANADA

The ESA continues to resist the establishment of national policies that discriminate against software downloads by subjecting them to discriminatory and less favorable treatment than would exist for software acquired on carrier media.

The ESA continues to oppose the SOCAN Tariff 22 on principle because it applies a double standard. It seeks to apply to game sites that make music or game downloads containing music available to Canadian consumers. The law is clear that no such tariff would issue for games transported into Canada on carrier media. The ESA and ESAC's engagement in the Tariff 22 process has resulted in substantial reductions to the applicable tariff rate (from 10 percent of game site revenue, as originally proposed, to four percent as revised, to an adjudicated rate of less than one percent as determined by the Copyright Board of Canada in its October 2008 ruling). Notwithstanding, the ESA/ESAC will continue to oppose application of the tariff through appeals in the Canadian courts.

IIPA MEMBERSHIP

The ESA continued full participation in the International Intellectual Property Alliance (IIPA) - forging common positions with other industries concerned with the protection of copyrighted works, including representatives of the film, music, book publishing and business software industries. During the year, IIPA monitored and engaged in reform efforts in more than 50 countries. Together, industry representatives made known to U.S. and foreign officials collective priorities, including:

- Adopting effective laws and remedies against Internet-based piracy;
- Combating organized criminal involvement in piracy; and
- Controlling optical media overproduction through effective licensing and regulation of production facilities.

"SPECIAL 301" FILING

The ESA and its members provided specific information on computer and video game piracy for inclusion in the IIPA's 2009 "Special 301 Report on Copyright Protection and Enforcement." The report

is the U.S. copyright industry's comprehensive account of legal and enforcement deficiencies noted in some 50 to 60 countries. It is filed each year with the U.S. Trade Representative and offers specific ranking recommendations that are taken into account in the Special 301 process, in which the U.S. government singles out countries for potential trade sanctions for failure to adequately protect IP rights. The report is furnished to other U.S. officials and lawmakers, and is published on the Web (www.iipa.com/special301.html) to aid countries in the formulation of copyright laws and enforcement policies.

Shortly after filing the 2009 report, the ESA and IIPA met with government delegations from Mexico, Spain and Thailand, who appeared in Washington to defend practices raised in Special 301 reporting.

Government representatives from Greece, Pakistan, Israel, Indonesia and the Philippines also filed submissions with USTR defending practices brought to light in the IIPA report.

During March 2009, the ESA staff and member representatives also met with interested officials from USTR and the Departments of Commerce, State and Justice to highlight industry-specific issues and offer additional justification for the ESA's and IIPA's country ranking recommendations.

OTHER COALITION ACTIVITIES

The ESA continues to productively engage with other coalitions to direct government attention to industry legal reform and enforcement needs. The ESA maintains membership and active involvement in key committees of the U.S. Council for International Business, and remains active in the legislative and policy-setting activities of the U.S. Chamber of Commerce's Coalition Against Counterfeiting and Piracy (CACP). Examples of our involvement include:

- In June 2008, the ESA worked with U.S. government representatives to the Organization for Economic Cooperation and Development (OECD) and the OECD Business and Industry Advisory Committee (BIAC) to develop legislative reform and enforcement benchmarks that should be met by Russia prior to being extended OECD membership;
- Through the latter half of 2008, IP Policy staff was extensively involved in United States Council for International Business (USCIB) and BIAC discussions to refine the OECD Phase II Report on Counterfeiting and Piracy. IP Policy

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staff also provided input into the OECD Recommendation on Counterfeiting and Piracy, a non-binding instrument that set out criteria to be met by OECD member and accession countries; and

- In May 2008, the ESA was invited to join the U.S. Chamber of Commerce's International Policy Committee, which remains instrumental in advancing industry priorities with respect to IP reform and enforcement, trade liberalization, tariff reduction and e-commerce expansion.

INDUSTRY-PRIORITY FOREIGN MARKETS

IP Policy worked to improve IP enforcement and legislative reform in a host of high-priority markets identified by members. For FY 09, these member priority countries were Brazil, Canada, Hong Kong, Malaysia, Mexico, Paraguay, South Korea, Spain, Sweden and the United States. Features of industry-specific engagement over the past year included:

- In February 2008, IP Policy staff met with and hosted a delegation of Mexican legislators to discuss continuing industry priorities in the country, such as the need to improve the country's TPM protection regime, strengthen law enforcement resources and powers, and begin consideration of an online enforcement framework, including ISP responsibility;
- In March 2008, the ESA (as part of the IIPA coalition) met with Swedish Embassy officials to discuss continuing concerns in the country, particularly with respect to its implementation of the EU Enforcement Directive and its efforts to improve its online enforcement framework;
- On July 16, 2008, the ESA (at USTR's request) briefed Malaysian trade negotiators on the rationale behind strong anti-circumvention laws and other industry-critical enforcement priorities, reportedly removing a major impediment to acceptance of the FTA IP chapter; and
- On August 6, 2008, the ESA and IIPA filed comments raising questions as to the adequacy of South Korea's ability to protect TPMs and to perform online enforcement under its newly announced, unified enforcement regime.

During FY 10, the ESA will prepare country-specific action plans to guide association engagement based on priorities that have emerged through members' Special 301 reporting. The ESA will also continue to furnish briefing papers to interested U.S.

government officials and congressional delegations traveling to member priority countries.

DOMESTIC ENFORCEMENT LEGISLATION

In FY 09, IP Policy staff analyzed and kept members apprised of several sweeping IP enforcement packages then under consideration by Congress, including S. 522 (Bayh-Voinovich); S. 2713 (Leahy-Cornyn); H.R. 4279 (Conyers-Smith); and various proposals originating with the U.S. Chamber of Commerce and other rights holder groups. The ESA mobilized during Senate consideration of these enforcement packages in late 2008 to relay member priorities concerning enforcement funding and responsibilities of a White House IP "Czar." These efforts coalesced into passage of a new IP enforcement package that was signed into law on October 14, 2008, and through 2009 the ESA has continued to press for full funding of its most helpful elements.

Also during 2009, the ESA urged Congress to bolster the role played by the Department of Homeland Security and its Customs and Border Protection service with regard to IP enforcement. The ESA continues to advocate for Customs' authority to seize unlawful circumvention devices and disclose seizure information to interested rights holders, and have advanced a proposal calling for additional personnel dedicated to IPR protection and enforcement that the ESA hopes will be integrated in Customs reauthorization legislation expected in 2009.

PROVIDE POLICY MONITORING AND REPORTING SERVICES IN AREAS OF INTEREST

In addition to issues arising in the trade and IP contexts, the industry is also susceptible to changes in countries' technology policies, such as those regulating e-commerce, broadband availability, Internet governance and related issues.

- In FY 09, the ESA refined its ability to provide "future-focused" reporting and analysis on noteworthy technology policy developments, and to engage selectively to advance industry consensus views when warranted through member guidance. By providing a continuing and reliable reporting service in a consolidated manner, members can avoid the necessity of engaging in redundant monitoring activities, whether through law firms or dedicated in-house resources.

- During FY 09, the ESA established with member committee representatives a commitment to monitor and report significant technology policy developments across the following subject matter areas: ICANN, OECD, tariffs, virtual property, EULA enforcement, user-generated content, CDA immunity, “players’ rights” movements, DRM policy, orphan works, ITA, customs classification, services classification, net neutrality/broadband policy, in-game advertising, patent reform and tax policy. The ESA’s policy monitoring efforts have helped to identify and sharpen issues of considerable economic and policy significance to the industry, and create new areas for productive policy engagement. Examples include:

- In July 2008, the ESA provided members an update on recent international developments in the taxation of virtual property. The update included analysis of an important tax provision affecting virtual property transactions in South Korea; and
- In November 2008, the ESA provided members with a summary and overview of the dispute before the FCC involving Comcast’s throttling of P2P traffic as well as ISPs’ experimentation with bandwidth caps and how they may impact the industry.

FOREIGN GOVERNMENT INTERACTION

The ESA’s offices remain attractive stops for foreign copyright policy and enforcement officials visiting Washington, D.C., including those attending training opportunities sponsored by the U.S. Patent & Trademark Office’s Global IP Academy (GIPA). During 2008, the ESA played host to visiting delegations from Mexico, China, the Middle East and Africa, developing contacts with foreign government officials and underscoring country-specific concerns and challenges.

INDUSTRY POLICY LIAISON

As relevant IP, trade and technology policy issues arise with increasing frequency in key markets, the ESA member committee representatives have placed increasing emphasis on promoting enhanced intra-association communications. Throughout FY 09, ESA IP Policy staff maintained regular, substantive communications with other leading game industry associations, including ESAC, ISFE (EU) and its

national association members, IEAA (Australia) and CESA (Japan).

The ESA took advantage of numerous associations’ participation in the E3 Expo to sponsor an association roundtable where industry representatives discussed common challenges and compared notes on issues regarding industry representation. Examples of productive cross-association cooperation include:

In January 2009, IP Policy staff attended ISFE’s first meeting on anti-piracy matters to continue to build on intra-association cooperation with other game industry bodies in the areas of anti-piracy enforcement and policy development;

In July 2008, the ESA and ESAC formulated a joint proposal to create an ESAC Canadian Policy Working Group consisting of present ESA Piracy Working Group members and additional ESAC member company representatives. The proposal was ratified by the ESAC Board on July 29; and

IP Policy staff continues to participate in ESAC Board meetings, briefing ESAC Board members on Canadian policy activities led by and undertaken through the ESA.

OTHER POLICY SUPPORT

IP policy staff continued to extend its reach on other issues vital to ESA members, specifically in SGA, in response to an Illinois law that required publishers of online games to offer an online cancellation method. IP Policy staff helped draft proposed amendments to the law that would minimize the burden on game publishers. Further, at the federal level, it provided members a preliminary analysis of the application of the *Consumer Product Safety Improvement Act (CPSIA)* to video game consoles and coordinated with members and the Office of the General Counsel on drafting a letter to the CPSC seeking exclusion for our industry’s products.

In addition, in December 2008, IP Policy staff invested significant staff resources in developing a policy position statement on key IP, trade and technology policy issues for submission to the Obama transition team.

anti-piracy program

ANTI-PIRACY PROGRAM

In FY 09, with the continued growth and expansion of broadband access to the Internet in markets across the globe, the ESA saw dramatic growth in the online piracy of member games as downloads climbed to new heights in a number of countries, including major Western European countries as well as some emerging markets. The ESA's anti-piracy program addressed this problem by shifting manpower and resources toward this priority.

Still, the program continued its efforts against other priority targets such as online warez groups and local criminal syndicates involved in pirate game replication and distribution abroad, among other issue areas.

ONLINE MONITORING AND ENFORCEMENT

As noted above, the ESA's monitoring of pirate activity on the Internet during FY 09 saw sizable increases in volume in many countries, particularly in Spain, Italy, France and Brazil (now ranking among the top five countries), with the greatest numbers of pirate game files found on P2P networks such as eDonkey and BitTorrent. This year also saw rapid growth in the incidence of pirate game files on cyberlockers, sometimes called "one-click" Web sites, on which individuals store illegal game files available for download that they then publicize through blogs and online game forums. Pirate versions of games cracked and released by warez groups often appear the weekend before their legitimate release dates and are disseminated rapidly through the P2P environments and cyberlockers, with a high incidence of downloading by a growing number of users around the world. The expansion of broadband access to the Internet has continued to accelerate the availability and accessibility of pirate game files through download.

The ESA's online monitoring and notice-and-takedown efforts in FY 09 continued to address online infringements of member companies' IP rights in more than 100 countries around the world. The ESA's specialized monitoring and takedown efforts in Korea have also been very productive, with operators of Web storage sites containing pirate game files responding favorably to ESA notices.

U.S. ENFORCEMENT

The ESA procured and supported law enforcement investigations, raid actions and prosecutions against a number of game piracy targets in the United States

Chief among this year's actions were five separate law enforcement raids against game pirates in California, resulting in the seizure of several thousand games and dozens of modded consoles, and the arrests of five individuals."

during FY 09. These included actions and cases at both the federal and state levels. Chief among this year's actions were five separate law enforcement raids against game pirates in California, resulting in the seizure of several thousand games and dozens of modded consoles, and the arrests of five individuals, two of whom have pled guilty. At the federal level, a number of cases this year resulted in prison sentences, including four against Internet pirates involved in game piracy, with sentences ranging from 15 to 30 months, as well as one involved in the sale of plug-in game players containing illegal games that resulted in a 15-month sentence.

INTERNATIONAL ENFORCEMENT

Canada

In FY 09, the ESA continued to pursue and obtain enforcement actions against game pirates distributing and selling infringing products in Canada, despite a challenging enforcement environment. As the Royal Canadian Mounted Police (RCMP) have pointed to a lack of resources and a low priority for enforcement of IP rights not involving health and safety, the ESA last year expanded its contacts with, and referrals of cases to, local police departments for criminal enforcement actions, supplemented by its service of civil "cease-and-desist" notices on targets along with requests for the surrender of infringing products. In FY 09, the Toronto Police Service undertook a number of enforcement actions, including a raid against Video Game and Repairs, a retail operation owned and operated by a notorious game pirate that had been the subject of ESA investigations for years.

In addition, the ESA delivered more than a dozen “cease-and-desist” notices and seized infringing game product from targets in Quebec, British Columbia and Toronto, including those delivered as part of Operation Blitz, a multi-industry campaign in which the ESA joined the motion picture and music industries in targeting pirate vendors in the Pacific Mall and Markham area just outside of Toronto. Despite the hurdles described above for RCMP actions, the ESA did succeed in generating some enforcement activity in FY 09 on the part of RCMP, with one action against a retailer in Ontario, three in Quebec and one in British Columbia.

The ESA maintained its collaborative efforts with ESAC to address the primary enforcement obstacles in Canada by: 1) pressing the Canadian government to assign more IP enforcement resources to RCMP and greater priority to criminal prosecutions of game pirates to obtain deterrent penalties (such as jail sentences), and; 2) lobbying for legislation to prohibit the manufacture and distribution of circumvention devices, such as modification chips and game copiers, which are sold widely throughout Canada and exported to buyers in the United States.

Brazil

The improved environment for IP enforcement in Brazil in FY 09 continued to offer productive results for the ESA's joint anti-piracy program with ABES, the Brazilian software association. While most enforcement activity continued to be focused on retail hot spots in Sao Paulo and Rio de Janeiro, as well as local burning labs and warehouses supplying sellers in these locations, the program was also able to obtain actions against game pirates in other states, such as Minas Gerais and Santa Catarina. While there were roughly 10 percent fewer actions in FY 09 as compared to the previous year, a greater number of actions targeted higher-value upstream targets, such as burning labs and storage facilities. Over the first nine months, the program was able to procure 17 actions against labs and storage facilities, and another 51 actions against retailers. These actions, combined with continuous seizure actions against street sellers in Sao Paulo and Rio, resulted in the seizure of more than 223,400 illegal copies of games. In addition, the Brazilian authorities have stepped up their efforts to control the inflow of counterfeit products from Paraguay, seizing more than 431,000 pirate and counterfeit game software products in the border region.

One alarming development in Brazil in FY 09 was the significant increase in the volume of illegal game

downloads by Brazilian Internet users. This past year, the Brazilian government promoted and subsidized Brazilian consumer purchases of home computers, with the result being a dramatic increase in PC household penetration and Internet connections. Unfortunately, the by-product of this development has also been a surge in downloading activity by Brazilian Internet users. According to the ESA's online monitoring, Brazil now ranks among the top five countries in the world in the volume of detected infringements of game titles. The ESA's local program has been active in addressing segments of the online game piracy problem through the monitoring and takedown of listings on the major auction site, mercadolibre.com, with more than 12,000 listings offering pirated games taken down in FY 09.

Mexico

The momentum established by the ESA's local anti-piracy program in FY 08 continued in FY 09 with three raids early in the year on problem markets in Guadalajara and Mexico City resulting in the seizure of more than 138,000 pirated games. The ESA's local law firm also undertook an intensive training schedule for Customs officials, with 10 training sessions on game piracy held in different ports around Mexico attended by more than 560 Customs agents. These training efforts showed immediate results with five seizures of pirated game shipments, resulting in the confiscation of more than 78,000 pirated games, including Game Boy Advance cartridges, Xbox 360 discs and the first-ever Mexican border seizure of R4 devices. In October 2008, the ESA promoted its anti-piracy message at the Electronic Game Show in Mexico City through a booth offering attendees materials on the harm piracy causes the game software industry. Toward the end of the year, the ESA's local anti-piracy counsel was able to obtain two massive raids against pirate labs in the notorious Tepito area of Mexico City within one month of each other, which produced seizures totaling more than 92,400 pirated games, 1,036 DVD/CD burners, 240 circumvention devices and 1.68 million pieces of packaging material. These raids comprised the largest seizure of disc burners in the history of the ESA's anti-piracy program.

Hong Kong

The ESA's anti-piracy program in Hong Kong was able to produce strong results that exceeded the number of criminal actions supported in the previous year, due principally to the strong working relationship the ESA and its members established with Hong Kong

anti-piracy program

Customs, the agency with primary responsibility for IP enforcement. In FY 09, the ESA was asked to provide examinations of seized game product in more than 175 Customs cases, a more than 60 percent increase over the previous year. The ESA also played a key role in supporting Customs' efforts to enforce the new criminal anti-circumvention provision against shops selling modified game consoles, with the first actions coming in May 2008 against seven shops resulting in the seizure of 29 game consoles and the arrest of eight people. In FY 09, the ESA provided examination support on 11 different cases involving modified consoles. In the fall of 2008, the ESA's (and Sony's) local anti-piracy counsel sent a warning letter to more than 100 game shops across Hong Kong describing how modifying a game console is a crime subject to criminal penalties including jail time.

Singapore

As in past years, the ESA's anti-piracy program in Singapore has been operating at a lower level of activity, owing generally to a favorable IP enforcement environment that has helped keep game piracy levels under control. In the first nine months of FY 09, the police undertook six actions against targets engaged in game piracy, with the ESA supplementing this effort by filing four private actions, all targeting local dealers of modified Wiis.

Paraguay

The ESA anti-piracy program in Paraguay is focused entirely on the pirate game traffic flowing through the border city of Ciudad del Este into Brazil, as this distribution channel is believed to represent a significant source of pirate game product in Brazil. Enforcement activity in FY 09 focused on sources including a burning lab, a number of warehouse operations, as well as a distribution channel from the Middle East. In all, enforcement actions in Paraguay in FY 09 resulted in the seizure of more than 116,000 pirated games and 54 DVD/CD burners.

Malaysia

In FY 09, the ESA anti-piracy program was able to make progress on a number of fronts, with one raid against an optical disc replication facility involved in game piracy, an action against a burning lab, a number of actions against retail outlets and storage facilities, and some seizures of export shipments, all of which resulted in the confiscation of more than 40,000 games on all major platforms. The ESA also continued to support the pending prosecution of

Basic Electronic, a notorious distributor of pirated PC products, with trial set to begin in June 2009.

TRAINING AND IP EDUCATION

Training

The ESA training program in FY 09 was very productive, conducting or participating in more than 45 training sessions in the United States, Canada, Mexico, Brazil, Uruguay and Paraguay. The training in Canada was enhanced by the ESA's playing a key role in the Canadian Reality Tour organized under the auspices of the Canadian Anti-Counterfeiting Coalition, which involved a schedule of training events for federal and local law enforcement officials in nine major cities across Canada, from Vancouver to Montreal. In the United States, the ESA training program worked closely with the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) division, as well as the New Jersey office of the Federal Bureau of Investigation, in its initiative to train local law enforcement officials in cyber and IP crime throughout the state. The ESA also participated U.S. Patent and Trademark Office programs to provide trainings on IP crime to state attorneys general offices, with speaking appearances in Mississippi and Pennsylvania.

IP Education

In FY 09, the ESA continued efforts to promote teachers' use of the "Join the © Team" curriculum materials that are designed to raise awareness and understanding of IP concepts among elementary school students as they learn to use computers and the Internet. The curriculum materials are made available for free via download from the ESA's curriculum Web site, www.jointhecte.com. In FY 09, there have been more than 25,700 downloads of materials from the Web site, and more than 65,000 downloads over the past two years. The ESA also worked this year to enhance the curriculum through the development of a new set of materials targeted specifically at elementary school media specialists and librarians. The ESA supplemented the curriculum program by conducting in-school IP education workshops aimed at middle school students. In FY 09, the ESA participated in three separate workshops in middle schools in Canada, through which it reached more than 600 students, as well as a fourth workshop in a middle school in Virginia.

COMMUNICATIONS & INDUSTRY AFFAIRS (C&IA)

FY 09 was a watershed year for the ESA's C&IA department. Through increased focus on industry products and events, support of elected officials and positive attention from media as the industry outperformed other economic sectors in the recession, the computer and video game industry took center stage with an opportunity to educate millions on the growth, innovation and creativity of our industry's products.

The ESA provided industry views on important issues including First Amendment protections, proposed regulation of games, global piracy, myths about games and youth violence, self-regulation, the current game market, and the cultural and economic significance of games, to name a few.

Following are some highlights of the media relations program from FY 09:

MEDIA INITIATIVES

- Fielded and released a ground-breaking study highlighting that 70 percent of major employers utilize interactive software and games to train employees. The intent was to illustrate how businesses across the spectrum, from automobile manufacturers to financial services providers, are utilizing entertainment software to help educate and train their employees. The study received coverage in *The Wall Street Journal*, *USA Today*, *The San Jose Mercury News* and numerous game enthusiast media outlets;
- Developed and released the 2008 *Essential Facts* about the Computer and Video Game Industry, which shed new light on the prevalence of computer and video games in the United States, revealing that 65 percent of American households enjoy interactive entertainment. This research also showed that 38 percent of American homes have a video game console and 41 percent of Americans expect to purchase at least one game in 2008.

Coverage was consistent through the entire year from multiple top-tier press outlets, third-party groups and game enthusiast publications—all of which used the ESA's data to underscore the growth and diversity of the industry's consumer base;

- During the FY, C&IA recruited and announced three new members: SouthPeak Interactive Corporation, Natsume Inc. and 505 Games. Shortly after the beginning of FY10, C&IA also recruited XSEED Games, Trion World Network, Crave Entertainment, KOEI Corporation and Playlogic Entertainment;
- Organized and executed the 2008 E3 Media & Business Summit, which hosted Governor Rick Perry, who made a persuasive case for why Texas is an optimal state for industry growth. The ESA welcomed more than 4,500 qualified invitees to the Los Angeles Convention Center between July 13 and 15. The event met all internal criteria for success. In addition, the ESA worked with member companies, the board and stakeholders to revitalize the E3 Expo and announce the new format, which was well-received by member companies, media, retailers and industry analysts;
- Generated press coverage around the 2008 Nite To Unite (NTU) Honoree, Shigeru Miyamoto; the industry raising \$750,000 for children's charities at NTU; the 2008 ESA Foundation grant recipients; and an innovative partnership with ThanksUSA to aid military families;
- Maintained an aggressive speaking calendar for ESA executives, educating important groups about industry facts and the ESA's programs and pursuits. Organizations and events hosting the ESA included:
 - Silicon Flatirons Conference at the Center for Law Technology and Entrepreneurship at the University of Colorado;
 - The Economic Club of Pittsburgh;
 - Carnegie Mellon University's Entertainment Technology Center;
 - Family Online Safety Institute;
 - Kaiser Family Foundation's Anticipating Children's Media Policy in the Obama Era;
 - Southern Interactive Entertainment Game Expo;

communications & industry affairs (C&IA)

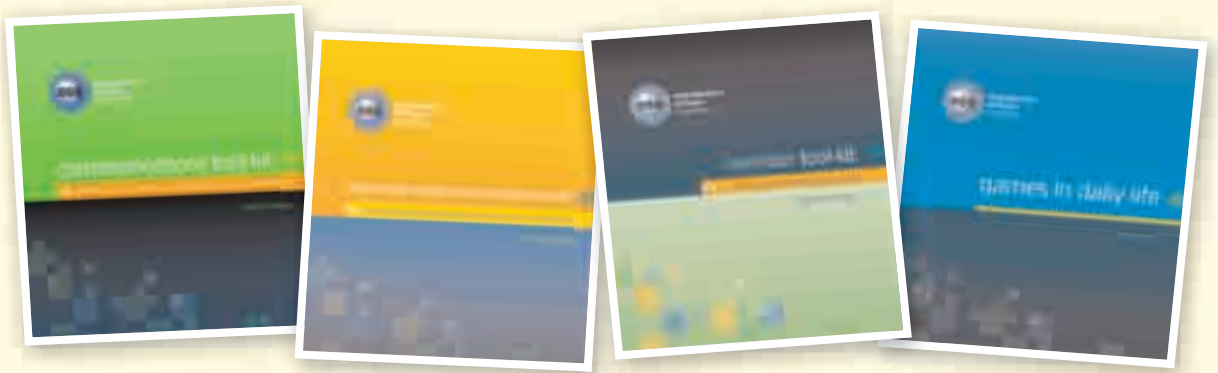


FIGURE 3. ESA TOOL KITS

Greater Raleigh Chamber of Commerce
Economic Development Seminar;

- Maine Public Relations Council;
 - Philadelphia Video Game Expo; and
 - The Game Business Law Summit at Southern Methodist University's Guildhall.
- Conducted a multi-state holiday ratings awareness program that resulted in local elected officials publicly supporting use of the ESRB rating system when parents and caregivers are purchasing games for holiday gifts. In total, state elected officials from 39 states participated in the press push, including the following: Governor Chris Gregoire (Wash.), Governor Jennifer Granholm (Mich.), six Lieutenant Governors and 17 Attorneys General; and
 - Promoted the ESA's grassroots political initiative, the VGVN, which, through earned media coverage and other tactics, attracted more than 150,000 members. This year also saw the launch of the VGVN's social media program including robust presences on Facebook, Twitter and MySpace.

E3 MEDIA & BUSINESS SUMMIT—E3 EXPO

FY 09 saw many changes to the industry's seminal event, the E3 Media & Business Summit. The E3 Media & Business Summit was held from July 15-17, 2008, and hosted more than 4,500 invitees at the Los Angeles Convention Center.

The event exceeded expectations for attendance, logistics and media coverage. However, upon a thorough review and rigorous survey process, the ESA and its Board of Directors felt that the industry needed an event that better reflected the industry's growth, energy and excitement. There was, therefore, a decision to bring back a high-energy, yet

manageable and sustainable E3 Expo with a target attendance of 40,000 individuals for 2009. Response to the renewed E3 Expo announcement was overwhelmingly positive from all sectors including publishers, developers, media, industry analysts and retailers.

VIDEO GAME VOTERS NETWORK

In FY 09, the ESA continued building and more importantly activating the VGVN, a grassroots political network created as a means for voting-age American gamers to organize and take action on important policy issues affecting the computer and video game industry.

To date, more than 160,000 activists have joined the VGVN. Through its Web site, www.videogamevoters.org, gamers have the ability to register to vote; learn about issues that could affect their right to play computer and video games; reach out to federal, state and local officials; and download VGVN banners and IM buddy icons.

In FY 09 the Network was activated 46 times and VGVN members sent more than 31,000 letters to Capitol Hill and state legislative offices in 20 states in response to "Action Alerts" about possible federal and state legislation. For example, in Utah so far this year, the membership generated almost 2,400 letters to decision makers.

Highlights of the VGVN since it was launched include:

- VGVN members have sent more than 73,817 letters to Capitol Hill and state legislative offices in response to "Action Alerts" about possible federal and state legislation; and
- VGVN members have written letters to their representatives in all 50 states;
- The VGVN MySpace page now has more than 3,171 "friends" and the VGVN Facebook page has 3,925 "fans."

RESEARCH

ANNUAL CONSUMER SURVEY

In FY 09, the ESA's 13th annual survey of consumers' game purchase and usage habits provided some of the most widely used and quoted data about the computer and video game industry. The data also provided ESA members with in-depth information on consumer buying and playing habits that is available exclusively to them.

The data was used extensively in articles about the changing demographics of the industry, its emergence as mass market entertainment and as an explanation for the industry's growth; it was used by Wall Street analysts in their reports on interactive entertainment as an investment opportunity, by politicians supporting our industry and by the ESA in testimonies, press materials and speeches.

Conducted for the ESA by Ipsos-Insight, the 2009 Entertainment Hardware and Software Attitude and Usage Study looked at a broad range of topics including information about system ownership, system usage, system location, user demographics, system satisfaction, system purchase patterns, software acquisition and rental habits, and sources of product information. Data was gathered from approximately 1,200 nationally representative households that were identified as owning a video game console and/or a personal computer used to run entertainment software.

Highlights from the 2009 Hardware and Software Attitude and Usage Study include:

- **Buyer Demographics:** The average age of the person who makes the actual purchase of games most often is 39;
- **Growth in Online Games:** Fifty-seven percent of male game players and 43 percent of female game players say they play games online one or more hours per week;
- **Types of Online Games Played Most Often:** Game players say that the one type of online game played most often is: puzzle/board/trivia/card games (43 percent); action/sports/strategy/role-play games (21 percent) and MMO games (16 percent);
- **Paying to Play Online Games:** Of most frequent users who play games online, 23 percent say they currently pay to play games online, more than four times more than the amount from 2003 (5.2 percent);

- **Parents' Opinions of Games:** Sixty-three percent of parents believe games are a positive part of their children's lives; and
- **Parental Involvement:** Parents are present 92 percent of the time that games are purchased or rented, and 94 percent of parents say they monitor the content of the games their children are playing.

...it was used by Wall Street analysts in their reports on interactive entertainment as an investment opportunity, by politicians supporting our industry and by the ESA in testimony, press materials and speeches."

entertainment software rating board (ESRB)

ENTERTAINMENT SOFTWARE RATING BOARD

The ESRB continues to carry out its self-regulatory mission of assigning age and content ratings, enforcing industry-adopted advertising and marketing guidelines, and ensuring responsible online privacy practices for the entertainment software industry. The ESRB bolstered its efforts on several fronts in FY 09, including:

- Enhancing the rating system to be more informative and transparent;
- Making rating information more broadly available through new tools;
- Working with retailers in support of store policies and ratings education signage;
- Educating the public about ratings, parental controls and online safety;
- Evolving advertising and marketing guidelines; and
- Expanding the scope of its privacy certification services to include EU policy directives.

ESRB RATINGS

Rating Summaries

In November 2008, the ESRB introduced “rating summaries,” a supplemental source of information for consumers that explains in concise (typically 2-3 sentences), objective terms the context and relevant details that factored into a game’s rating assignment, with particular emphasis on explaining the content descriptors. Rating summaries are available for all titles rated since July 1, 2008, and have been met with praise from parents, elected officials such as Secretary of State Hillary Clinton² and Senator

Joseph Lieberman (I-CT), and groups like the PTA and NIMF.

Ratings Assigned and Trends

The ESRB assigned 1,677 ratings in 2008, an increase of seven percent over the 1,563 ratings assigned in 2007 and 30 percent higher than the 1,281 assigned in 2006. Remaining by far the most dominant rating category, nearly six in ten ratings assigned in 2008 (59 percent) were E (Everyone 6+). The E10+ (Everyone 10+) rating category introduced in 2005 accounted for 16 percent of rating assignments, while the T (Teen 13+) category represented 19 percent. The M (Mature 17+) category, which tends to receive a disproportionate amount of media attention, accounted for six percent of rating assignments - the same percentage as the year prior and half of the 12 percent of all ratings it represented in 2005. Neither the eC (Early Childhood 3+) nor AO (Adults Only 18+) rating categories were statistically significant. Overall, the rating category breakdown for 2008 was virtually identical to that of the year prior, with the sole variation being that the E10+ rating category gained a percentage point (to 16 percent from 15 percent) from the T category (from 20 percent to 19 percent).

Over the last four years (2005-2008), the E rating category is the only category to grow consistently in both percentage of total and volume. This growth is due in large part to the recent influx of casual games for the PC, handheld devices and online arcades, many of which are E-rated.

ADVERTISING REVIEW COUNCIL (ARC)

ARC’s pre-clearance program, monitoring and enforcement of its advertising and marketing guidelines, continues to ensure that game packaging and advertisements are correctly labeled with the appropriate rating information; products are marketed to audiences for whom they are appropriate; and advertisements are truthful and responsible.

As the online environment has evolved into the most popular medium for the promotion of game products to consumers, the ESRB has increased its monitoring and enforcement efforts in this area, regularly monitoring publishers’ e-mail marketing messages and online advertisements to consumers as well as other types of Internet marketing vehicles.

² Hillary Clinton was a U.S. Senator (D-NY) when rating summaries were introduced.

entertainment software rating board (ESRB)

ESRB AND RETAILERS

More than 20 national retail chains in the United States and Canada, and many local independent retailers, continue to display the ESRB ratings education and store policy enforcement signage in their stores. Many of those retailers provide additional support for the ratings on their Web sites, in circulars and on in-store television networks, generating well over one billion impressions on an annual basis.

The ESRB Retail Council (ERC), founded in 2005, currently consists of eight member companies including Best Buy, Blockbuster, GameStop, Movie Gallery (Hollywood Video / Game Crazy), Sears / Kmart, Target, Toys 'R' Us and Walmart. One of the goals of the ERC is to continue to improve the level of store compliance in the display of ratings education signage and the enforcement of store policy with respect to the sale of M-rated games, both of which are measured through biannual mystery shopper audits. The most recent audit, conducted in November 2008, indicated that ERC retailers displayed proper ratings education signage in 75 percent of their stores and enforced their policy regarding the sale of M-rated games 80 percent of the time. This 80 percent compliance rate represented a 15 percentage point improvement from the ERC audit results from October 2006, and matched the figure reported in the FTC's May 2008 mystery shop, which found that the level of compliance with store policies restricting the sale of M-rated video games topped compliance levels for all other entertainment media products including movies, DVDs and music.

RETAILERS AND PUBLIC EDUCATION

The ESRB teamed up with Walmart to run a series of five ratings education PSAs on its in-store TV network - the nation's largest - generating upwards of 600 million consumer impressions throughout 2008. The ESRB in-store TV PSA spots also ran in Best Buy, Target and Blockbuster stores nationwide.

On December 3, 2008, ESRB President Patricia Vance participated in satellite and radio media tours with GameStop COO Paul Raines. In addition to the ESRB's perennial holiday message reminding parents to check the ratings when buying games as gifts, the launch and availability of rating summaries and the ESRB's new mobile Web site were also promoted. These media tours generated a combined 35.5 million impressions in top markets including New

York, Los Angeles, Chicago, Philadelphia, Dallas, San Francisco, Boston and Washington, D.C.

CONSUMER EDUCATION

OK to Play? PSA Campaign

The ESRB continues to develop award-winning PSA campaigns that encompass various media channels including TV, radio, print, outdoor and online. During FY 09, the ESRB's radio PSAs generated 110 million audience impressions from nearly 6,600 airings on English- and Spanish-language networks and stations. These included airings by the ABC Radio Network that occurred on November 28 ("Black Friday") and again on December 12, generating six million impressions on key holiday shopping days.

The *OK to Play?* print PSA campaign generated more than five million impressions from consumer publications such as *Parenting*, *Sports Illustrated for Kids* and *Stars and Stripes*. The ESRB also secured 17 placements of the gamer-focused Penny Arcade PSA campaign, which appeared in game- and youth-oriented magazines such as *Nintendo Power*, *Tips and Tricks* and *PlayStation the Official Magazine*, generating an additional six million impressions.

State PSA Campaigns

The ESRB continued its work with the ESA SGA staff to launch ratings education campaigns with elected state officials in the run-up to the holiday shopping season, in which the official encourages parents to check the ratings and utilize parental controls. The campaigns most often featured local TV and radio ads, but in some cases included a combination of brochures, billboards, mall kiosks and online/rich media banner ads, depending on the media market targeted.

New Jersey Senate President and former Governor Richard J. Codey (D), and Nebraska Attorney General Jon Bruning (R) both participated in PSA campaigns generating a combined 11 million impressions on TV and radio during the first two months they ran (December 2008 and January 2009). The ESRB, in close partnership with the ESA, has implemented 12 state ratings education campaigns since 2006, collectively generating more than 131 million impressions. Additional campaigns in other states are in production for FY 10.

entertainment software rating board (ESRB)

Partnerships

In 2006, the ESRB forged a partnership with the PTA to distribute more than one million ratings education brochures and online resources to 26,000 PTAs around the country. In 2008, the ESRB expanded upon this partnership by distributing 650,000 copies of a new booklet entitled *A Parent's Guide to Video Games, Parental Controls and Online Safety*. The booklet provides helpful information about the rating system, parental controls and online video game safety, and encourages parents to be involved in making informed decisions about games for their children and family. Integrating the campaign online, the PTA and the ESRB also hosted an interactive webcast featuring PTA National President Jan Harp Domene, ESRB President Patricia Vance and "GamerDad" Andrew Bub, who also contributed an article to the guide about playing video games online.

In October 2008, the ESRB and *Parenting* magazine launched a partnership through which Parenting.com offers its online audience an exclusively designed ESRB rating search widget and a series of three articles by ESRB President Patricia Vance.

To keep parents ahead of the curve when it comes to the games in which their kids are interested, Parenting.com began publishing a monthly list of some best-selling titles with their complete ESRB rating information. *Parenting* also ran two, full-page ESRB print PSA ads in the November and December 2008 issues, timed with the holiday shopping season, and will run two more such ads in the first half of 2009. Finally, Parenting.com developed a series of "Video Game Cheat Sheet" videos as a means of offering their recommendations for kid-friendly games, with each recommended title listed with complete ESRB rating information.

New Tools and Resources

The most popular consumer application on the ESRB's Web site, the game rating search function, is now available as a portable "widget" that can be downloaded onto personal Web pages and/or computer desktops. The widget, which also provides access to rating summaries, allows parents to conduct title keyword searches of more than 16,000 computer and video game ratings in the ESRB's database.

The ESRB launched two new, free opt-in e-mail newsletters called ParenTools and GamerTools, which in November 2008 replaced the ESRB's quarterly newsletter. Subscribers receive a twice-monthly e-mail featuring a list of recently rated titles

customized to their selected preferences between game platforms and/or by rating categories. Each list comes complete with rating summaries. Readers also receive a list of the top 10 best-selling video games, as well as news, updates and other information about the ESRB and video games.

In order to provide access to rating summaries to parents and consumers as they shop, the ESRB launched a mobile Web site at m.esrb.org. Use of the mobile Web site is expected to grow as mobile Web use increases generally.

CONSUMER RESEARCH

According to consumer research commissioned by the ESRB and conducted by Peter D. Hart Research Associates in April 2008, awareness of the ratings among parents of game-playing children under the age of 17 is at 86 percent, with regular use of the ratings at 78 percent. Awareness of the content descriptors is at an all-time high of 66 percent, up from 64 percent in 2007.

More than nine in 10 parents surveyed believe the ratings are "somewhat" to "very helpful" in selecting appropriate games for their children and are confident that the ratings accurately describe game content.

ESRB WEB SITE

Traffic to the ESRB Web site remains consistently strong. In 2008, seven million visitors came to www.esrb.org and conducted 3.6 million searches for rating information. We also received and responded to approximately 3,000 comments and questions from consumers.

ESRB PRIVACY ONLINE

The ESRB Privacy Online program remains one of only four privacy programs in the United States approved by the Federal Trade Commission (FTC) as an authorized COPPA Safe Harbor. It currently has 35 member companies enrolled in the program, and actively monitors more than 1,500 member Web sites with six million pages.

To address the evolving business needs of its participants, Privacy Online broadened the program's focus beyond COPPA compliance to include guidance with respect to CAN-SPAM, ECPA (Electronic Communications Privacy Act) and PIPEDA (Canada's privacy law), as well as relevant state statutes. Privacy Online also provides "best practice" guidance in the increasingly important areas of

behavioral advertising, social networking and mobile gaming.

To better serve the global needs of its participants, Privacy Online expanded its reach beyond the United States and Canada by creating an EU Seal Program based on privacy standards in the EU Privacy Directive. Companies participating in the EU Seal Program will be permitted to use a newly designed EU seal, alerting consumers that the Web site on which it is posted meets EU standards. Privacy Online also continued its participation in preliminary discussions regarding the APEC (Asian Pacific Economic Corporation) privacy framework. As part of furthering its global outreach, Privacy Online now also provides reliable, certified translation services for approved privacy policies.

ESA CANADA

In FY 09, ESAC continued to establish itself as the voice of the entertainment software industry in Canada, while educating policymakers and the public about the industry and its key issues.

VIDEO GAME RATINGS

The ESAC maintained positive relations with Film Board representatives from all jurisdictions in Canada that are responsible for video game ratings legislation through participation in the ESAC/ ESRB-led Canadian Advisory Committee and regular contact with the Interprovincial Film Classification Council of Canada, as well as a presentation at Show Canada, an annual conference of film and video officials.

In addition, the ESAC staff continued to work with provincial governments to ensure consistency in ratings-related legislation that supports the ESRB rating system:

- **Saskatchewan:** The ESAC provided comments on draft regulations.
- **New Brunswick:** The ESAC is engaged in an ongoing discussion with provincial officials regarding new regulations introduced in December.
- **Alberta:** The ESAC presented at legislative committee hearings regarding an amendment to provincial film and video game legislation.

In order to increase compliance with the national voluntary *Commitment to Parents* program, the ESAC worked with retailers and the ESRB, undertook audits of in-store CTP signage, and conducted national research on awareness of video game ratings.

In the province of Quebec, the ESAC continued to work with the *Office Quebecois de la Langue Francaise* (OQLF) on implementation of the industry agreement on French-language content and packaging, and submitted quarterly reports as required.

PUBLIC RELATIONS AND ISSUE MANAGEMENT

In FY09, the ESAC produced the fourth annual Canadian Essential Facts in French and English, as well as the first ever white paper comprised of original research and interviews on the Entertainment Software Industry in Canada, a follow-up to last year's paper based on survey data, in both official languages, which achieved significant media attention across the country.

The ESAC provided media and public relations support and worked with ESA staff on the CACN "reality tour" - a cross-Canada tour designed to raise awareness about the effects of counterfeiting.

Staff built media relationships and continued to establish a presence for the ESAC among key English and French media, with coverage in local and national outlets including CBC/ Radio-Canada, *National Post*, *Financial Post*, *Globe and Mail*, *Canadian Press*, *Toronto Star*, *La Presse*, *Le Devoir*, *Calgary Herald*, *Ottawa Citizen*, *Sympatico/MSN*, *Branchez-vous* and other regional radio, print and online media.

Other key initiatives included a redesign of the ESAC English-language Web site to better reflect current priorities and to update information and imagery; sponsoring the Media Awareness Network's National Media Education Week, a week spotlighting the importance of media literacy for children and youth; and continuing to represent the video game industry on the board of the Kids Internet Safety Alliance to promote the safety of children online.

Further, the ESAC served on the Ontario Ministry of Economic Development committee regarding the development and growth of Ontario's video game industry.

THE ESA FOUNDATION

The ESA Foundation (ESAF) is dedicated to supporting positive programs and opportunities that will make a difference in the quality of life, health and welfare of America's youth. The Foundation seeks to harness the collective power of the interactive entertainment industry to create a positive social impact in our communities. The ESAF supports geographically diverse projects and programs that benefit American youth of all races, religions and genders.

NITE TO UNITE - FOR KIDS

The 11th annual Nite to Unite (NTU) was held at the Westin St. Francis in San Francisco on October 22, 2008, and raised more than \$700,000. There, the industry honored Shigeru Miyamoto of Nintendo with the ESA Champion Award in recognition for his outstanding video game designs over the past 30 years. Co-Chairs Brian Farrell, President & CEO, THQ Inc.; Graham Hopper, Executive Vice President/GM, Disney Interactive Studios; and, John Riccitiello, CEO, Electronic Arts were joined by 10 distinguished members of the industry who served as vice chairs.

GRANT PROGRAM

In keeping with the Foundation's mission, the ESAF awarded grants to the following organizations in FY 09.

- **Computers for Youth (CFY):** CFY is a national nonprofit organization with a mission to help enable low-income children to succeed in school by improving their home learning environment. CFY works with low-income middle schools through its *Take IT Home* program, which provides participating sixth grade families with a free computer, educational software materials, Internet access at reduced cost, bilingual Web content, Family Learning Workshops that teach parents and children how to best utilize their computer systems, and technical support from CFY's bilingual help desk.

The ESAF awarded a grant to CFY to expand its *Take IT Home* program to the San Francisco Bay area in FY 09. CFY worked with approximately 300 families in two Bay Area middle schools - Clyde Fischer Middle School in San Jose and Horace Mann Middle School in San Francisco. CFY begins the program with sixth graders and their families and then expands it to more senior middle grades in subsequent years. CFY begins with sixth grade, because this is when children's disengagement from family and school begins. Survey results from the families who participated in CFY's Family Learning Workshops showed an increase in both parents' and children's confidence levels. In addition, as a direct result of the ESAF's seed funding, CFY was able to secure an additional \$930,000 to grow the CFY California program.

- **HopeLab Foundation:** HopeLab is a nonprofit organization that combines rigorous research with innovative solutions to improve the health and quality of life of young people with chronic illness. HopeLab works closely with young people with chronic illnesses to understand their needs and incorporate their critical and ongoing input into product development. They are committed to the scientific study of their interventions through formative research and outcome studies to ensure these products and/or approaches are effective. HopeLab works to address diseases in which there is significant unmet need among young people and where there is potential to have great impact, including cancer, obesity, sickle cell disease, autism and major depressive disorder.

HopeLab created *Re-Mission*, a video game developed specifically for adolescents and young adults with cancer. In *Re-Mission*, players pilot a nanobot as she travels through the bodies of fictional cancer patients destroying cancer cells, battling bacterial infections and managing side effects associated with cancer and cancer treatment. It is the first game proven to help teens with cancer improve their quality of life, their sense of control and knowledge about cancer, and maintain adherence to their prescribed treatment regimen. In FY 09, the ESAF supported the manufacturing and distribution of 10,000 copies of *Re-Mission* throughout the country: approximately 2,250 copies to 50 cancer camps; more than 7,000 copies to the Childhood Leukemia Foundation, Cancer

Recovery Foundation, Alicia Rose Foundation and Gilda's Club Worldwide; and 1,500 copies to medical staff treating children with cancer.

- **Work, Achievement Values & Education, Inc. (WAVE):** WAVE's mission is to motivate youth to complete school, lead productive lives and make valuable contributions to their communities. WAVE provides teachers and youth development professionals in schools and community organizations with adaptable teaching strategies and tools that ensure success. WAVE's goal is to provide support to schools, community-based organizations, juvenile courts, governments, foundations and businesses to better serve young people based on WAVE's methodology.

The ESAF/WAVE Incentive Grant Program, established in 2006, enables community-based organizations, schools and WAVE to help more at-risk youth and build professional capacity of local teachers and youth development staff working directly with these youth. In FY 09, the ESAF supported WAVE's continued work with its local program partners in Georgia, New Jersey, New York and Virginia. Support from the Foundation enabled WAVE to work with students in some of the nation's neediest communities, providing professional training, consultation and ongoing support to educators and staff from schools and community organizations.

- **Web Wise Kids (WWK):** WWK is a national nonprofit organization dedicated to preventing online child victimization by providing innovative tools to assist youth in staying safe online. WWK implements interactive Internet safety programs nationwide in conjunction with school systems, law enforcement, teachers, community-based youth organizations and others. The U.S. Department of Justice's Project Safe Childhood Initiative chose to include WWK products. WWK programs have reached more than five million children and thousands of parents nationwide.

The ESAF has been a strong supporter of WWK since 2002. Through the years of collaboration, WWK has developed and distributed three educational computer games (*MISSING*, *Mirror Image* and *AirDogs*) to students, teachers, law enforcement officers and other youth leaders in 49 of the 50 United States. *MISSING* educates youth about the dangers of online luring,

predators and chat rooms. *Mirror Image* teaches about criminals who use the Internet to lure young women with promises of modeling contracts and online romance. *AirDogs* shows teenagers that online crimes have lifelong legal and social consequences for teens and their families. With the ESAF's support, WWK has also collaborated with the California PTA to give parents access to the *Wired with Wisdom* e-learning program, which provides useful information and solutions related to the problems faced by today's e-generation.

In FY 09, WWK provided youth safety programs to new communities in Utah, New York and Florida. WWK also established a partnership with the New York State PTA to bring *Wired with Wisdom* to parents. Finally, with the Foundation's assistance, WWK developed a new online game, *It's Your Call*, which serves to educate teens about smart wireless phone usage, risk-taking and decision-making. The new game is targeted to middle schoolers ages 11-14 and is focused on educating youth about the dangers of using cell phones such as bullying, inappropriate pictures, cheating and other risky behaviors.

COMPUTER AND VIDEO GAME SCHOLARSHIP PROGRAM

In 2007, the ESAF established a scholarship program to provide financial assistance to women and minority students pursuing degrees leading to careers in Computer & Video Game Arts. To be eligible, applicants must be enrolled in a full-time undergraduate course of study at an accredited four-year college or university and have a grade point average of 2.75 or above on a 4.0 scale (or equivalent).

In the first year of implementation, the ESAF awarded scholarships to six students. In FY 09, 15 scholarships of \$3,000 each were granted to students from 10 states majoring in Computational Media, Computer Animation, Computer Art, Computer Graphics, Digital Media-Animation, Electronic Game Design, Game and Simulation Programming, Game Art and Design, Game Design-Art and Animation, Programming and Video Game Design.

The ESAF expanded this program to graduating high school seniors, doubling the number of awards from 15 to 30 for FY 10.

ESA member listing

(May 2009)



505 GAMES

ATARI, INC.

CAPCOM USA, INC.

CRAVE ENTERTAINMENT

DISNEY INTERACTIVE STUDIOS, INC.

EIDOS INTERACTIVE

ELECTRONIC ARTS

EPIC GAMES, INC.

HER INTERACTIVE, INC.

KOEI CORPORATION

KONAMI DIGITAL ENTERTAINMENT AMERICA

MICROSOFT CORPORATION

MTV GAMES

NAMCO BANDAI GAMES AMERICA INC.

NATSUME INC.

NINTENDO OF AMERICA INC.

SEGA OF AMERICA, INC.

SONY COMPUTER ENTERTAINMENT AMERICA

SONY ONLINE ENTERTAINMENT, INC.

SOUTHPEAK INTERACTIVE CORPORATION

SQUARE ENIX, INC.

TAKE-TWO INTERACTIVE SOFTWARE, INC.

THQ, INC.

TRION WORLD NETWORK, INC.

UBISOFT ENTERTAINMENT, INC.

WARNER BROS. INTERACTIVE ENTERTAINMENT INC.

XSEED GAMES



**entertainment
software
association**