

- “The only rational response might well be to stop selling video games to minors altogether. Movies and books have been targets before... and will likely come next. The Court should not go down this road.” (p. 61)

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- “Restrictions on protected expression must be clear in their scope to comply with the First Amendment.” (p. 55)
- “[The Act] uses terms... that are vague and ambiguous, and provide little guidance to game creators and distributors.” (p. 57)
- “[T]he Act is invalid for the independent reason that it is unconstitutionally vague. Its proscriptions – using terms such as ‘an image of a human being’ and ‘appeal[ing] to a deviant or morbid interest of minors’ – have no clear boundary in the context of a medium that is highly diverse and often fanciful. As a result, the law will chill a far broader array of speech than even California purports to target.” (p. 16)
- “[I]n many cases it will not be clear whether the ‘image of the human being’ can be harmed in a way that falls within the statute. Does ‘killing’ a character who immediately springs back to life count? If the game allows the player to crush a super villain with a boulder, has a maiming occurred if the villain regenerates his strength? It is impossible to answer these questions by examining the statutory text.” (p. 58)
- “California itself has no clear idea which games are or are not covered by the Act. It asserts it is regulating only a ‘narrow category of material,’... but it invokes research that draws no distinctions among violent games (including cartoonish games designed for small children). California refused in the lower courts to say whether the six games introduced into the record by Respondents would be covered by the Act.” (p. 60)

The California Law Could Open the Door to Massive Civil Fines and Litigation, Particularly Given the Law’s Vagueness:

- “Violations of the labeling or retail provisions are punishable by a civil fine of up to \$1,000.” (p. 11)
- “Arguably, those who distribute or sell video games may also face suit by private citizens under Cal. Civ. Code § 1750, which authorizes suits, including class actions, to redress injuries caused by mislabeled products, providing for awards of compensatory and punitive damages and attorneys’ fees.” (pp. 11-12)



- “Thus, it will be impossible for game makers to know which games will trigger the law’s restrictions. The availability of public enforcement in multiple jurisdictions and the possibility of private suits will create substantial pressure to rate more and more games as appropriate only for those 18 and older. Choosing not to impose such limits, in any borderline case, would risk massive civil penalties of up to \$1,000 per game sold in California.” (p. 60)
- “Requiring retailers to view all the content of a product that contains dozens of hours of game play and is accessible only to a skilled player, to try to apply amorphous standards to the ‘range of options’ available to a player, would impose a nearly impossible burden.” (p. 61)