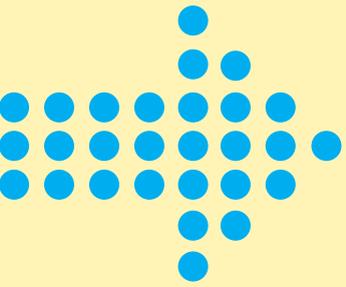




entertainment
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association

annual 2009 report

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A Message From Michael D. Gallagher

Dear Friends:

I am pleased to present the 2009 Entertainment Software Association (ESA) Annual Report. The ESA has proudly represented the entertainment software industry's business and public affairs interests for the past 15 years, witnessing first-hand computer and video games' ever-expanding role in modern society.

As seen in most sectors of the U.S. economy, 2009 was a year filled with challenges for our industry. While the industry was not immune to the economic difficulties caused by the most severe economic downturn since the 1930s, the circumstances did not prevent us from achieving what we set out to do.

During the past year, the ESA engaged in a variety of initiatives that positioned the industry for continued success, while working to further cement its place in our nation's cultural, social and economic life. Featured here are some of the key milestones demonstrating our forward progress:

- In 2009, the ESA welcomed eight new members: SouthPeak Interactive Corporation, Natsume, Inc., 505 Games, Trion World Network, Inc., XSEED Games, Crave Entertainment, Playlogic Entertainment, Inc. and KOEI Corp.;
- Our efforts, combined with the unwavering support of the Video Game Voters Network (VGVN), paid off at the state level. While we continued to face serious legislative challenges, not a single bill regulating interactive entertainment software was enacted. The greatest threat we faced was the Utah Legislature's overwhelming passage of a bill that would have exposed retail partners to legal action if they advertised their enforcement of the Entertainment Software Rating Board (ESRB) rating system and then violated that policy. Governor Jon Huntsman vetoed the legislation, marking the first time in our industry's history that a video game regulation bill was blocked by a top state official;
- Lawmakers throughout the nation recognized the industry's economic benefits. Bills creating new or improving existing tax incentives for game development were enacted into law in seven states: Alabama, Arkansas, Colorado, Kentucky, Louisiana, Ohio and Texas;
- On January 7, 2010, we achieved an important First Amendment victory when the U.S. District Court for the Northern District of Illinois granted the ESA's motion for preliminary injunction against enforcement of a Chicago Transit Authority (CTA) ordinance that prohibits advertisements for video games rated Mature 17+ (M) or Adults Only 18+ (AO). After a hearing in December 2009, the court found that the ESA is likely to succeed in establishing that the ordinance is unconstitutional;
- We redesigned the E3 Expo to more accurately reflect the entertainment software industry's excitement, energy and innovation. The improvements made this year solidified the E3 Expo as our industry's preeminent event for announcing trends and previewing cutting-edge products. Feedback from leading industry figures, analysts and journalists was overwhelmingly positive;
- In November, President Barack Obama announced the ESA's involvement in a new White House educational initiative intended to motivate students across the country to excel in science, technology, engineering and math (STEM) learning. The ESA, its member companies and nonprofit partners will organize two national video game design competitions that promote learning while leveraging the industry's expertise and harnessing the excitement surrounding our products;
- The ESA developed and released the *2009 Essential Facts about the Computer and Video Game Industry* report, which provided updated sales, demographic and usage data about the computer and video game industry. The new research revealed the extent to which America's households have embraced computer and video games, as demonstrated by the fact that 68 percent play computer or video games and 42 percent have a video game console;

A Message From Michael D. Gallagher

- The ESRB earned high marks from parents, the media and elected officials over the course of the year. Most recently, the Federal Trade Commission (FTC) commended the ESRB for its leadership in setting the bar for consumer ratings systems. In its 2009 report to Congress, the FTC asserted that, “of the three entertainment sectors, the electronic game industry continues to have the strongest self-regulatory code;”
- Now boasting more than 166,000 members, the ESA-sponsored VGVN continues to organize and take action on important policy issues affecting the computer and video game industry. VGVN members sent more than 12,000 letters to federal and state lawmakers spanning 35 states about possible legislation; and
- In the last year, the ESA Foundation (ESAF) continued to provide opportunities for America’s youth and college students. The Foundation expanded its Computer and Video Game Scholarship Program for graduating high school seniors, doubling the number of awards given from 15 to 30. The scholarship recipients hailed from 16 different states and 26 different academic institutions. This year’s Nite to Unite for Kids event raised more than \$800,000, enabling the Foundation to distribute grants to a number of worthy organizations.

We would not be where we are today without the continued support, dedication and innovation of our member companies. I firmly believe that, because of your efforts, the strength and impact of our industry will continue to grow. I would like to take a moment to express my appreciation to our Board members, the ESA staff and the ESRB. We look forward to continuing our work together to educate and inform all levels of society about the computer and video game industry’s significant contributions to the economy, education, healthcare and, more broadly, the lives of millions of Americans.



Michael D. Gallagher
President and CEO

FEDERAL GOVERNMENT AFFAIRS (FGA)

In 2009, the ESA FGA expanded its work on behalf of the industry to include increased outreach to President Obama and his administration. FGA actively participated in discussions on legislation and agency rulemakings impacting ESA members; hosted numerous events and briefings highlighting the association's members and products; and established the ESA as a liaison for the Obama administration as it explores public-private partnerships to advance the country's domestic agenda.

FGA staff continued to direct their efforts on two priority issue areas identified by the ESA's Public Policy Committee (PPC): content regulation and intellectual property (IP) protection. In addition, FGA staff focused on other industry policy issues including STEM education and broadband expansion and regulation.

After taking office, the administration rapidly filled top posts relevant to our industry, including the newly created IP enforcement coordinator, Victoria Espinel, and Chairmen of the FTC and Federal Communications Commission (FCC), Jon Leibowitz and Julius Genachowski, respectively. The ESA worked with staff and officials throughout the nomination process to ensure our industry's views were represented as these officials formulated and began to execute their policy agendas.

PRIORITY ISSUES

Content Regulation

- In 2009, congressional efforts to regulate game content significantly diminished, in large part due to the ESRB's continued diligent work and FGA's ongoing advocacy efforts. That success is illustrated by the most recent FTC Report to Congress that highlighted the significant and continuing progress by the ESRB and retailers to promote ratings awareness and enforcement.

- Midway through 2009, the FCC announced its Notice of Inquiry (NOI) pursuant to Senator Mark Pryor's (D-Ark.) Child Safe Viewing Act, signed into law at the end of 2008. The NOI, originally intended to direct the FCC to research the effectiveness of filters on "Internet platforms," led the FCC to conduct a broadened inquiry into the scope of its jurisdiction and the viability of a universal ratings system. The ESA filed comments focusing mostly on the ESRB's robust and effective ratings system, while also noting the jurisdictional objection that video games were outside the scope of the Child Safe Viewing Act. The FCC's resulting report acknowledged that video games were outside the scope of the Child Safe Viewing Act, but the FCC then issued a second NOI titled "Empowering Parents & Protecting Children in an Evolving Media Landscape" to examine ratings systems and media. The ESA filed comments addressing this inquiry, underscoring the effectiveness of the ESRB and arguing against a single ratings system for all media.

Performance Rights

- In 2009, performance rights organizations (PROs) sought to amend current U.S. law to treat digital downloads as public performances, thereby requiring a license/royalty in addition to any pre-negotiated license fees already paid. FGA, in collaboration with a broad coalition including the Motion Picture Association of America (MPAA) and the Digital Media Association, employed a targeted lobby strategy in response to the PROs' efforts.

Energy Efficiency

- Senator Robert Menendez (D-N.J.) introduced an amendment to energy and climate change legislation mandating a study of video game consoles' energy efficiency. This proposed study replaced a previous, more draconian effort to mandate energy standards for video game console systems. FGA worked directly with representatives of our console manufacturing member companies to develop support for the senator's initiative and to provide a public statement on the industry's behalf. This effort followed a letter sent to Senate Energy and Natural Resources Committee Chairman Jeff Bingaman (D-N.M.) on behalf of ESA members in support of the

federal government affairs

committee's efforts to promote energy efficiency. As the bill moves forward as part of a larger energy effort, FGA plans to work closely with Chairman Bingaman, Senator Menendez and the committee in 2010.

Customs Reauthorization

- The Senate Finance and House Ways and Means Committees explored non-Free Trade Agreement-related vehicles in late 2009. This included a customs reauthorization bill designed to re-prioritize trade functions within U.S. Customs and Border Protection. Further, Senate Finance Committee Chairman Max Baucus (D-Mont.) introduced the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009. ESA President and CEO Michael Gallagher issued a statement applauding the chairman's leadership on this important issue for the industry.

In cooperation with the White House, the ESA, its member companies and its nonprofit partners will host two national video game design competitions - one to create new STEM-based video games for three different age groups and another to design STEM-related levels for existing video games.

WHITE HOUSE EFFORTS

- In November, President Obama announced a White House initiative to engage and motivate students in STEM learning. As part of this announcement, the White House highlighted a video game competition organized by the ESA that leverages the video game industry's expertise and harnesses the excitement

surrounding our products to create effective educational tools for STEM learning. In cooperation with the White House, the ESA, its member companies and its nonprofit partners will host two national video game design competitions - one to create new STEM-based video games for three different age groups and another to design STEM-related levels for existing video games. The first of these competitions, a MacArthur Foundation effort to develop STEM-specific levels for the games *Little Big Planet* and *Spore*, launched in mid-December.

- ESA President and CEO Michael Gallagher and the CEOs of major motion picture studios, recording labels and their trade associations participated in a meeting about IP theft with Vice President Joe Biden, Senior Advisor to the President Valerie Jarrett, IP Enforcement Coordinator Victoria Espinel, Attorney General Eric Holder, Department of Commerce Secretary Gary Locke, Department of Homeland Security Secretary Janet Napolitano and FBI Director Robert Mueller. As a follow-up to that meeting, the ESA met with and provided industry-specific comments to Espinel.

PRIORITY INDUSTRY EVENTS

The ESA, in conjunction with Microsoft, MTV Games and Electronic Arts (EA), hosted a game launch event for *The Beatles: Rock Band*. More than 200 guests, including senior White House officials and Members of Congress, attended the event. House Science and Technology Committee Chairman Bart Gordon (D-Tenn.), New Democrat Coalition Chairman Joe Crowley (D-N.Y.) and Representative Jesse Jackson Jr. (D-III.) performed songs on stage with ESA staff. Reporters from the *New York Times*, *Washington Post* and *Newsweek* also attended the event that was featured in eight publications.

THE BEATLES: ROCK BAND LAUNCH EVENT ON SEPTEMBER 15



Congressman Bill Pascrell (D-N.J.)



Congressman Jesse Jackson Jr. (D-Ill.)



Congressman Joe Crowley (D-N.Y.)

state government affairs

STATE GOVERNMENT AFFAIRS (SGA)

The ESA's SGA program pursues four primary goals:

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

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

SGA YEAR IN REVIEW

- In 2009, the ESA continued to face serious state legislative challenges, including attempts to regulate the sale and distribution of computer and video games. A total of 121 bills 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.
- Eight bills to regulate content or access to games were introduced. The single greatest threat was the Utah Legislature's overwhelming passage of House Bill 353, which would have exposed retail partners to legal action if they advertised their enforcement of the ESRB rating system and then violated that policy. Governor Jon Huntsman (R) vetoed the legislation, marking the first time in our industry's history that a video game regulation

bill was blocked by a top state official.

Ultimately, no statutes regulating video games sales were enacted in 2009.

- SGA is fighting a new threat that would impose significant new legal liability on the industry. In August, the Screen Actors Guild (SAG) indicated that its new state legislative priority is to prevent video games from receiving an exemption as an expressive work in "right of publicity" legislation, which governs an individual's right to control the use of his or her image, likeness or characteristics. The ESA continues to push for equal treatment with other entertainment mediums such as movies, music and books in right of publicity legislation, and expects substantial activity on this issue in 2010.
- Bills creating new or improving existing tax incentives for game development were enacted in seven states: Alabama, Arkansas, Colorado, Kentucky, Louisiana, Ohio and Texas. In Connecticut and Florida, SGA successfully preserved incentives for computer and video game development, which were threatened by budget cuts. There were a total of 35 bills introduced in 18 states to establish or increase existing tax incentives for video game production.
- SGA developed and enhanced relationships with national and state retailers and local business groups who voiced support for the ESRB, the ESA and our industry's economic contributions at legislative hearings and meetings.

STATE-BY-STATE REPORT

ALABAMA: Governor Bob Riley (R) signed into law motion picture, video game and television production tax credits.

ARIZONA: As a result of proactive educational efforts with key state legislative leaders, SGA's work prevented the reintroduction of legislation that would have imposed legal liability on the creators, sellers or distributors of any violent content that resulted in committing a felony crime.

Legislation was introduced in the House to improve the current motion picture tax credit, which includes video game production. The bill increased the level of incentives for eligible film and video game production, but prohibited using credits for

“obscene” projects, which was undefined in the legislation.

ARKANSAS: Governor Michael Beebe (D) signed into law legislation to establish incentives for film and digital product development, which specifically included video games.

CALIFORNIA: The ESA participated in a coalition led by the California Chamber of Commerce that successfully stopped legislation that would have taxed certain electronic transactions from businesses with facilities in California. The bill language was added to the omnibus tax bill, which was vetoed by Governor Arnold Schwarzenegger (R) on June 30, 2009.

The ESA participated in a coalition that included MPAA and the Recording Industry Association of America (RIAA) to support AB 568 which will allow district attorneys and appropriate local prosecutors to institute nuisance abatement proceedings when real property is used for counterfeiting operations, specifically by people convicted of trademark or true-name-and-address violations. Governor Schwarzenegger signed the bill into law in October.

Also in October, Governor Schwarzenegger signed into law legislation totaling \$15 million in attorneys’ fees for plaintiffs that successfully challenged the state in litigation, including a \$96,000 appropriation for the ESA in the U.S. Court of Appeals for the Ninth Circuit case, *Video Software Dealers Association (VSDA) v. Schwarzenegger*.

COLORADO: Governor Bill Ritter (D) signed into law legislation to offer film production and video game incentives.

CONNECTICUT: With the support of Governor Jodi Rell (R), four bills were introduced to reduce the amount of film and video game production tax credits provided under the state’s current incentive program. However, the Connecticut Legislature passed a budget bill that preserved the film and video game tax incentives and became law without the governor’s signature.

DELAWARE: SGA met with key legislative leaders including Representative Helene Keeley (D), who previously sponsored video game regulation legislation, to discourage reintroduction of language to regulate the sale of M-rated video games to minors.

In lieu of legislation, Representative Keeley partnered with Senator Bethany Hall-Long (D) and

the ESRB on a statewide ratings awareness campaign. This campaign included a radio public service advertisement (PSA), ads in shopping mall kiosks and e-newsletter articles for legislators to distribute to constituents. In November, SGA participated in a press conference announcing the launch of the PSA campaign at a Best Buy store in Newark, Del., with Governor Jack Markell (D), Representative Keeley, Senator Hall-Long, Representative Greg Lavelle (R) and Senator Cathy Cloutier (R).

FLORIDA: In May, the Florida Legislature adopted its annual budget, including \$10.8 million for preservation of the existing state film and digital production incentive program, of which five percent was dedicated to eligible digital media projects.

Bills creating new or improving existing tax incentives for game development were enacted in seven states: Alabama, Arkansas, Colorado, Kentucky, Louisiana, Ohio and Texas.

HAWAII: The Honolulu City Council adopted an ordinance on January 28, 2009, that prohibited playing video games while operating a motor vehicle which Mayor Mufi Hannemann (D) vetoed for being too narrowly focused. Since the veto, the City Council adopted an ordinance prohibiting the use of all handheld and electronic devices while driving, which the Mayor signed into law on May 7, 2009.

ILLINOIS: Representative Robert Pritchard (R) introduced House Bill 369, which sought to make technical changes to the Illinois “harmful to minors” law. However, this legislation erroneously amended the failed 2005 video game regulation statute, and would have re-enacted the violent video game statute invalidated in *ESA v. Blagojevich*. SGA worked with Representative Pritchard to introduce a new bill that was signed into law by Governor Pat Quinn (D) to provide an increase in penalties for exhibiting or depicting harmful materials to minors without the

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unintended consequence of re-enacting the failed video game statute.

KENTUCKY: Governor Steven Beshear (D) signed legislation to provide tax credits for film productions and video games as part of an economic development package.

LOUISIANA: Senator A.G. Crowe (R) introduced legislation that would require retailers who sell or distribute goods or services with an age restriction or recommendation to enforce it. The Senate Consumer Protection Committee added language that would impose civil penalties on retailers who sell goods or services containing obscene “sexually explicit content” to minors on five separate occasions. Another amendment was added requiring the state attorney general to notify retailers when complaints about these sales are made and allowing private rights of action by consumers who claim that minors were sold inappropriate material. The bill overwhelmingly passed the Senate in June 2009.

Governor Steven Beshear (D) signed legislation to provide tax credits for film productions and video games as part of an economic development package.

SGA met with Attorney General Buddy Caldwell (D), who recognized the constitutional concerns with the bill. The Attorney General also notified the legislature with concerns about the significant costs for his office to carry out the proposal. SGA also testified against the bill before the House Commerce Committee which voted to hold the bill in committee. The legislation expired with the legislature’s adjournment.

Six bills were also introduced to continue and significantly expand available tax credits for digital interactive media projects. SGA worked with the Louisiana Department of Economic Development and key legislative leaders in support of this legislation. Ultimately, SB 277, which provides a 25 percent tax credit for game production, sponsored by Senator

Ann Duplessis (D), was signed into law by Governor Bobby Jindal (R).

MAINE: Legislation was introduced to expand tax incentives for visual media productions, including interactive computer and video games. The bill was approved by the House, but failed to pass the Senate before the legislature adjourned in June. The bill has been carried over to the 2010 session.

The state of Maine was legally challenged on constitutional grounds for broadly restricting the collection, receipt or use of personal- or health-related information from minors for marketing purposes. Legislative repeal of the law is expected when the legislature reconvenes in 2010. SGA will work with the coalition of groups that oppose the current statute and Maine legislators in support of the repeal to assure that any new legislation is narrowly tailored and avoids the serious First Amendment issues raised by the current statute.

MASSACHUSETTS: Boston Mayor Thomas Menino (D) and the ESRB announced a partnership to launch a TV, radio and transit PSA campaign in support of the ratings system in Boston. This ratings awareness partnership represents the first ratings awareness campaign with a major metropolitan official.

Representative John Binienda (D), chairman of the House Rules Committee, filed a bill in the 2009-2010 session to significantly improve the state’s video game tax incentive program. This bill would make video game production incentives equal to the film production tax credit (a 25 percent tax credit for payroll and production expenses). The ESA worked with Microsoft, Blue Fang Games, Demiurge Studios, Tencent Boston, Macguffin Games, Mayor Menino’s Economic Development Office and Northeastern University, all of which testified in support of the bill at a House committee hearing. SGA submitted written testimony in support of the legislation.

MICHIGAN: Five bills were introduced that would scale back the film and digital media tax credits that were enacted in 2008. SGA opposed these bills along with Governor Jennifer Granholm (D), and they did not move from their committees of jurisdiction in 2009.

Representative Pam Byrnes (D) invited the ESA to participate in negotiations of stakeholder groups to draft right of publicity legislation for the 2010 legislative session. The ESA continues to work with key legislators to educate them about the First Amendment protections the courts have afforded

video games, and to ensure that video games are given the same expressive works exemptions as other entertainment media in any right of publicity legislation. Representative Byrnes is expected to file the right of publicity bill in early 2010.

NEW JERSEY: Assemblyman Nelson Adano (D) and Senate President Richard Codey (D) introduced legislation that would impose penalties for broadly defined "sexually offensive" communication through social networking websites. SGA worked with a coalition that included MPAA and the Media Coalition in opposition. The Assembly bill was reported out of the Judiciary Committee in March, but no further action occurred and the bill died.

In November, legislation was pre-filed to enhance the state's existing tax credits for digital media production. This bill is expected to receive action in the 2010 session.

NEW YORK: The ESA successfully opposed 11 bills that would have impacted the video game industry. In addition to proposed video game content regulations, the bills included the imposition of additional taxes on video games.

Governor David Paterson (D) included a tax on digital products as a part of his 2009 budget proposal. The ESA worked with a coalition in opposition to this tax that was later removed as part of the omnibus budget agreement between the governor and state legislative leadership.

NORTH CAROLINA: Senator Julia Bozeman (D) introduced a bill to provide tax credits for video game producers. This bill is before the Senate Finance Committee.

In February, representatives from EA and Epic Games, Inc. testified before the House Committee on Technology in support of tax incentives for video game production.

Also in February, Representative Melanie Goodwin (D) and Senate Majority Leader Tony Rand (D) introduced right of publicity legislation that did not include video games under the exemption for expressive work. The ESA met with the bill sponsors, who agreed to revise the language to include video games. No further action on this legislation has occurred to date.

OHIO: Several bills offering film and video game production tax credits were introduced in the Ohio legislature. The ESA supported these incentives and submitted a letter in support of the legislation to the

governor, Senate and House leadership. In July, Governor Ted Strickland (D) signed into law the biennium budget which contained a film and video game tax incentive program. The bill provides total tax credits of \$10 million for FY2010 and \$20 million for FY2011 for 25 percent of eligible video game production investments greater than \$300,000.

Boston Mayor Thomas Menino (D) and the ESRB announced a partnership to launch a TV, radio and transit PSA campaign in support of the ratings system in Boston.

PENNSYLVANIA: In March, the House Children and Youth Committee held a public hearing in Philadelphia on "violent" video games, at the request of Representative Ron Waters (D), who sponsored the resolution that created the state's Task Force on Violent Interactive Media. During this hearing, task force participants reiterated the finding from their December 2008 report that the ESRB ratings have been highly effective in providing information to parents and other consumers about the age suitability and content of video games, and that the General Assembly should avoid challenging the established legal consensus that video games are protected speech and therefore subject to First Amendment protections. SGA also submitted testimony highlighting the ESRB's education and outreach efforts. The committee expressed interest in pursuing educational opportunities rather than legislative content restrictions. As a result, the ESRB partnered with the committee on a ratings brochure for dissemination to other state legislators and parents.

TEXAS: Representative Dawnna Dukes (D) and Senator Bob Duell (R) introduced HB 873 and SB 605, respectively, to remove the caps on grants available for motion picture, television and video game development and production. The ESA held multiple meetings with key legislators and state officials throughout the 2009 session to educate them on the economic benefits and contributions of

state government affairs

the video game industry, and how increased incentives would help build upon the existing base of developers and publishers 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 Rick Perry also issued a similar proclamation.

As a result, the ESRB partnered with the committee on a ratings brochure for dissemination to other state legislators and parents.

In April, Governor Perry signed HB 873 into law, which removed the cap on incentives available for video game projects, and gave the Texas Film Commission (TFC) authority to develop rules for implementing the new incentive program. The state budget provided a \$60 million appropriation over the next two years to fund HB 873, a significant increase over the previously appropriated \$11 million per year.

In the fall, the TFC issued proposed rules for implementing the new incentive program that did not treat video game production equal to film and television production with respect to the level of incentives for which they were eligible to apply. The ESA submitted written comments making the case for equality with film and television in the disbursement of incentives, and participated in a public hearing held by the TFC in October.

TFC Director Bob Hudgins responded to ESA concerns about the proposed rules stating that, while he supports equality in the disbursement of incentives in principle, the limited appropriation had to be weighted to attract film and television production. Hudgins also wrote that he would be presenting evidence to the legislature when it reconvenes in 2011 to substantially increase funding for the program. The ESA continues to work with key legislators and stakeholders to advocate for increasing the incentives available for video game production in Texas. Video game productions in

Texas are eligible to receive incentives equal to five percent of their in-state spending.

UTAH: Legislation that exposed video game retailers to legal liability if they advertised ratings enforcement but failed to do so, sponsored by Representative Michael Morley (R) and Senator Margaret Dayton (R), was approved in the final hours of the 2009 legislative session by a vote of 24-5 in the Senate and 67-3 in the House. The bill also covered Internet-based transactions, which raised concerns about violating the U.S. Constitution's Commerce Clause, because of the burden it would impose on retailers for transactions with out-of-state consumers.

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.

WISCONSIN: Governor Jim Doyle's (D) budget package included a plan to replace the existing tax credits available for motion picture and video game development projects with a significantly smaller grant program. This proposal was due, in part, to the inappropriate use of the existing program funds for film projects 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 for the misuse of incentives for non-Wisconsin projects and creating more jobs in the state. SGA worked with the lieutenant governor and other key legislators to promote the economic benefits and jobs that video game development and production create and protect the current incentive program. This proposal passed the legislature, but, in a partial veto by Governor Doyle, the appropriation was scaled back to what he originally proposed as part of his budget package.

RATINGS AWARENESS PROJECTS

The ESA developed partnerships with state and local officials to launch ratings education programs that include co-branded materials with the ESRB, and television and radio PSAs. In 2009, the ESA launched ratings awareness programs with the following leaders at the state and local levels:

- Alabama Attorney General Troy King (R);
- Arkansas Attorney General Dustin McDaniel (D), co-chair of the Democratic Attorneys General Association;
- Boston Mayor Thomas Menino (D);

- Colorado Attorney General John Suthers (R);
- Delaware State Representative Helene Keeley (D) and State Senator Bethany Hall-Long (D);
- Kansas Attorney General Steve Six (D);
- Oregon Attorney General John Kroger (D);
- Puerto Rico Department of Consumer Affairs Secretary Luis Rivera Marin; and
- South Carolina Attorney General Henry McMaster (R).

SGA successfully worked with a total of 55 key state legislators and officials in 41 states, Puerto Rico and the District of Columbia to issue holiday ratings awareness press releases that encouraged parents and caregivers to check the ratings on computer and video games before purchasing them as gifts. ESA's Communications & Industry Affairs department provided outreach and support for this campaign.

YOUTH INTERNET SAFETY PROJECTS

In conjunction with the ESAF, 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 2009, the ESA worked with the following officials to roll out these projects:

- Arizona Attorney General Terry Goddard (D);
- New Mexico Attorney General Gary King (D);
- Utah Attorney General Mark Shurtleff (R), Utah Senate President Michael Waddoups (R) and Utah Speaker of the House David Clark (R); and
- Washington State Attorney General Rob McKenna (R) and State Superintendent of Public Instruction Randy Dorn.

STATE CAPITOL DAYS AND OUTREACH

- More than 70 state legislators from across the country attended an SGA reception showcasing video games during the State Government Affairs Council's Leadership Policy Conference in November.
- Disney Interactive Studios, Inc., EA, Take-Two Interactive Software, Inc., and Microsoft Corporation participated in legislative meetings or showcased games during a state lobbying day and reception for Texas legislators in February.
- EA, Capcom USA, Inc., Take-Two Interactive Software, Inc., Sony Computer Entertainment

America, Microsoft Corporation, Namco Bandai Games America, Inc., and SouthPeak Interactive Corporation participated in legislative meetings or showcased games during a state lobbying day and reception for California lawmakers in March.

LITIGATION STATUS REPORT

There were a number of important developments in litigation in 2009. First, the ESA filed and prevailed on a preliminary injunction motion in Illinois against the CTA, challenging a ban on advertisements of video games rated M and AO. Second, the State of California petitioned the U. S. Supreme Court for review of a decision by the Ninth Circuit Court of Appeals, which affirmed a lower court ruling that a California law seeking to ban the sale of violent video games to minors was unconstitutional. Third, the ESA led a coalition of interested business associations in filing an amicus curiae brief in the Second Circuit Court of Appeals, disputing the American Society of Composers, Authors and Publishers' (ASCAP) attempt to characterize digital downloads as "public performances" under the Copyright Act.

● Illinois (ESA v. Chicago Transit Authority):

On January 7, 2010, the ESA achieved an important First Amendment victory for our industry. The U.S. District Court for the Northern District of Illinois granted the ESA's motion for preliminary injunction against enforcement of a CTA ordinance that prohibits advertisements for video games rated M or AO. After a hearing on December 11, 2009, the court found that the ESA is likely to succeed in establishing that the ordinance is unconstitutional.

The District Court determined that the CTA is a public forum and that its ordinance would fail the strict-scrutiny test. But the court also held that, even under a lesser commercial-speech/intermediate-scrutiny standard, the ordinance would still fail. The court noted that the CTA could offer no defensible distinction for singling out video games, while requiring no similar restrictions on advertisements for movies or television shows with adult ratings or content; adding that, even if it could, "the Seventh Circuit has shown resistance to recognizing any such proffered distinction in the past." The court also found that the CTA had offered no evidence to demonstrate any connection between ads for M- and AO-rated games and violence among young CTA

riders. The court noted, “[a]s far as the court is aware, the CTA possesses no new research or evidence that would contradict the prior findings of courts in this circuit that there is insufficient evidence connecting real violence with violent games to justify restrictions on expressions.”

The court held a status hearing in March to determine the next steps in the litigation. The parties’ motions for summary judgment are currently due on May 7, 2010.

- **U.S. Supreme Court (*Schwarzenegger v. EMA*):** On February 20, 2009, the U.S. Court of Appeals for the Ninth Circuit issued a unanimous decision to affirm the district court’s permanent injunction against enforcement of California law AB 1179, which would have banned the sale of violent video games to minors. On May 20, 2009, the State of California filed a petition for a writ of certiorari in the U.S. Supreme Court, seeking review of

The U.S. District Court for the Northern District of Illinois granted the ESA’s motion for preliminary injunction against enforcement of a CTA ordinance that prohibits advertisements for video games rated M or AO.

the Ninth Circuit’s decision. On July 22, 2009, the ESA filed its opposition brief.

In its petition, California argues that violence in video games should be equated with the sexually explicit materials that the Supreme Court has found may constitutionally be barred from sale to minors. Alternatively, the state argues that, even if violent video games receive full First Amendment protection, the state legislature was entitled to conclude that violent video games pose a grave threat to children, based on scientific research on the subject.

On April 26, 2010, the United States Supreme Court granted the state of California’s petition for writ of certiorari in *Schwarzenegger v. EMA* (08-1448). The Court will hear oral arguments on the California “violent video game” statute sometime in the fall of 2010. The issues in the case include whether violence in video games should be equated with the sexually explicit materials that may constitutionally be barred from sale to minors, and whether the government, in order to satisfy “strict scrutiny,” must demonstrate a direct causation between violent video game play and harm to minors. Under the current schedule, California’s opening brief is due on June 10, and the ESA’s opposition brief is due on July 12.

While its petition was pending, California, on October 18, 2009, issued payment to the ESA in the amount of \$94,305.95 for attorneys’ fees, plus interest, in connection with the Ninth Circuit proceedings. California had already paid ESA \$276,000, plus interest, for the ESA’s fees in connection with the district court proceedings.

- **ASCAP Copyright Issue:** On August 17, 2009, the ESA, along with the Digital Media Association, MPAA and other entities, filed an amicus curiae brief in the U.S. Court of Appeals for the Second Circuit in *U.S. v. ASCAP* regarding the issue of downloads as public performances.

In 2007, the U.S. District Court for the Southern District of New York (in its capacity as ASCAP rate court) ruled that digital downloads of musical works are not “public performances” for purposes of the U.S. Copyright Act and, therefore, are not covered by the “public performance” right. ASCAP appealed this ruling to the U.S. Court of Appeals for the Second Circuit.

The ESA’s brief argued that, contrary to ASCAP’s view, downloads of products that contain musical works, such as video games, are not “public performances” of those works such that a performance royalty would be due to the composer or other owner of the musical composition copyright. The brief noted further that requiring payment of a royalty in such circumstances would be duplicative of pre-negotiated license fees already paid for reproduction and distribution rights. The issue remains pending before the Second Circuit.

INTELLECTUAL PROPERTY (IP) POLICY

The IP Policy department works with ESA member companies to formulate and advance industry-favorable policy positions in the areas of IP, trade and technology policy. The ESA does so through frequent communications and regular meetings with member committee representatives to forecast policy developments, assess their likely business impact, and consider new areas for monitoring and engagement. IP policy analyses and products are provided to government officials, advocacy groups and coalitions, and to other ESA departments (including FGA and SGA) to advance favorable policy objectives.

During 2009, leading policy objectives included:

- Improving online enforcement and Internet service provider (ISP) cooperation to reduce piracy;
- Reducing the availability of circumvention devices through improved laws and enforcement against technological protection measures (TPM) circumvention;
- Improving conditions for digital delivery of game software, including no less favorable treatment of entertainment software delivered online;
- Improving IP enforcement generally (domestic and international); and
- Providing ongoing policy monitoring and reporting services in areas of member interest.

Often, the ESA's policy work is undertaken in communication with other international game industry representatives, which helps the industry to maintain policy cohesiveness on key global issues. During 2009, our international outreach included:

- **Associations Roundtable:** During the E3 Expo, heads of six game industry associations met to share information on global industry challenges, including IP protection, anti-piracy and policy considerations; game content and ratings; and industry representation challenges.
- **Roundtable Call on the Anti-Counterfeiting Trade Agreement (ACTA):** In November, game industry association leaders from CESA (Japan), ESA (USA), ESAC (Canada), ELSPA (UK) and ISFE (EU) again convened to consider the benefits of a robust Anti-Counterfeiting Trade Agreement (ACTA), and to compare challenges and approaches in framing messaging for policymakers. Representatives from these participating associations reviewed and discussed current research and background materials to facilitate communications with trade officials as they prepared for resumption of negotiations in 2010.

IMPROVING ONLINE ENFORCEMENT AND ISP COOPERATION TO REDUCE PIRACY

In 2009, the ESA saw continued growth in online piracy, internationally and domestically, through both peer-to-peer (P2P) and direct download sites. As part of its policy response, the ESA continued to explore opportunities to encourage ISP cooperation in addressing online infringement.

- **Quarterly Reports:** In July and October, IP Policy staff provided members with quarterly reports on developments with respect to ISP responsibility in countries of commercial interest. These reports covered developments in Brazil, Finland, France, Hong Kong, Ireland, Italy, Malaysia, Mexico, the Netherlands, New Zealand, Singapore, South Korea, Spain, Sweden, the United Kingdom and the United States. The ESA also shared these reports with game industry trade associations in Australia, Canada, Europe and Japan.
- **New Zealand Filing:** In August, the ESA and the Business Software Alliance filed joint comments with the New Zealand government highlighting gross deficiencies that would follow from its implementation of recently proposed amendments on how ISPs should respond to online infringement by their subscribers.
- **Hong Kong Filing:** At the end of April, the ESA submitted comments to the Commerce & Economic Development Bureau/Tripartite Forum secretariat on the draft memorandum of

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understanding containing proposed measures to address online infringement. In May, the ESA signed on to a cross-industry letter urging legislative action.

REDUCING THE AVAILABILITY OF CIRCUMVENTION DEVICES

Throughout 2009, IP Policy staff continued engagement with governments to reduce the availability of devices used to defeat technological protection measures (TPMs), including “mod chips” and “game copiers,” through improved laws and enforcement practices. Activities intended to promote beneficial legal reforms included:

- **Congressional Anti-Piracy Caucus Watch List:** In mid-May, co-chairs of the Congressional Anti-Piracy Caucus renewed their efforts to combat international copyright piracy by calling attention to countries where piracy has reached alarming levels: China, Russia, Canada, Spain and Mexico. The ESA was instrumental in drawing caucus attention to legal and enforcement-related deficiencies in Canada, Spain and Mexico, including deficiencies in those countries’ TPM regimes.
- **Analysis of Anti-Circumvention Laws of Key Trading Partners:** The ESA furnished to members an internal analysis of the enforceability of TPM laws among some 13 countries that are partners in ACTA or in various free trade agreements (FTAs). We highlighted deficiencies that could threaten the viability of enforcement actions, with particular attention to coverage for access controls, and availability of civil and criminal remedies.
- **Coalition Support for Strong TPM Provisions in ACTA:** In September, the heads of the copyright associations comprising the International Intellectual Property Alliance (IIPA) submitted a joint letter to President Obama urging that ACTA include strong commitments to prohibit circumvention of TPMs and to act against online piracy.
- **Supporting ACTA on Capitol Hill:** ESA President and CEO Michael Gallagher wrote to the chairmen and ranking members of five key congressional committees describing the industry’s international legal reform priorities and urging continued support for ACTA negotiations.

The ESA also participated in domestic proceedings to evaluate U.S. laws on TPM circumvention:

- **FTC Town Hall on Digital Rights Management:** In March, the FTC held a town hall meeting on consumer issues related to the use of Digital Rights Management (DRM) technologies. Patrick Ross of the Copyright Alliance and Steve Metalitz, counsel for the DMCA Implementation Group, represented the interests of the copyright community at the meeting. It is possible that the FTC will publish a report on the proceeding in 2010.
- **Digital Millennium Copyright Act (DMCA) Rulemaking:** In late 2008, the U.S. Copyright Office began a year-long rulemaking process to consider proposed limited exemptions to the DMCA’s prohibition on circumventing TPMs. This rulemaking occurs every three years. In coordination with member companies and other copyright groups, the ESA participated in a joint filing submitted in February 2009. That filing opposed most of the newly proposed exemptions, including two that would directly impact the game industry: a research exemption to study TPMs used in computer games where the TPM might compromise the PC’s security, and another exemption related to authentication servers. The U.S. Copyright Office will issue its ruling in 2010.

IMPROVING CONDITIONS FOR DIGITAL DELIVERY OF GAME SOFTWARE

Despite a dearth of opportunities to affirmatively advance trade priorities with U.S. government officials in 2009, the ESA took measures to articulate industry trade priorities and defend against policies that could hurt online games and game downloads.

- **World IP Day Policy Keynote:** On April 30, 2009, in commemoration of World IP Day, Michael Gallagher delivered a keynote address titled “Intellectual Property Protection – Driver of Innovation, Catalyst for Job Creation” at an event hosted by the Institute for Policy Innovation in Washington, DC. In describing the innovation, economic contributions and technological advancements of the industry, he urged the U.S. government to leverage trade agreements to strengthen international IP protections, extend “play fair” rules that exist for distribution of software on physical media to software downloads, and renew the existing World Trade Organization (WTO) moratorium on customs duties for electronic transmissions.

- **Canada's Tariff 22:** The ESA continued to resist the establishment of national policies that discriminate against software downloads by subjecting them to less favorable treatment than would exist for software acquired on carrier media. The ESA and ESAC's engagement in Canada's Tariff 22 proceedings has already 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 reflected in the Copyright Board's October 2008 ruling).
- **JCCT Negotiating Objectives:** During 2009, the United States and China reaffirmed intentions to resume discussions through two important bilateral mechanisms - the Strategic & Economic Dialogue and the Joint Commission on Commerce and Trade. The ESA submitted, on behalf of its members, the recommendations that China expedite and simplify the content review process, consider centralization of it within a single agency, and repeal the ban on the sale of game consoles for use in the home.

IMPROVING IP ENFORCEMENT GENERALLY

During 2009, the ESA advanced enforcement priorities through the inclusion of key enforcement provisions in the U.S. Customs reauthorization legislation. The ESA also urged improvements in the enforcement practices of other countries through in-depth involvement in the Special 301 process, and by urging the Obama administration to press ahead with key IP provisions in ACTA.

- **Improvements to Customs' Authority:** In January 2009, the ESA recommended to Senate Finance and House Ways and Means Committee staff several industry priorities for customs reauthorization and enforcement legislation. These included a requirement that Customs provide additional investigative information to rights holders following seizure of unlawful circumvention devices.
- **Customs Reauthorization Legislation:** Throughout March, ESA staff met with committee staff to urge inclusion of industry priorities in draft legislation. In August, Senate Finance Committee Chairman Max Baucus (D-Mont.) and Ranking Member Charles Grassley (R-Iowa) introduced S. 1631, a comprehensive Customs Reauthorization bill that included several provisions requested and supported by the ESA.
- **Customs Reauthorization Hearing Statement:** In October, the ESA filed a statement in connection with Senate Finance Committee hearings on S. 1631, describing the role that circumvention devices play in facilitating piracy and making the case for Customs to be given explicit seizure and reporting authority.

On April 30, 2009, in commemoration of World IP Day, Michael Gallagher delivered a keynote address titled "Intellectual Property Protection - Driver of Innovation, Catalyst for Job Creation" at an event hosted by the Institute for Policy Innovation in Washington, DC.

- **Special 301 Filing:** "Special 301" refers to a regulatory process by the U.S. Trade Representative (USTR) to publicly identify countries that have sub-par IP laws or enforcement practices. In February, the ESA again participated in the filing of the IIPA's Special 301 Report on Copyright Protection and Enforcement. The report provided the U.S. government with detailed information and recommendations for improvement across 48 markets, including 21 countries of particular significance to ESA members.
- **Special 301 Follow-Up:** Throughout March 2009, ESA staff and member representatives met with officials from USTR, the Departments of Commerce, State and Justice, the U.S. Copyright and Patent and Trademark Offices, and delegations from various countries to discuss the challenges highlighted in the Special 301 Report. On April 30, 2009, USTR made history

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when it placed Canada on the Special 301 Priority Watch List, marking the first time Canada has appeared on the list after repeated urging by the ESA and other trade groups.

- **Promoting the Industry's Positive Impact:** One of the most powerful arguments for urging governments to provide improved protections for IP is underscoring the industry's contribution to the U.S. economy.

Michael Gallagher participated in a joint meeting with the heads of other copyright groups to impress upon U.S. Trade Representative Ron Kirk and his top advisors the economic impact of the copyright industries on the U.S. economy, and the collective global piracy and market challenges. Commerce Secretary Gary Locke and IIPA leaders announced publication of the 2003-07 "Siwek" report estimating the contributions of the copyright industries to the U.S. economy.

PROVIDE POLICY MONITORING, ANALYSIS AND REPORTING IN AREAS OF MEMBER INTEREST

In addition to issues arising in the IP and trade context, the industry is also susceptible to changes in technology policy, such as those regulating e-commerce, Internet governance and the availability of broadband Internet. During 2009, IP Policy staff engaged in monitoring, analysis and reporting of significant legislative and regulatory developments in areas including digital property taxation, Internet governance, broadband policy and consumer safety.

- **Internet Corporation for Assigned Names and Numbers (ICANN) and New Generic Top-Level Domains (gTLDs):** The ICANN is the nonprofit entity that manages the Internet's domain name system. The ESA provides members periodic updates on ICANN policy matters that impact online enforcement. Throughout 2009, the ESA passed along to members various reports and draft filings of the Coalition for Online Accountability (COA). ICANN is working out the procedures for introducing dozens of new top-level domains, and COA has focused much of its efforts this past year on ensuring that those procedures are IP-friendly.
- **The National Broadband Plan:** Congress ordered the FCC to develop a plan to ensure that all Americans have access to broadband Internet. In formulating that plan, the FCC

invited commentary on a wide variety of issues that relate to broadband access, including network management. Many copyright groups, including the ESA, submitted views on the need for ISPs to have the flexibility to manage their networks to address online piracy. AT&T also filed comments in the proceeding and, among other things, argued that the capability to play online games is not important enough to be included in the baseline definition of broadband. The ESA filed a reply in September, arguing that online games and game services are an emerging and important use of the Internet.

On October 22, 2009, the FCC issued a notice of proposed rulemaking on the related issue of network neutrality.

OTHER ADMINISTRATIVE PROCEEDINGS

The policy environment for computer and video games expands with the growth and innovation of the industry. That expansion triggered ESA action in regulatory proceedings that impact the industry, but do not fit neatly within the ESA's five strategic goals. For example:

- **Implementation of the Consumer Product Safety Improvement Act:** In 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA) that imposed strict limits on the amount of lead in children's products and the amount of plastic softeners in children's toys. Several ESA members requested that ESA monitor the various regulatory proceedings underway at the Consumer Product Safety Commission (CPSC) to implement the CPSIA. The ESA provided periodic reports to members on a host of implementation issues throughout 2009. In addition, the ESA filed with the CPSC a short letter on February 12, 2009, arguing that video game hardware systems and storage media for interactive software are not subject to the CPSIA's lead or phthalate limits, because these goods are neither children's products nor children's toys. The ESA requested an advisory opinion from the CPSC confirming this interpretation.

ANTI-PIRACY PROGRAM

The ESA's Anti-Piracy Department manages efforts in the United States and in a number of other countries to target different forms of game piracy ranging from illegal downloading of game files to the sale of pirated copies of games in retail outlets and flea markets to the online sale of game circumvention devices such as mod chips and game copiers. The ESA's efforts against such pirate activities include:

- Monitoring of the Internet to detect and identify instances of infringing activity;
- Sending notices to websites and ISPs to procure termination of such activity;
- Communication with ISPs regarding the infringing activities of their subscribers;
- Investigation of individuals and entities engaged in game piracy;
- Training of law enforcement officials about detecting and identifying game piracy;
- Referral of targets to law enforcement and support for criminal enforcement actions;
- Pursuit of civil remedies or resolution of claims against infringers;
- Publicizing results of enforcement efforts against game pirates; and
- Educating younger age groups about the benefits of IP and the harms of piracy in order to preempt future, infringing behavior.

ONLINE MONITORING AND ENFORCEMENT

The ESA upgraded its online monitoring efforts in July when it engaged a new outside monitoring service, procuring better coverage of link sites and cyberlockers, and allowing member access to the service's database of monitoring results. This upgrade helped produce the first two of the achievements listed below.

- In the second half of 2009, using a much more selective approach than the first half of the year, the ESA transmitted roughly 1.99 million notices regarding P2P infringements of ESA member company games.
- With respect to hosting sites, in the second half of 2009, the top six sites ranked by the number of infringing game files represented 90 percent of the total. The ESA's takedown efforts against the infringing copies on hosting sites were very productive, with more than 91 percent of the more than 10 million infringing links taken down in response to an ESA notice.
- The ESA's monitoring and enforcement efforts on eBay, Craigslist and other e-commerce and exchange sites in 2009 was also productive, resulting in the takedown of roughly 100,000 listings offering pirated copies of games or illegal circumvention devices.
- The ESA's specialized monitoring of online piracy in Korea through the Softsave monitoring service expanded significantly in 2009, with an increase from 42 to 78 in the number of webhard and P2P portal sites being monitored for posts of infringing game files. The ESA's takedown efforts resulted in the removal of more than 103,577 infringing files within 24 hours of Softsave sending the notice, achieving a takedown rate of more than 87 percent.
- The ESA also spent much of the year tracking legal developments in Korea and France, where legislation was enacted to provide a regulatory regime through which a government entity would be involved in addressing online piracy. As these countries are among the first to adopt such measures, the implementation of these regimes and their effectiveness in reducing online piracy will be very important to rights holders. Other countries such as the U.K. and New Zealand also introduced legislation to establish graduated response approaches.

U.S. ENFORCEMENT

- The ESA was active in pursuing enforcement against game piracy in the United States with 20 new cases or investigations opened against individual targets. These efforts yielded positive returns throughout the year, with convictions and jail sentences in cases begun the prior year, as well as raids undertaken by federal and state authorities throughout the country against new game piracy targets identified by the ESA or developed by law enforcement on the basis of training provided by the ESA.
- In February, a local criminal court in Los Angeles imposed a 90-day jail sentence on Cesar Gutierrez, whom the Los Angeles County Sheriff's Department had arrested in 2008 based on an ESA referral concerning his console-modding and game piracy activities. On July 23, upon completion of his jail sentence, the court ordered Gutierrez to make a \$5,000 restitution payment to the ESA.

The ESA's takedown efforts against the infringing copies on hosting sites were very productive, with more than 91 percent of the more than 10 million infringing links taken down in response to an ESA notice.

- On August 3, agents of the Immigration and Customs Enforcement (ICE) division of the U.S. Department of Homeland Security arrested a Cal State Fullerton student on charges of criminal circumvention activities in violation of the Digital Millennium Copyright Act based on an ESA referral concerning his business of installing mod chips in game consoles.
- On August 10, FBI agents arrested an individual in Bellflower, Calif., on charges of criminal circumvention activities in violation of the Digital Millennium Copyright Act based on an ESA referral concerning his business of installing mod chips in game consoles.
- On September 16, Long Beach, Calif., police raided the residence of an individual involved in the online sale of pirated Xbox 360 games, seizing a small number of pirated games, computer equipment and blank discs. On December 3, the Long Beach Superior Court ordered the individual and his brother to pay the ESA restitution in the amount of \$2,100.
- On September 17, San Bernardino, Calif., police raided the residence of an individual based on an ESA referral regarding his piracy activities, seizing almost 150 pirated games, more than 2,900 pirated movies, seven disc burners and several hundred blank discs and counterfeit DVD inserts.
- On November 12, Garden Grove, Calif., police executed search warrants against the residences of two local individuals on the basis of an ESA referral regarding their sales of pirated copies of video games, with one of them also involved in the illegal modification of game consoles. The police seized roughly 1,300 pirated games and arrested both men, charging them with state counterfeiting offenses.
- On December 14, ICE agents, with onsite support from the ESA, raided the residence of an individual in Thibodaux, La., for offering Xbox 360 modding services through online venues such as eBay and Craigslist, seizing 45 Xbox 360 consoles, roughly 100 pirated video games, and several computers and modding tools.
- In addition to these actions, other U.S. enforcement efforts included: the delivery of a cease and desist (C&D) letter to a New Jersey individual selling modding services online; federal "knock and talk" action against a Florida seller of game copier devices; and a Montgomery County, Md., police raid against
- A California state court in San Jose imposed a sentence of 10 months in prison and a \$5,000 restitution payment to the ESA on Khuong Van Truong, a game pirate the San Jose Police Department arrested in 2008 on state counterfeiting charges after a search of his home uncovered roughly 10,000 copies of pirated Xbox games that he was offering for sale.
- In June, the Shelbyville, Tenn., police raided a store engaged in the sale of pirated Xbox 360 games, seizing roughly 300 pirated games and movies, as well as computers and disc burners.

two mall vendor locations that resulted in the seizure of 150 Power Players.

INTERNATIONAL ENFORCEMENT

Canada

- In 2009, the ESA was able to overcome a difficult IP enforcement environment in Canada, supporting 10 new law enforcement actions against game pirates, supplemented by the delivery of 23 C&D letters to additional game piracy targets. Enforcement against game piracy in Canada continues to be hampered by the absence of a clear legal prohibition against mod chips and other circumvention devices, as well as a judicial system that does not impose serious penalties on defendants convicted of IP crimes.
- On May 5, agents of the Toronto Police Service, supported by the ESA, raided a local store identified by ESA investigators, arrested two people and seized roughly 200 pirated video games and four computers containing illegal copies of video game files.
- In June, agents of the Royal Canadian Mounted Police (RCMP) executed a search warrant against a van parked in a garage near the Pacific Mall in Toronto that appeared related to two retail outlets in the mall that the ESA identified as possible pirate retailers. Agents found and seized more than 3,500 pirated copies of Wii and Xbox games, and subsequently charged the van owner with criminal copyright violations.
- On July 6, RCMP officials, with onsite support from the ESA, executed raids against four different pirate game outlets in and around Quebec City, arresting four individuals, and seizing 31 modified Xbox 360 and Wii consoles, roughly 800 pirated games, 13 computers and 12 external hard drives.
- On October 9, Justice Peter Voith of the Supreme Court of British Columbia entered judgment in favor of the member company plaintiffs, Nintendo and Sony, in a civil action that the ESA filed last year against a Vancouver game pirate for his breach of a 2007 settlement agreement that the member companies had entered into after the ESA found him engaging in the sale of illegal copies of games and game circumvention devices. The judge awarded the plaintiffs C\$84,000 in

regular damages, C\$100,000 in punitive damages and legal fees, and permanently enjoined the defendant from engaging in any further activities prohibited by the settlement agreement or that infringe the IP rights of the plaintiffs.

The ESA's specialized monitoring of online piracy in Korea through the Softsave monitoring service expanded significantly in 2009, with an increase from 42 to 78 in the number of webhard and P2P portal sites being monitored for posts of infringing game files.

- Also in October, the RCMP raided five different targets related to two retail operations selling pirated games identified by the ESA and its investigators in the notorious Pacific Mall outside of Toronto. Supported onsite by ESA staff, the RCMP seized pirated products from the two stores in Pacific Mall, as well as from two vehicles and one residence associated with these stores, including 50 burners, as well as more than 2,000 pirated Wii and Xbox 360 games.

Mexico

- The ESA's anti-piracy program in Mexico was very active for most of 2009, procuring a number of highly productive enforcement actions against local sources of pirated game product in Mexico City.
- On February 5, the Attorney General of the Republic (Spanish acronym PGR), with the assistance of the ESA's local anti-piracy team, raided 37 apartments in the notorious Tepito area of Mexico City and successfully dismantled six burner labs and numerous warehouses, seizing 784 CD/DVD burners, the most ever in a single ESA enforcement action, as well as

32,900 pirated games and 1,185,790 pieces of packaging material.

- On March 3, on the basis of ESA complaints, PGR conducted another raid against pirate game lab targets in the Tepito area of Mexico City. This second raid netted a seizure of 252 burners and more than 59,500 pirated games on all major platforms.
- Also in March, the ESA procured a PGR raid of pirate vendors in the Bazar Lomas Verdes market in Mexico City that resulted in the seizure of 948 pirated games.
- On April 17, the ESA procured another PGR raid against pirate labs in the Tepito section of Mexico City, the third such raid against game piracy targets in this area since the beginning of the year. The raid resulted in the seizure of 120 burners; 10,000 pirated games; 20 consoles with built-in games; and 2,170,000 paper covers.

Supported onsite by ESA staff, the RCMP seized pirated products from the two stores in Pacific Mall, as well as from two vehicles and one residence associated with these stores, including 50 burners, as well as more than 2,000 pirated Wii and Xbox 360 games.

- On September 5, the ESA procured a PGR enforcement action against four pirated game operations in the Tepito area of Mexico City, resulting in the seizure of 197 disc burners, almost 79,000 pirated games and more than 1.3 million face covers.
- On September 28, with the assistance of the ESA's local anti-piracy team and the police, PGR conducted the game industry's fifth enforcement action against Tepito targets in 2009, raiding roughly 24 apartments and

seizing seven tons of material, including 50 burners; 16,550 pirated games; and more than 200,000 items of packaging materials.

- On October 22-24, ESA staff conducted a series of meetings with Mexican law enforcement officials, U.S. Embassy attachés and local member company representatives focused on addressing the game piracy problem in Mexico and communicating the industry's enforcement priorities. These meetings were timed to coincide with the ESA's participation in this year's Electronic Game Show in Mexico City, where the ESA organized an anti-piracy booth to dispense information and materials on game piracy and the industry enforcement program to thousands of attendees.
- On November 26, the ESA's local counsel procured a major raid by the Mexican authorities against 82 sellers of pirated games in the San Juan de Dios market in Guadalajara, resulting in the seizure of 55,617 pirated games and 365,675 items of manufacturing and packaging materials.

Brazil

- The IP enforcement environment in Brazil remained comparatively positive in 2009, and the ESA's joint anti-piracy program with ABES, the Brazilian software association, worked to take advantage of the favorable conditions to pursue enforcement actions against important targets in Sao Paulo and Rio de Janeiro. ABES also continued to work at high levels on the enforcement policy front as a member of the National Council Against Piracy, the private-public sector group that is setting IP enforcement priorities for the Brazilian government.
- On January 11, the ESA/ABES program supported Brazilian law enforcement officials in executing an enforcement sweep against sellers of pirated games and software in the Camelodromo Uruguaiânia market in downtown Rio de Janeiro, hitting 11 outlets and seizing almost 11,000 pirated game discs.
- On March 5, with support from the ESA/ABES anti-piracy program, Brazilian law enforcement authorities executed a massive raid against pirate game vendors in the Camelodromo (open market) in the city of Campos in the state of Rio de Janeiro, seizing more than 105,000 pirated copies of illegal game and business software,

including, among others, the following titles: *Pro Evolution Soccer 2009*, *NBA 2K 09*, *FIFA Manager 2009* and *High School Musical*.

- In April, the ESA/ABES program staged major training events for law enforcement in four cities in Brazil: Juiz de Fora (April 8), Belem (April 16), Santo Andre (April 23) and Sao Jose dos Campos (April 28). Each of these trainings provided the roughly 40-50 attendees with a basic understanding of game software piracy and how to identify it in its many different forms.
- On May 26, the ESA/ABES program supported law enforcement in executing raids against pirate sellers in the Camelodromo de Bangú in the state of Rio de Janeiro, seizing roughly 9,000 pirated copies of game software.
- In December, ESA/ABES was able to get law enforcement authorities to execute a civil seizure order against pirate sellers in the Galeria Pagé, one of the major shopping center hotspots in downtown Sao Paulo, for the sale of counterfeit electronics and other products. This civil action ended up covering 18 of the outlets in the Galeria Pagé and resulted in the seizure of 100,000 pirated copies of game and application software. A similar action several years ago against Stand Center, another piracy hotspot, eventually resulted in the closure of that venue.

Paraguay

- The ESA's anti-piracy program in Paraguay continued to attack sources that supply illegal copies of games destined for the Brazilian market, and took some important steps in procuring enforcement of the country's recently enacted prohibitions against circumvention devices and operations involved in modding consoles.
- On June 10, the ESA's local investigators worked with the Unidad Tecnica Especializada (UTE), the Paraguayan government unit dedicated to IP protection, to conduct a raid against a burning lab in Ciudad del Este, as well as a related retail outlet and warehouse unit. This raid resulted in the seizure of 46 burners, 478 pirated PlayStation 2 games, and 25,000 covers for games on optical discs.
- Also in June, the ESA's local investigators were able to get UTE to raid another burning lab in Ciudad del Este and a related storage facility,

seizing 43 disc burners, as well as roughly 11,300 pirated PlayStation 2 games.

- On August 13, the ESA's local investigators assisted UTE and the local prosecutor in Ciudad del Este in raiding six local targets engaged in the trafficking of circumvention devices and modified game consoles, the first criminal enforcement actions taken under the new law banning sales of circumvention devices that went into effect in July. These actions resulted in the seizure of 411 modified consoles (Xbox 360, Nintendo Wii and PlayStation 2), 148 game copiers, 150 cartridges for game copiers, 16 mod chips and 172 pirated game discs.

This second raid netted a seizure of 252 burners and more than 59,500 pirated games on all major platforms.

- On November 6, the ESA's local investigators were able to procure UTE raids against two game piracy targets in Ciudad del Este, the first against a burning lab and the other against a modding operation that was engaged in the installation of circumvention devices in game consoles and the sale of circumvention devices and modified game consoles, as well as pirated games. In these actions, UTE seized roughly 186 modified PS2 consoles, 40 DVD/CD burners and 18,000 PlayStation 2 games.
- On November 11 and 12, UTE raided two burning labs and a warehouse in Asuncion, seizing 18 burners, 16 hard drives containing illegal copies of games and 3,648 pirated games for PlayStation 2, Xbox360, Nintendo's Wii and PC.

Hong Kong

- The ESA's anti-piracy program in Hong Kong continued to support Hong Kong Customs & Excise in its efforts against game piracy, providing examinations and analyses of pirated games seized in 60 cases throughout the year, 51 of which involved counterfeit Wii software, four of which involved pirated PC game software and two of which involved modified Nintendo Wii consoles. The number of cases is significantly lower than in 2008, reflecting an

increase in Hong Kong consumers acquiring pirated game products through Internet downloads.

- In March, with the support of the ESA and its local counsel, prosecutors obtained the first criminal convictions of two defendants charged with criminal circumvention activities for the modification of game consoles. These defendants were indicted last year after enforcement actions resulted in the seizure of modified consoles in retail outlets operated by the defendants.
- On November 18, with support from the ESA and Nintendo, investigators and local counsel, Hong Kong Customs & Excise raided 21 shops throughout Hong Kong that were engaged in the sale of illegally modded consoles or providing illegal modding services. Customs officials arrested 26 people, and seized 103 illegally modified Nintendo Wii consoles and 316 pirated game discs.

On May 26, the ESA/ABES program supported law enforcement in executing raids against pirate sellers in the Camelodromo de Bangú in the state of Rio de Janeiro, seizing roughly 9,000 pirated copies of game software.

Singapore

- In 2009, the ESA's anti-piracy program in Singapore became more active in using local anti-circumvention laws to attack the increased traffic in game circumvention devices, whether mod chips for Nintendo Wii and Xbox 360 consoles or game copiers for the Nintendo DS, especially as the presence of pirated hard copies on the streets of Singapore has diminished. People in Singapore are increasingly looking to Internet downloading to acquire pirated game products.
- On May 15, the ESA's local counsel procured a raid against the premises of Owl Games, a game store engaged in the commercial-scale circumvention and sale of Nintendo Wii consoles via the Internet, resulting in the seizure of eight modified Wiis. This raid was the second against this target in three weeks, the first having been executed against the store premises, as well as the home and car of the proprietor, resulting in the seizure of 17 modified Wii consoles and numerous other circumvention devices for Wii and DS consoles.
- On June 12, the ESA's local counsel brought a private criminal action against a more significant target known as Tenchi, which is a major distributor with four retail outlets, resulting in the seizure of 70 modded Wii consoles and 73 game copiers.
- On July 29, the Singapore Police executed enforcement actions against 13 shops in the Lucky Plaza shopping complex, confiscating modified game consoles, modchips and game copiers. The raids, which resulted in the arrest of 28 individuals, represented the first actions by law enforcement to enforce Singapore's criminal anti-circumvention provisions.
- In August, the Singapore Police again raided the Owl Games retail outlet, seizing 20 modded Wii consoles, five discs containing pirated games, dozens of other pieces of Wii consoles in the process of being modded, as well as various infringing items relating to PlayStation Portable.

Malaysia

- MFACT, the ESA's anti-piracy partner in Malaysia, undertook some productive enforcement efforts in 2009, particularly against the factories and illegal burning labs that are key sources of pirated game products. For the year, MFACT seized a total of 207,841 pirated games, five replication lines and 47 DVD-R burners.
- In early June, MFACT procured law enforcement raids and seizures against two illegal disc replication factories in the state of Selangor with the assistance of Paddy, the Labrador retriever trained to detect the presence of the polycarbonate plastic used in disc replication. Seized in these two actions were four DVD replication machines, as well as roughly 20,000 pirated game and movie discs.

- On August 14, MFACT provided support to officials of the Ministry of Domestic Trade and Consumer Affairs (MDTCA) in executing a raid of a disc replication facility, Balakong, in the state of Selangor that was involved in the manufacturing of pirated games. The authorities seized one DVD replication line, as well as roughly 3,300 pirated PlayStation 2 game discs

TRAINING AND IP EDUCATION

Training

The ESA's training program continued to cover the major U.S. federal agencies charged with IP enforcement, in particular the FBI and ICE, as well as key enforcement units at the state and local levels, and in Canada and Mexico. The ESA conducted more than 30 onsite training events at different enforcement offices throughout these countries, complementing these live training sessions with downloadable training materials and newsletters available on the ESA's enforcement website, www.gameoverpirates.com. The most prominent of these enforcement trainings were:

- On February 4-6, in Monterrey, Mexico, a training for dozens of U.S. and Mexican customs and law enforcement officials sponsored by the U.S. Embassy, involving the U.S. and Mexican governments, as well as industry representatives;
- On July 20-23, in Washington, D.C., the U.S. Patent and Trademark Office Workshop on Effective Practices on the Border Enforcement of Intellectual Property Rights for customs and border enforcement officials from more than 25 countries;
- On September 16, in San Jose, Calif., a training for the more than 30 FBI agents assigned to the specialized IP enforcement positions created under the Pro IP Act enacted last year; and
- In September and October, a series of training sessions known as the Canadian Reality Tour, organized by the Canadian Anti-Counterfeiting Network for federal, provincial and local law enforcement officials (for which the ESA played a central role in developing and executing) were held in four Canadian cities including Toronto and Vancouver.



IP Education

- The ESA's IP education efforts in 2009 focused on driving more traffic to the "Join the ©Team" website, where teachers, school librarians and media specialists can find the ESA's downloadable, grade-appropriate curriculum materials that seek to provide children in elementary school with a basic understanding and appreciation of IP and the harm caused by piracy. Based on the results of the first three quarters of the year, the ESA was on track to exceed 10,000 unique visitors to the site and register more than 30,000 downloads of curriculum materials for the year.
- In the early part of the year, the ESA worked with its educational curriculum consultant, Young Minds Inspired, to create and incorporate a new feature in the "Join the ©Team" website specifically for librarians and media specialists, as this segment of educators has been very responsive to the ESA's IP curriculum materials.
- In the spring, the ESA sent postcards announcing the launch of the upgraded website with new materials to the 7,500 elementary school librarians it reached out to last year. At the start of the 2009 school year, the ESA sent out a promotional mailer about the "Join the ©Team" website to librarians and media specialists in 20,000 elementary schools across the country.
- Also in the spring, the ESA conducted three in-school workshops on IP at middle schools in Bristow, Va., and Kansas City, Mo., and also staged an IP workshop at the U.S. State Department for children of staff.

COMMUNICATIONS & INDUSTRY AFFAIRS (C&IA)

The past year offered C&IA ample opportunities to educate and inform about the computer and video game industry's contributions to the economy, education, healthcare and, more broadly, the lives of millions of Americans. By stressing these positive factors, C&IA worked to enhance understanding of and appreciation for the industry among the media, lawmakers, education leaders and consumers.

Video games assumed a prominent role in courtrooms, classrooms and rehabilitation centers during the previous year. In response, the ESA ensured the industry's perspective was represented and the rights of the industry's storytellers and creative artists were preserved.

Through speeches, earned media coverage and editorials in leading publications, the ESA provided balance, accuracy and objectivity to the national dialogue about entertainment software. By doing so, the association's membership increased to more fully represent the breadth of entertainment software publishers and the industry's geographic diversity.

Following are some highlights of C&IA's initiatives in 2009.

MEMBERSHIP AND MEDIA INITIATIVES

- C&IA recruited and announced eight new members: SouthPeak Interactive, Natsume, Inc., 505 Games, Trion World Network, Inc., XSEED Games, Crave Entertainment, Playlogic Entertainment, Inc. and KOEI Corp.
- C&IA obtained a meeting with the *Los Angeles Times*, resulting in an editorial that urged California not to appeal the Ninth Circuit Court's decision to the U.S. Supreme Court.
- To coincide with the South by Southwest Music, Film and Interactive Festival, C&IA drafted and successfully pitched an op-ed by Michael Gallagher for placement in the *Austin*

American-Statesman, encouraging the state to pass incentives for the entertainment software industry.

- In spring 2009, *Psychological Science* published a paper on "pathological game-playing" written by the University of Iowa's Douglas Gentile. After a thorough review by C&IA, it was determined that there were substantial methodological and statistical problems with the study. C&IA generated coverage of the paper's inaccuracies.
- C&IA developed and released the *2009 Essential Facts about the Computer and Video Game Industry*, which provided updated sales, demographic and usage data. The research indicated that 68 percent of American households play computer or video games and 42 percent have a video game console. Top-tier press outlets and game enthusiast publications covered the release of the information and used data points throughout the year.
- C&IA maintained an aggressive speaking calendar for ESA executives, educating important groups about developments in the industry, and the ESA's programs and pursuits. Organizations hosting the ESA included:
 - Broadband Properties Summit;
 - Family Online Safety Institute;
 - Gay and Lesbian Alliance Against Defamation;
 - Greater Raleigh Chamber of Commerce;
 - Institute for Policy Innovation;
 - Internet Innovation Alliance Biannual Broadband Symposium;
 - National Association of Attorneys General;
 - North Carolina Technology Association;
 - Silicon Flatirons - Center for Law, Technology and Entrepreneurship at the University of Colorado;
 - Southern Interactive Entertainment and Game Expo;
 - Tech Columbus;
 - The Aspen Institute;
 - The Country Music Association;
 - The Game Business Law Summit;
 - The Guildhall at Southern Methodist University Commencement Address; and
 - The U.S. Chamber of Commerce.

- In November, C&IA released the findings of a new ESA survey indicating that 42 percent of Americans planned to give or receive a computer or video game during the holiday season. In addition, 52 percent of respondents reported that entertainment software was a good option for family entertainment during the holidays.
- C&IA partnered with the National Middle School Association to help develop the 21st Century classroom, featuring computer and video games for educational purposes that were showcased during its annual meeting.



ELECTRONIC ENTERTAINMENT EXPOSITION (E3 EXPO)

- The E3 Expo was reformatted in 2009 to more accurately reflect the entertainment software industry's excitement, energy and innovation. The 2009 E3 Expo welcomed 41,000 attendees to the Los Angeles Convention Center from June 2-4.
- Public reactions from leading industry figures, analysts and journalists were overwhelmingly positive. Immediately following the 2009 E3 Expo, the ESA conducted quantitative research to determine attendees' and exhibitors' views of the event. Both attendees (89%) and exhibitors (84%) reported that the E3 Expo fills a niche for the computer and video game industry. Of attendees, 92 percent were able to accomplish their business objectives and 87 percent of exhibitors felt the show was either "valuable" or "extremely valuable." Ninety-five percent of attendees plan on attending the 2010 E3 Expo and 94 percent of exhibitors plan on participating. In both audiences, attendees (99%) and exhibitors (96%) unanimously felt that the layout of the show floor was satisfactory to excellent for smooth traffic flow and access.



VIDEO GAME VOTERS NETWORK (VGVN)

In 2009, the ESA continued building and activating the VGVN, a grassroots political network created to engage voting-age American gamers to take action on important policy issues affecting the computer and video game industry.

To date, more than 166,000 activists have joined the VGVN. Through its website, www.videogamevoters.org, gamers can 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 2009, the Network was activated 46 times and VGVN members sent more than 12,000 letters to Capitol Hill and state legislative offices in 35 states in response to Action Alerts about possible legislation.

Highlights of the VGVN to date include:

- VGVN members sent more than 85,000 letters to Capitol Hill and state legislative offices in response to Action Alerts about possible federal and state legislation;
- VGVN members wrote letters to their representatives in all 50 states;
- The VGVN Facebook fan page now has more than 4,500 fans and the VGVN Twitter account has more than 1,100 followers; and
- VGVN's Wall of Protest encourages activists from across the country and around the world to make a powerful statement to politicians and video game critics by taking a picture of themselves holding a sign that states their frustration with the assault by politicians on their choice of entertainment.



ENTERTAINMENT SOFTWARE RATING BOARD

The ESRB continued 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. During the past year, the ESRB earned high marks from parents, the media, elected officials and the FTC alike. Among its key accomplishments were:

- Processed the highest volume of rating assignments in its 15-year history;
- Made ratings information more readily accessible to consumers through the launch of new mobile tools;
- Increased awareness and usage of rating summaries, which were introduced in 2008;
- Obtained strong results from its ongoing work with game retailers in support of store policies not to sell M-rated games to children; and
- Expanded the scope of services provided by its Privacy Online program by launching a new European Union (EU) Privacy Seal certification program.

ESRB RATINGS AND RATING SUMMARIES

- The volume of rating submissions and assignments reached an all-time high in 2009.
- The ESRB assigned 1,791 ratings in 2009, repeating the same seven percent year-over-year volume increase. Much of the growth in volume is attributable to an increase in submissions of lower-cost games (under \$250,000 to develop) mainly intended for use on PC or in online arcades.
- The composition of rating categories assigned remains almost unchanged from 2008:
 - As has always been the case, the E (Everyone 6+) category remains by far the most dominant at a full 60 percent of all ratings assigned;
 - The E10+ (Everyone 10+) rating category introduced in 2005 accounted for 16 percent of rating assignments;
 - The T (Teen 13+) category represented 18 percent of rating assignments;
 - 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 two years prior; and
 - Again, neither the number of assignments in EC (Early Childhood 3+) nor the AO (Adults Only 18+) rating categories were statistically significant. Overall, the rating category breakdown for 2009 was virtually identical to that of the year prior, with the sole variation being that the E rating category gained a percentage point (to 60% from 59%) from the T category (from 19% to 18%).
- Starting last year, the ESRB generated rating summaries for all games submitted. Summaries were available for publishers to view within five business days of the certificate being issued.
- Use of rating summaries (as measured by page views) increased nearly 300 percent from this time last year (the year in which they were introduced). Consumers can now access rating summaries via the ESRB's website (www.esrb.org), mobile website (m.esrb.org), iPhone app, widget, as well as direct links on third party websites (e.g., whattheyplay.com).

COMPLIANCE AND ENFORCEMENT

- The ESRB enforcement system continues to hold game publishers accountable for full disclosure of pertinent content during the rating process, as well as responsible marketing and advertising of their products.
- Having reviewed a multitude of enforcement-related materials provided by the ESRB pursuant to its request, the FTC's December 2009 Report to Congress (the sixth of such reports since 2000) praised the ESRB for "continuing to enforce its rules and assess fines and sanctions for violations." It also noted the numerous types of violations for which monetary penalties have been assessed, rendering the ESRB unique among the entertainment media industries reviewed in the report.

ADVERTISING REVIEW COUNCIL (ARC)

- Through its pre-clearance program and various monitoring and enforcement activities, ARC continues to ensure that game packaging and advertisements are correctly labeled with rating information; products are not marketed to audiences for whom they are deemed inappropriate; and advertisements are truthful and responsible.
- ARC's self-regulatory efforts were also lauded in the FTC's Report, which stated: "Of the three entertainment sectors, the electronic game industry continues to have the strongest self-regulatory code." Also, "the video game industry continues to do an excellent job of clearly and prominently disclosing rating information in television, print and Internet advertising, and on product packaging" and "has made great strides in restricting the marketing of violent, M-rated games to children."
- ARC continued its ongoing industry outreach activities to review new and modified ARC policies with those directly responsible for the marketing and advertising of ESRB-rated computer and video games. Thanks to ARC's first-time use of webinar technology, industry participation was the highest ever for an ARC seminar, with more than 200 participants from 56 game publishers and advertising agencies.

PRIVACY ONLINE PROGRAM

The ESRB Privacy Online program remains one of only four privacy programs in the U.S. approved by the FTC as an authorized Children's Online Privacy Protection Act (COPPA) Safe Harbor. The program currently has 34 participating companies and actively monitors more than 2,000 websites with more than six million pages.

- Privacy Online continued to broaden its services to include, in addition to COPPA compliance, guidance with respect to compliance with CAN-SPAM, 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, mobile gaming and data protection/security.
- Privacy Online rolled out its EU Privacy Seal program to monitor compliance with standards incorporated in the EU Privacy Directive, and several member companies are already participating in this program.
- As a result of the heightened legislative emphasis on privacy issues at both the state and federal levels, Privacy Online and ESA staff members coordinated their efforts to ensure that the concerns most directly affecting industry members are adequately addressed from legal, lobbying and operational standpoints.

CONSUMER RESEARCH

- The overwhelming majority of parents continue to turn to the ESRB for guidance when purchasing games and find its rating information to be helpful and trustworthy.
- In May 2009, the ESRB commissioned Peter D. Hart Research Associates to conduct a telephone survey of 503 parents with children between the ages of three and 17 that play video games. The results include:
 - 87 percent of parents are aware of the ESRB rating system;
 - 76 percent of parents regularly check a game's rating before purchasing;
 - 69 percent of parents are aware of content descriptors;

entertainment software rating board

- 54 percent of parents regularly read content descriptors before purchasing a game;
- 96 percent of parents say the ratings are helpful in choosing which games are appropriate for their children; and
- 91 percent of parents say they are confident that the ratings accurately describe a game's content.

ESRB AND RETAILERS

- Twelve national retailers in the U.S. support the ESRB through ratings education and store policy enforcement. In coordination with the Retail Council of Canada, the ESRB works with 15 national retailers in Canada to support ratings education and store policy enforcement.
- The ESRB Retail Council (ERC) includes eight national retailers in the U.S.: Blockbuster, Best Buy, GameStop, Hollywood Entertainment, Sears HC, Target, Toys "R" Us and Walmart. On behalf of ERC member companies, the ESRB continues to implement two mystery shopper audits each year measuring compliance with store policy enforcement and signage. The most recent audit was conducted in November 2009 and found, weighted by market share, that store policy was enforced 85 percent of the time and 82 percent of ERC store locations displayed the correct rating signage.
- The FTC's 2009 report noted that "video game retailers have implemented a robust system of checking for age identification when unaccompanied children attempt to buy M-rated games." In conducting its own mystery shop audits as part of the report, the FTC found an 80 percent compliance rate with game retailers' store policies not to sell M-rated games to children, far surpassing similar rates for movies, DVDs and music. Since the FTC's first mystery shop audits in 2000, video and computer game retailers have increased the compliance rate with their M-rated game store policies by 433 percent.
- The ESRB continues to work with several e-commerce websites, video game distributors and local retailers to support ratings education and responsible store policies regarding the sale of M-rated games.

RETAILERS AND PUBLIC EDUCATION

- The ESRB teamed up with Walmart and Hollywood Entertainment to produce four 30-second TV PSAs supporting ratings education and rating summaries. The PSAs will run on in-store television networks at Walmart, Hollywood Video, Game Crazy, Target and Blockbuster, generating upwards of 300 million consumer impressions over the next year.
- Just as in the two years prior, the ESRB teamed up with GameStop in 2009 for a combination satellite and radio media tour timed with the holiday shopping season. ESRB President Patricia Vance joined GameStop COO Paul Raines on December 2 for interviews that aired in more than a dozen top media markets. In total, the tour generated 121 TV and nine radio segments, yielding nearly 12 million impressions combined. The tours were supplemented for the first time with a live online chat featuring ESRB and GameStop spokespersons giving parents information and advice on choosing games for their children to give as gifts for the holidays.



CONSUMER EDUCATION AND THE "OK TO PLAY?" PSA CAMPAIGN

- New TV PSAs promoting the ESRB ratings and rating summaries were distributed to 650 broadcast and cable stations throughout the U.S. The PSA campaign began airing in late 2009 and, over the course of its run throughout 2010, is expected to generate upwards of 200 million impressions.
- The ESRB produced 30- and 15-second radio PSAs in English and Spanish that were distributed to more than 10,000 radio outlets in the U.S. The campaign launched on Black Friday (November 27, 2009) with airings on Radio America and USA Radio networks, capitalizing on parental interest in video games during the holiday shopping season. The

campaign is expected to generate 400 million consumer impressions.

- The ESRB distributed the rating search widget along with an online banner ad linking to the new TV PSA campaign to 250 parent-focused websites, earning placements on USA Today.com, GoodHouseKeeping.com, CafeMom.com and PluggedInParents.com, among several others. In addition to generating approximately 10 million impressions, the campaign also tripled the number of rating searches performed on the widget in December 2009.



MOBILE RATING SEARCH APP

- The ESRB introduced a free rating search application for iPhone and iPod Touch users in December 2009. Consistent with the ESRB's mobile website, the application enables parents and other consumers to quickly and easily conduct rating searches and review rating summaries anywhere, especially right at the store. According to CNET.com, the ESRB rating search app is "precisely the kind of thing that puts the power over decisions about which video games to buy right back where it belongs: in parents' hands."

SOCIAL MEDIA

- In 2009, the ESRB made its first foray into social media by launching its own Facebook page, www.facebook.com/OKtoPlay, and Twitter feed, www.twitter.com/OKtoPlay. The ESRB also increased its work with key parent-focused blogs, pitching postings and engaging with them and their readers via live chats on Twitter.
- To virally promote rating summaries to parents and drive participation in the ESRB's Facebook page, the ESRB held a unique micro-essay contest wherein participants wrote short essays about rating summaries and posted them to the ESRB's Facebook page. The contest generated 150 entries and a 55 percent increase in traffic to rating summary pages on ESRB.org from July through September. Three contest winners were selected to receive a prize that included a game console and a trip to PAX East in March 2010.

ADDITIONAL OUTREACH

- In 2009, more than 6.5 million visitors came to the ESRB's website, 2.6 million rating searches were conducted and more than 530,000 rating summary Web pages were viewed.
- Additionally, 1,640 ESRB rating search widgets were installed on other websites or personal Web pages, accounting for 22,661 users; nearly six million widget views (impressions); and 75,599 rating searches.
- More than 9,000 consumers subscribe to the ParenTools and GamerTools e-newsletters, which are sent twice monthly and feature the most recently rated games, a link to their complete rating summary and other helpful information.



ESA CANADA (ESAC)

ESAC is dedicated to serving the business and public affairs needs of companies in Canada that publish and distribute computer and video games for video game consoles, handheld devices, personal computers and the Internet. ESAC members include the nation's leading interactive entertainment software publishers and distributors, which collectively accounted for more than 90 percent of the \$2.2 billion in entertainment software and hardware sales in Canada in 2008.

FEDERAL AND PROVINCIAL AFFAIRS

- In April, ESAC held its third annual Ottawa Day event on Parliament Hill, highlighting Canada's interactive entertainment software industry. With an exceptional turnout of senior politicians and media, including Minister of Canadian Heritage James Moore, Members of Parliament Justin Trudeau and Gerard Kennedy, as well as Parliamentary Secretary to the Minister of Industry Michael Lake, the ESAC event was covered in national news magazine *Maclean's*, *The Hill Times*, CTV and the *National Post*.
- In July, ESAC Executive Director Danielle Parr represented the industry in a small roundtable consultation with Minister of Industry Tony Clement and Minister Moore to discuss copyright reform. Following the roundtable, ESAC and EA hosted Minister Moore for a tour and meeting at EA's Burnaby studio.
- In September, ESAC drafted a comprehensive submission for the government of Canada's

copyright consultation process with specific recommendations for changes to Canada's IP regime, which was subsequently published in the highly regarded *Osgoode Hall Law Journal*.

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- In fall 2009, ESAC managed government relations and communications for the Canadian Anti-Counterfeiting Network's Reality Tour 2.0, specifically:
 - Secured Minister of Public Safety Peter Van Loan to provide the keynote address to law enforcement attendees on anti-piracy and anti-counterfeiting;
 - Met with the minister and staff to discuss IP crime and the urgent need for government action, and obtained a pledge from the minister to address border issues; and
 - Organized a middle school education session and managed production of an educational video for use as a Web resource.
- In September, long-sought changes to Proceeds of Crime regulation were obtained that now permit proceeds of copyright piracy to be seized by law enforcement.

- Executive Director Danielle Parr attended the minister of industry's Digital Economy Forum with leaders in Canada's technology sector to provide input on the government's digital economy strategy.
- Through extensive lobbying activity, ESAC obtained key changes to C-27, the Electronic Consumer Protection Act, which would have significantly impacted the development and distribution of software in Canada. The bill would have restricted many forms of legitimate commercial speech, as well as the installation of any computer program without the express consent of the computer's owner. With the changes obtained by ESAC, the bill will now have minimal impact on the industry.
- ESAC was consulted by federal government departments regarding the nation's Temporary Foreign Workers program for knowledge workers and participated in a meeting with Canada's lead negotiator regarding labor mobility provisions of a major trade agreement currently being negotiated with the EU
- ESAC participated in the revision of Statistics Canada's Canadian Framework for Cultural Statistics and Canadian Heritage's proposal to revise the North American Industry Classification System to properly reflect the computer and video game industry.
- In October, ESAC released online parental control videos through YouTube, featuring Executive Director Danielle Parr and top video game journalist Marc Saltzman, to educate parents on how to use the parental control features of each of the consoles and PCs.

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- Also in October, ESAC was proud to be a silver sponsor of Media Awareness Network's (MNet) Media Literacy Week. Together with MNet, ESAC produced a tip sheet for parents on safe gaming habits, which is now integrated on MNet, ESAC and several provincial government and parenting websites.
- ESAC also enriched resources for parents available on its website, including links to the ESRB app and widget, tips sheet and parental control videos.

PUBLIC RELATIONS

- Through a press release and media relations efforts, ESAC generated considerable coverage of Canadian-made games at E3 Expo.
- In the spring, ESAC conducted extensive research on Canadian gamers and the wellness gaming trend, which was shared with members.
- In September, ESAC launched *Essential Facts 2009* with a press release highlighting wellness gaming, and sent copies to journalists and all Members of Parliament.
- Over the summer, ESAC restructured its English and French websites, including a navigation redesign, links to member websites, and the addition of a photo gallery, RSS feed and news content. In addition, ESAC also launched social media presences on Twitter, Facebook and YouTube, with a growing number of followers including key reporters and influencers.



THE ESA FOUNDATION (ESAF)

The ESAF is dedicated to supporting positive programs and opportunities that make a difference in the lives of America's youth. The Foundation seeks to harness the collective power of the interactive entertainment industry to create positive social impact in our communities. The ESAF supports geographically diverse projects and programs that benefit American boys and girls of all races and religions.

NITE TO UNITE FOR KIDS

- The annual Nite to Unite for Kids (NTU) event raised more than \$800,000. The sold-out event, held at the Westin St. Francis in San Francisco, was attended by more than 950 guests.
- The industry honored Yves Guillemot, chairman and CEO of Ubisoft, with the ESA Champion Award. Co-Chairs Robbie Bach, president of Microsoft's Entertainment and Devices division; Michael Capps, president of Epic Games, Inc.; Kazumi Kitaue, chairman and CEP of Konami Digital Entertainment, Inc.; and Bob Picunko, vice president of electronic games and interactive products for MTV Networks/MTV Games were joined by 10 distinguished members of the industry who served as vice chairs.
- NTU 2009 was also the first to feature casino entertainment after the dinner and live auction. The ESAF donated \$5,000 to the Children's Brain Tumor Foundation, the charity chosen by the winner of the casino night.
- The ESAF donated more than \$10,000 to the Mission Child Care Consortium, a charity important to California Assembly Majority Whip

Fiona Ma (D-San Francisco). The Consortium, featured at NTU, is one of San Francisco's largest providers of childcare and development services.

GRANT PROGRAM

- This past year was the first that ESAF made multi-year commitments. Three out of nine funded organizations were awarded two- and three-year grants.
- Nearly 300 submissions were received by the April 2009 deadline to be considered for 2010 grants. Of those proposals, the ESAF selected six new grants in addition to three multi-year grants from 2009.
- **Federation of American Scientists:** The Federation of American Scientists (FAS) is a 64-year-old science policy organization that counts 70 Nobel Laureates on its Board of Sponsors. FAS addresses a broad spectrum of policy issues in carrying out its mission to promote humanitarian uses of science and technology. They have three main program areas: energy and the environment, learning technologies and strategic security. The learning technologies program works on research and development to harness the potential of emerging information technologies to improve how we teach and learn.
 - FAS created *Immune Attack*, an educational video game that introduces basic concepts of human immunology to middle school, high school and entry-level college students. Designed as a supplemental learning tool, *Immune Attack* aims to familiarize students with molecular biology and cell biology concepts as they pertain to the battle between white blood cells and infectious agents. In 2009, ESAF made a three-year commitment to FAS to support additional teacher training, improve game support materials, increase outreach activities and widen distribution and evaluation.
 - More than 700 teachers are registered as *Immune Attack* users, and 130 are participating in the formal evaluation of learning this school year. Additionally, more than 1,200 individuals downloaded *Immune Attack* from all 50 states.

- **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 illnesses. 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.

It is committed to formative research and evaluation studies to ensure that its products and approaches are effective. Most importantly, HopeLab works closely with young people to incorporate their critical and ongoing input into product development.

- HopeLab created *Re-Mission*, a groundbreaking video game for teens and young adults with cancer. *Re-Mission* is the first video game shown to induce positive behaviors that enhance the effectiveness of medical treatment. With ESAF's support, HopeLab distributed more than 9,000 free copies of *Re-Mission* to young people with cancer attending cancer camps and in hospitals - as well as to their clinicians and other care providers.

- **National Institute on Media and the Family (NIMF):** NIMF works to educate parents and communities about their children's media exposure. It is an independent, nonpartisan, nonsectarian and nonprofit organization that is based on research, education and advocacy. Its MediaWise Network helps parents, teachers and community leaders monitor and influence the media world by providing free resource guides, the latest research, blogs and more.

- In 2009, ESAF supported the pilot of Switch, a childhood health and wellness program designed to change three key behaviors: physical activity (Do), television viewing/screen time (View) and fruit/vegetable consumption (Chew) in North Carolina. The Switch program provides participants and their families with easy-to-use tools and resources to make healthy choices.

- **One Economy Corporation:** One Economy Corporation is a global nonprofit organization that uses innovative approaches to deliver the power of technology and information to low-

income people, giving them valuable tools for building better lives. It helps bring broadband into the homes of low-income people; employ youth to train their community members to use technology effectively; and provide public-purpose media properties that offer a wealth of information on education, jobs, healthcare and other vital issues.

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- ESAF supported the expansion of the Digital Connectors program to Chicago, New York City, Oakland, San Francisco and San Jose. The Digital Connectors program is the best practice, youth development movement that engages low-income teens and young adults, ages 14 to 21, in leadership development, digital education, life skills management and community service. By making a difference in their respective communities, taking field trips to high-tech companies, hearing from emerging business leaders and connecting to each other through the Connectors Club website, youth are able to hone technical competencies and grasp lifelong principles that inspire educational advancement and workforce preparation.
- One Economy has engaged more than 2,800 youth in providing more than 77,000 hours of community service to more than 15,000 families, friends and neighbors.

- **PAX / Real Solutions to Gun Violence:** PAX is a nonpolitical nonprofit organization working with all Americans to help end gun violence against children and families. PAX's two

innovative programs – SPEAK UP and ASK (Asking Saves Kids) – offer practical solutions for protecting children from gun violence. SPEAK UP is a proven national youth violence prevention initiative that empowers students with critical knowledge and resources to prevent weapon-related violence in their schools and communities. The SPEAK UP campaign consists of a national hotline (1-866-SPEAK-UP) for students to anonymously report weapon threats, a mass awareness campaign and a youth education initiative.

- ESAF supported the SPEAK UP program in 2009 and 2010. This two-year grant supports measurable implementation of the SPEAK UP program in Cumberland County, N.C., including community outreach and coalition-building, 1-866-SPEAK-UP customization, media outreach, education kits and materials, as well as assessments.

ESAF supported the expansion of the Digital Connectors program to Chicago, New York City, Oakland, San Francisco and San Jose.

- **ThanksUSA:** ThanksUSA is a non-partisan, charitable effort to mobilize Americans of all ages to thank the men and women of the U. S. armed forces. It provides college, technical and vocational school scholarships for the children and spouses of active-duty military personnel. Since 2006, ThanksUSA has provided more than \$5 million in military family scholarships.
 - ESAF awarded a three-year grant to ThanksUSA in 2009 to sponsor its annual game, *Treasure Hunt*, a trivia and puzzle book about American history, culture and values that generates donations for scholarships. More than 300 classrooms and 10,000 individuals have registered to play the *Treasure Hunt* online game.
- The grant also supports the ESAF/ThanksUSA Scholarship for Military Youth. In 2009, 25 scholarships of \$3,000 each were made possible under this grant.
- **The Animation Project (TAP):** TAP offers a compelling and revolutionary form of animation therapy that, by taking full advantage of adolescents' interest in video games, propels development in the emotional, social and cognitive areas. TAP's technology-based group therapy builds self-esteem, pre-planning and collaborative skills, as well as technical abilities. The combination of improved mental health with newly acquired high-tech aptitudes prepares the adolescents for success in the modern workplace.
 - The 2009 ESAF grant supported expansion of TAP's 3-D computer animation therapy to at-risk adolescents in New York and New Jersey. Working in support groups, youth make their own video game scenarios and animations that are used over the course of the program as a therapy vehicle. A licensed art therapist and a professional computer animator lead the groups.
 - The animation project placed TAP's first intern, an adolescent with a felony conviction, in a New York City animation studio.
 - In December, TAP announced a marketing and educational video, www.loopfilms.com/TAP, highlighting the great work being accomplished by TAP staff, clients and stakeholders.
- **Web Wise Kids (WWK):** WWK is a national nonprofit organization dedicated to preventing online child victimization by providing innovative tools to empower today's youth to make wise choices online. WWK implements interactive Internet safety programs nationwide in conjunction with school systems, law enforcement, teachers, community-based youth organizations and others. Its programs have been chosen as part of the U.S. Department of Justice's Project Safe Childhood Initiative. WWK programs have reached more than six million children and thousands of parents nationwide.
 - The March 2009 WWK premiere of *It's Your Call* – the educational game about the dangers of using cell phones for bullying, inappropriate pictures, cheating and other

risky behaviors - reached more than one million kids.

- Funding from ESAF assisted WWK in development and distribution of the game to WWK partners across the U.S.
- **WGBH:** WGBH is a public service media producer for New England - on TV, radio, the Web and in the community. It is the single largest producer of PBS primetime and online programming, and is a major source of programs heard on public radio from coast to coast. WGBH is a pioneer in educational multimedia and in media access technologies for people with hearing or vision loss. It created The Greens, a website geared toward kids ages 9-13 that offers flash-animated episodes, interactive games and quizzes, engaging dialogues, a blog and other activities that illustrate environmental concepts and suggest ways to make a difference.
 - ESAF awarded WGBH a grant in 2009 to help develop online animations and games that teach tweens how to live sustainable lifestyles, the centerpiece of The Greens website (pbskids.org/greens). The games and animations guide kids in a critical exploration of green choices, prompt real-world action and underscore a shared relationship with others worldwide in facing environmental challenges. Project advisors include the Earthwatch Institute, the Institute for Sustainable Energy and the North American Association for Environmental Education.
 - In April, PBS' promotion brought nearly 10,000 visits to The Greens site per day around Earth Day.

- ESAF announced the 2009-2010 scholarship recipients in September 2009. Awards were given to 15 freshmen, four sophomores, five juniors and six seniors. Of the 30 winners, 16 were women and 20 were minorities. They represent 16 different states, 26 different colleges and included majors in game art, design, development and programming, digital animation and real-time interactive simulation.

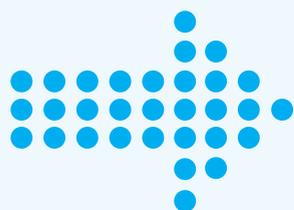
The 2009 ESAF grant supported expansion of TAP's 3-D computer animation therapy to at-risk adolescents in New York and New Jersey.

CHALLENGE GRANT PROGRAM

- The Challenge Grant launch has been rescheduled for spring 2010 to allow for the inclusion of key constituents from the educational sector to serve on the review committee.
- ESAF's goal is to issue a challenge to teachers and administrators in public, private and parochial schools to propose creative ways of integrating computer and video games into the traditional teaching curriculum.

COMPUTER AND VIDEO GAME SCHOLARSHIP PROGRAM

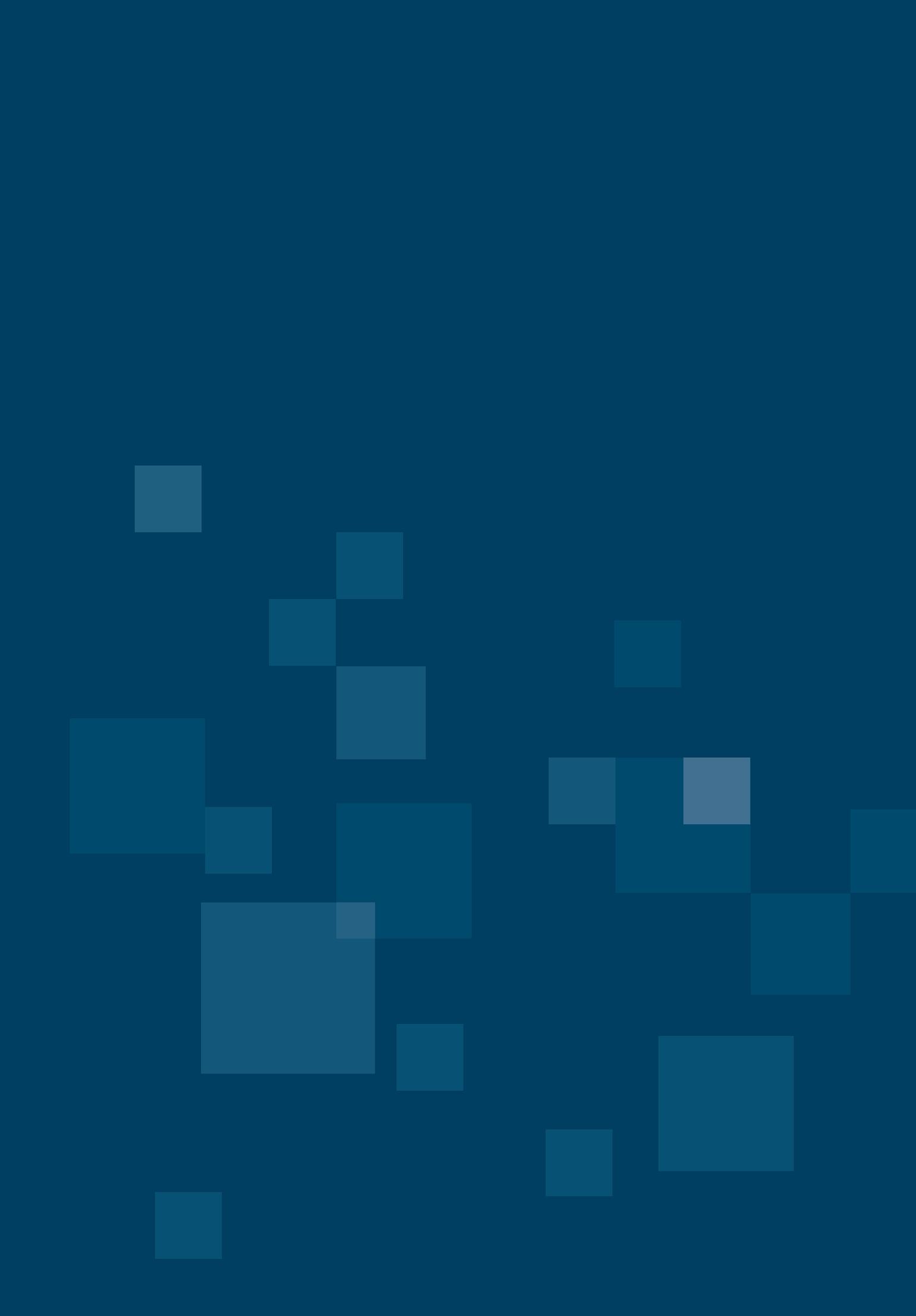
- ESAF expanded its Computer and Video Game Scholarship Program to graduating high school seniors in 2009, doubling the number of awards from 15 to 30.
- By the May 15, 2009, deadline, ESAF received had more than 3,200 applications and 380 of those were complete and eligible. Sixty semi-finalists were reviewed and voted on by the ESAF Scholarship Committee.



ESA MEMBER LISTING

As of May 2010

505 GAMES
CAPCOM USA, INC.
CRAVE ENTERTAINMENT
DEEP SILVER, INC.
DISNEY INTERACTIVE STUDIOS, INC.
EIDOS INTERACTIVE
ELECTRONIC ARTS
EPIC GAMES, INC.
HER INTERACTIVE, INC.
IGNITION ENTERTAINMENT, LTD.
KONAMI DIGITAL ENTERTAINMENT AMERICA
MICROSOFT CORPORATION
MTV GAMES
NAMCO BANDAI GAMES AMERICA, INC.
NATSUME, INC.
NEXON AMERICA, INC.
NINTENDO OF AMERICA, INC.
NVIDIA CORPORATION
O-GAMES, INC.
PLAYLOGIC ENTERTAINMENT, INC.
REALTIME WORLDS
SEGA OF AMERICA, INC.
SEVEN45 STUDIOS
SLANG
SONY COMPUTER ENTERTAINMENT AMERICA
SONY ONLINE ENTERTAINMENT, INC.
SOUTHPEAK INTERACTIVE CORPORATION
SQUARE ENIX, INC.
TAKE-TWO INTERACTIVE SOFTWARE, INC.
TECMO KOEI AMERICA CORPORATION
THQ, INC.
TRION WORLD NETWORK, INC.
UBISOFT ENTERTAINMENT, INC.
WARNER BROS. INTERACTIVE ENTERTAINMENT INC.
XSEED GAMES





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software
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