

# FIRST AMENDMENT



The video game industry is an ardent supporter of free expression and opposes any attempt to restrict the First Amendment rights of video game publishers, developers, artists, storytellers and players. The First Amendment ensures that unwarranted government intervention does not stifle the creativity and innovation that has served the video game community well. In fact, these protections are enshrined in the U.S. Constitution, as affirmed by the U.S. Supreme Court in a landmark ruling, and remain fundamental to providing video game players of all ages with the diverse and entertaining games that people across the world enjoy each day. Calls to regulate video game content or to limit free expression in games for any reason infringe upon this fundamental and guaranteed right.

At the same time, the video game industry recognizes the importance of providing information and tools for all audiences to make educated, age-appropriate purchasing decisions regarding video games. For more than 25 years, the industry has worked through the Entertainment Software Rating Board (ESRB) to ensure that consumers—especially parents and caregivers—have the resources, including voluntary ratings, needed to make informed decisions about video games. The effectiveness of these efforts has been praised by the U.S. Supreme Court and U.S. Federal Trade Commission (FTC).

## Landmark U.S. Supreme Court Ruling Confirms Video Games Constitute Protected Speech

The U.S. Supreme Court spoke directly to the First Amendment's protections for video games in a seminal 2011 ruling. In *Brown v. EMA*, the Supreme Court found that video games constitute protected speech and that efforts to limit or ban video game content considered “objectionable” conflict with the First Amendment of the U.S. Constitution. In its decision, the Court observed that video games are entitled to the same constitutional protections as books, movies, music and other forms of artistic expression. Writing for the majority, Justice Antonin Scalia emphasized that under the “least restrictive” standard required for limiting free speech, California could not “show that the Act’s restrictions meet the alleged substantial need of parents who wish to restrict their children’s access to violent video games. *The video game industry’s voluntary rating system already accomplishes that to a large extent*” (emphasis added). The Court further noted that California’s attempt to create a new category of restricted speech was “unprecedented and mistaken.” Indeed, the court made clear that efforts to limit constitutionally protected speech run counter to democratic norms. As this and other court decisions demonstrate, efforts to limit access to video game content are likely to run afoul of the U.S. Constitution.

## The Video Game Industry Empowers Parents with Tools and Resources to Protect Children

The video game industry creates a wide range of games for players of all ages and works to ensure that its games are enjoyed by people of appropriate age and maturity. Since 1994, the

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video game industry's self-regulatory body, the ESRB, has provided parents with age and content ratings for video games and apps to help them make informed decisions about which products are appropriate for their family. These tools have a high level of awareness and use among parents.

The ESRB also enforces marketing guidelines that ensure advertisements for games rated inappropriate for children are not targeted to them and works closely with retailers to maintain high levels of compliance with their in-store policies not to sell Mature-rated games to unaccompanied children. The FTC has lauded industry efforts to responsibly market its products and has noted that the video game industry "outpaces" other entertainment sectors in having the "strongest self-regulatory code" and "high compliance" with that code.

In addition, parental controls, offered on virtually all video game devices, offer parents the ability to efficiently set preferences that are appropriate for their household. These controls enable parents to: (i) block video games by age rating category; (ii) manage the amount of money their kids can spend playing video games; and (iii) limit the amount of time their kids can spend playing video games. In addition to being able to set parental controls directly on the console, parents can download easy-to-use smartphone apps for each console to manage what, when and with whom their children can play. The ESRB provides a centralized place for parents to obtain step-by-step parental control guides for all the game consoles, Windows computers and other platforms at [ParentalTools.org](http://ParentalTools.org).

These safety and wellness features continue to evolve as consumer needs evolve. The video game industry regularly updates parental controls and other product features and tools to help consumers navigate the ever-changing world of video games.