



## MARKETING VIOLENT ENTERTAINME



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## **EXECUTIVE SUMMARY**

In September 2000, the Federal Trade Commission issued a report requested by the President and Congress entitled, *Marketing Violent Entertainment to Children: A Review of Self-*

found no ads for R-rated movies in popular teen magazines and little promotion of R-rated films in locations popular with teens. Its check of trailers for R-rated movies revealed none shown before G- and PG-rated feature films.

The one popular teen venue where studios continued to advertise R-rated films was television. The Motion Picture Association of America has set no specific limits on ad placements. Although some studios have announced they will not advertise R-rated movies in venues with a 35 percent or more youth audience share, this threshold permits continued advertising on popular television programs that attract larger absolute numbers of underage viewers than programs with a 35 percent or more youth audience share.

In its review, the Commission found the movie industry has made real progress in disclosing rat

explicit-content labeled recordings. Although a promising start and a clear improvement since the September 2000 Report, continued efforts will be needed to achieve widespread compliance. Because the industry's labeling program does not call for providing the reasons for the labels, such information is not part of the labeling or advertising disclosures.

**Games.** For the electronic game industry, the Commission found continued positive steps to limit ad placements in popular teen media, including new industry standards limiting ads for M-rated games where children constitute a certain percentage of the audience: 35 percent for television and radio and 45 percent for print and the Internet. The Commission found little advertising on popular teen television programs. However, in its review of marketing documents for 14 violent M-rated games, the Commission found that all planned at least some ad placements in media venues popular with teens, although only two expressly targeted an under-17 audience. The Commission also found continued placements of advertising in youth-oriented magazines and popular teen Web sites. The industry's new anti-targeting standards should diminish – but likely not eliminate – such placements.

The Commission found that the game industry has made substantial progress in providing accurate and prominent rating information in advertising. With a revised game industry code now in place that strengthens and clarifies disclosure requirements across all media, there remain only a few key areas where the code and compliance need strengthening.

**Undercover Shopper Survey.** For this Report, the Commission again conducted an undercover “mystery” shopper survey, as it had for the September 2000 Report, to determine whether unaccompanied 13- to 16-year-olds could purchase tickets to R-rated movies, explicit-content labeled recordings, and M-rated games. The survey was designed to assess any changes made in response to the Commission's recommendation in the September 2000 Report that all three industries improve their self-regulatory efforts by increasing retail level compliance by, for example, requiring identification or parental permission for sales to children. The results indicate that, unlike the commendable progress by the movie and electronic game producers in responding to the Commission's recommendations of September 2000, retailers have made few changes since the first survey. Nearly half (48 percent) of the theaters sold tickets to R-rated movies to the underage moviegoers, while 90 percent of the music retailers sold explicit content recordings to



the underage shoppers. Neither of these results represents a significant change from the practices documented in the first survey. Electronic game retailers showed modest improvement in restricting purchase of M-rated games than last year, with 78 percent allowing shoppers to purchase M-rated games (compared to 85 percent earlier). Increasing retail level enforcement remains an important challenge, especially for the music industry.

This Report documents genuine improvements by movie and electronic game producers in the two areas of study: (1) limiting advertising placements for R-rated movies and M-rated games in popular teen media, and (2) disclosing rating and labeling information in advertising. It also identifies recent modest steps taken by the music industry to increase the number of explicit content labeling disclosures in advertising and to communicate the meaning of the label to parents. The Report offers suggestions for continuing improvements by all three industries in the areas of study. Because of First Amendment and other issues, the Commission continues to support private sector initiatives to implement these suggestions. The Commission believes that in addition to the role that industry self-regulatory programs can play, individual companies can take the lead in adopting best practices that go beyond those programs. In this Report, the Commission points to several companies that have done so. It encourages others to follow their lead. The Commission will continue to monitor the entertainment industry's marketing practices as Congress may direct.

## **I. INTRODUCTION**

### **A. Commission Reports on Marketing Violent Entertainment to Children**

In September 2000, the Commission issued its first report on the marketing of violent entertainment products to children by the motion picture, music recording, and electronic game industries (

industry associations – the Motion Picture Association of America (“MPAA”), the National Association of Theatre Owners (“NATO”), the Recording Industry Association of America (“RIAA”); and the Interactive Digital Software Association (“IDSA”).<sup>3</sup> The Commission also reported its findings, based on its review of television and print advertising and industry Internet Web sites, that while the movie and electronic games industries had made progress, the music recording industry had done little to respond to the September 2000 Report. The Commission continued to urge the industries to strengthen their self-regulatory programs.

This is the second follow-up report. It examines the same issues as the April 2001 Report, but is based on more extensive information, as described below.

## **B. Sources of Information for this Report**

To prepare this Report, the Commission collected information from a variety of sources. As it had done for the April 2001 Report, it tracked advertising placement in media popular wit

content labeled recordings<sup>7</sup> released by three major recording companies



that a number of violent R-rated movies were advertised on programs that likely had youth audiences over 35%,<sup>24</sup> in some instances by studios that had pledged to observe the 35% threshold. Among the films advertised on these programs were MGM's *Original Sin*, Sony/Columbia Pictures' *Baby Boy* and *Brother*, 20<sup>th</sup> Century Fox's *Kiss of the Dragon*, and Warner Bros.' *Exit Wounds* and *Swordfish*.<sup>25</sup>

As the Commission noted in its April 2001 Report,<sup>26</sup> the 35% standard would have little effect if a studio wanted to target teens in advertising R-rated films. This is because many programs that are very popular with youth – especially network programs, which have the largest audiences, as compared to cable – have an under-18 audience share less than 35%.<sup>27</sup> The top ten daily network programs all have an under-18 audience smaller than 35%.<sup>28</sup> On the other hand, that 35% audience share includes 17-year-olds, who are permitted to attend R-rated movies with adult accompaniment.<sup>29</sup> Still, even programs geared to the very young do not necessarily meet the 35% threshold – for example, programs such as *Frosty the Snowman* (33%), *Rudolph the Red-Nosed Reindeer* (31%), *Mickey's Christmas Carol* (30%), and *Power Rangers* (23%) and *Digimon* (21%) afternoon specials.<sup>30</sup> As one studio document reviewed for this Report explained:

Even NBC's teen-aimed TNBC Saturday morning block has programs that barely reach the 35% composition. *City Guys* at 36% and 32% for its two airings, *One World* at 35%, *Hangtime* at 30% are the only [non-prime-time] network programs not specifically targeting kids 2-11 or 6-11 that exceed 30%.<sup>31</sup>

In addition to implementation of the 35% standard, some studios and the networks have taken additional steps that are likely to discourage targeting youth in advertising R-rated films. Some networks have decided not to accept advertising for R-rated films in youth-oriented programming, including some programs that do not garner a 35% youth audience.<sup>32</sup> As noted above, in advertising R-rated films, studios no longer selected programs with the goal of maximizing impact among viewers under 18.

#### **b. Print and radio ads**

In its September 2000 Report, the Commission found ads for R-rated films in youth-oriented comic books and magazines, including some magazines that were specifically distributed in high schools.<sup>33</sup> For this purpose, the Commission reviewed a sample of 100 advertisements for R-rated films in youth-oriented comic books and magazines, including some magazines that were specifically distributed in high schools. The sample included 31 advertisements for R-rated films in youth-oriented comic books and magazines, including some magazines that were specifically distributed in high schools. The sample also included 69 advertisements for R-rated films in youth-oriented comic books and magazines, including some magazines that were specifically distributed in high schools.

R-rated film from any studio.<sup>35</sup> Moreover, none of the studios' media plans reviewed for this Report called for advertising R-rated films in youth-oriented publications; such publications did figure in the marketing plans for two of the three PG-13 movies reviewed.

With respect to radio advertising, the picture was more mixed. The media plans showed that one studio collected audience demographic data for spot radio buys,<sup>36</sup> and avoided advertising on certain parts of the day on particular stations because of teen audience shares over 35%.<sup>37</sup> The other two studios did not appear to collect radio audience demographic data. All three of the studios, however, in coordinating promot

as free passes to movie screenings and free merchandise related to the film (*e.g.*, t-shirts, mini-posters, etc.)



restrictions for entry into screenings or previews for R-rated films, which had been overlooked previously.

The industry also changed its research practices. Studios previously conducted research, including focus groups, surveys, and trailer tests, on the film preferences of children under 17 for R-rated films. In response to the September 2000 Report, a major research company, after consultation with the studios, stopped using children under 17 in test groups for R-rated movie marketing unless specifically requested by a studio.<sup>52</sup> Review of trailer tests and commercial tests provided to the Commission indicates that the studios did not conduct research for R-rated movies on children under 17.

### **3. Analysis of industry practices since the September 2000 Report**

It is clear that members of the movie industry have taken a number of significant steps since the Commission's September 2000 Report to avoid marketing R-rated films in venues with substa

In response, the MPAA agreed to “seek ways to include” rating reasons in print and online advertising, but did not make a similar commitment with respect to television or radio advertisements. More specifically, it prescribed that rating reasons for all but G-rated films be included in print advertising above a certain size, Web sites, and outdoor advertising such as billboards. Member studios agreed to include the rating reason on packaging for new video and DVD releases and in the preface to those materials, and to encourage theaters and newspapers to provide rating reasons. NATO members, too, pledged to seek ways to disseminate rating reasons.

## **2. Industry advertising practices since the September 2000 Report**

In April, the Commission reported that disclosure of rating reasons in the advertising of R-rated films had improved substantially since the September 2000 Report. It found that studios routinely included reasons for ratings in both print and television advertisements. However, in many print ads, the reasons were too small to read or were obscured by graphics, and in television ads they often disappeared from the screen too quickly to be read and understood.

The sections below review the studios’ disclosures of ratings and rating reasons in the various advertising media.

### **a. Television ads**

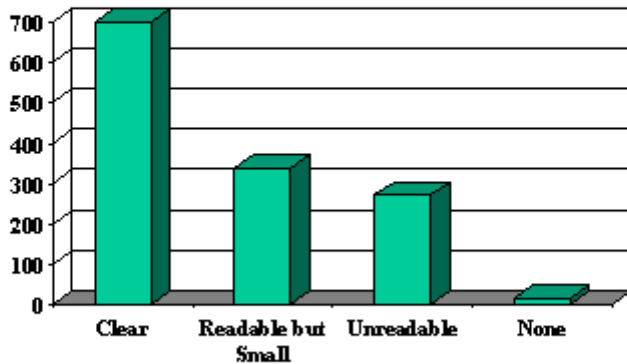
Although the MPAA does not require disclosure of rating reasons in television ads, each of the studios did provide them. In reviewing the television advertising for the nine films studied for this Report, the Commission found a range of practices. For example, one studio invariably included rating reasons in its advertisements, and they were prominent and of sufficient duration to be read, while another provided the rating reasons, in small print, for only one of its films.

For studios’ television ads as a whole,<sup>54</sup> most ads included both the rating and rating reasons. Notably, the rating was provided both in audio and visual formats. The rating reasons, however, were usually not displayed long enough for a viewer to read them.

**b. Print and radio ads**

To determine the extent to which ratings and reasons were disclosed and legible in print media, the Commission reviewed more than 1300 ads for R-rated films in magazines and newspapers, including the youth-oriented magazines discussed in the Advertising Placement section above,<sup>55</sup> as well as additional magazines<sup>56</sup> and newspapers.<sup>57</sup> With very few exceptions, the Commission found that the ads displayed both the rating and the reasons for the rating.<sup>58</sup> Although that the rating reasons were often not clear and conspicuous, the Commission found improvement since the April 2001 Report,<sup>59</sup> with more than half of the disclosures reviewed for this Report reasonably clear and prominent. The large majority of ads by Disney/Buena Vista, Dreamworks, MGM, Paramount Pictures, Universal Pictures, and Warner Bros. featured ra00 TD(ur)Tj10.0800 0.

### Readability of Rating Reasons for Motion Pictures in Print Ads



The Commission reviewed 1322 print ads for motion pictures.

made them difficult to read, the rating letter was usually provided separately from the box art, making the rating more prominent.

This limited improvement in disclosure of rating information in studios' home video did not extend to retailers' advertising for home videos. A review of "free-standing inserts" by major retailers, distributed in newspapers, indicates that these retailers' advertising for videocassettes and DVDs, with one exception, did not feature the film rating or rating reason.<sup>60</sup>

For radio, each of the studios studied for this Report included rating reasons in its radio ads, although not required to do so by the MPAA. Moreover, each took steps to have radio stations make clear that promotions such as free passes were limited to those 17 or older and include information about the film's rating when announcing the promotion.

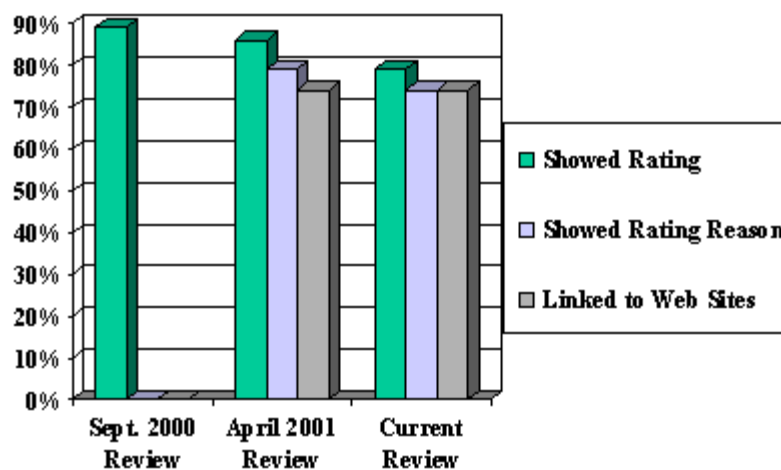
### c. Internet Advertising

#### (1) Studio Web sites

For its September 2000 Report, the Commission's review of official movie Web sites revealed that nearly all the sites displayed the movie's rating somewhere on the site, but none displayed the movie's rating reasons.<sup>61</sup> Information from the studios studied for this Report shows that the studios have since changed their Web sites to provide rating information and to link to additional sites with rating information as required by the MPAA. A check of the official sites for the nine films studied reflects that each of the sites did provide the rating and, with one exception, the rating reason.<sup>62</sup>

A review of 34 official movie Web sites from all studios showed that more than three-quarters (27 of 34) displayed the films' rating, usually on either the teaser page or home page.<sup>63</sup>

### Comparison of Web Site Review Results





### **(3) Home video retailer Web sites**

The Commission surveyed rating information practices at the five online movie retailers' sites it reviewed for the April 2001 Report.<sup>71</sup> Practices have not materially changed. In nearly every case, the sites provided the movies' letter rating, but only TowerRecords.com displayed rating reasons. None of the sites linked to rating information at other sites, nor did any of the sites provide information on the MPAA ratings.<sup>72</sup>

#### **d. Other steps**

The studios often printed rating information, including the age restriction, on screening passes and preview invitations. The studios also included rating information on home video packaging, on the videotape or DVD itself, and on pay-per view and pay-TV.

### **3. Analysis of industry practices since the September 2000 Report**

The disclosure of reasons for movie ratings has improved considerably. Since the September 2000 Report, when the Commission found that rating reasons were absent from movie advertisements, studios now widely include rating reasons in television, print, radio, outdoor, and online advertising. Their remaining challenge is to make the information clear and conspicuous to consumers in all media.<sup>73</sup>

## **C. Box Office Enforcement of the Rating System**

In its September 2000 Report, the Commission reported on its nationwide undercover study that found almost half of the theaters sold tickets to R-rated movies to unaccompanied children. com stud 0040.3200

2001 surveys show that movie theaters are the most strict of the three industries in restricting sales to children under 17, theaters can be more effective, particularly with younger children. One-third (33%) of 13-year-olds were able to purchase tickets to R-rated movies.<sup>77</sup> As the age of the shopper increased, so too did the percentage of purchases of R-rated movie tickets.

### **FTC Mystery Shop Results By Age - Movies**

#### **Q. Was the shopper able to make the purchase?**

	13 years old	14 years old	15 years old	16 years old	Total
No	67%	57%	47%	38%	52%
Yes	33%	43%	53%	62%	48%
# of shoppers	69	82	76	73	300

## **III. MUSIC RECORDINGS**

### **A. Marketing to Children: Ad Placement**

#### **1. Industry commitments following the September 2000 Report**

In the September 2000 Report, the Commission found that the music industry engaged in extensive marketing of explicit-content labeled recordings to children under 17.<sup>78</sup> Finding that such marketing undermines the message inherent in the label that parental review is warranted, the Commission urged the industry to adopt industry-wide prohibitions on marketing explicit content recordings in “media or venues with a substantial under-17 audience.”<sup>79</sup>

The industry’s trade association, the RIAA, notes that the parental advisory labeling program for music, unlike the age-based rating systems for movies and games, does not designate an age for which labeled music may be inappropriate. Accordingly, it asserts that marketing explicit-content labeled music to all ages is consistent with its labeling program:<sup>80</sup> it has not changed this position in response to the Commission’s Report.<sup>81</sup>

Individual members of the music industry are free to adopt policies on advertising placement, and two of the three co

## **2. Industry advertising placement since the September 2000 Report**

In April, the Commission reported, based on its review of publicly available information, that the major recording companies were continuing to place advertising for explicit content music on television programs and in magazines with substantial under-17 audiences.

For this Report, the marketing plans submitted by the companies also indicate marketing of explicit-content recordings aimed at children under 17. Two plans referred to promoting explicit recordings at high schools; another referenced promotions in “teen magazines.” Although one marketing plan identified a specific target audience (18 - 34) that did not include children under 17,<sup>83</sup> the marketing documents for the remaining recordings detailed plans to place advertising in media that would reach an audience with a majority or substantial percentage of children under 17.

### **a. Television and radio promotions**

As noted in earlier reports, explicit-content labeled recordings are promoted extensively on cable television music programs with substantial teen audiences. Frequently, the marketing documents reviewed included plans to secure promotions on popular after-school and



explicit content recordings on popular teen shows such as *Total Request Live*, *Direct Effect*, and *106<sup>th</sup> and Park*.<sup>89</sup>

Many of the marketing documents the Commission reviewed for this Report also described plans to promote explicit content recordings on radio stations with a substantial audience of 12- to 24-year-olds. These promotional efforts included seeking radio play of edited versions of singles, placing advertisements, and providing giveaways of labeled albums.

#### **b. Print advertising**

Like those plans reviewed for the September 2000 Report,<sup>90</sup> the marketing plans reviewed here revealed that the recording companies routinely used print advertising to promote their explicit-content labeled recordings to children under 17. Marketing documents for eight out of 14 explicit-content labeled recordings discussed placing ads in magazines with a majority or substantial teen audience (such as *Metal Edge*, *Right On!*, *Seventeen*, *Skateboarding*, and *Thrasher*),<sup>91</sup> as well as obtaining reviews of recordings, magazine covers, and feature stories about artists who released the recordings in these same publications.<sup>92</sup>

The Commission reviewed the June through September 2001 issues of eight magazines with a majority or substantial readership under 18,<sup>93</sup> and found that each of the five major recording companies had placed advertisements for explicit content recordings in at least two of the following magazines: *Metal Edge*, *Right On!*, *Teen*, *Teen People*, *Thrasher*, and *YM*.<sup>94</sup>

#### **c. Internet marketing**

As the Commission found in its September 2000 Report, Internet advertising is a key feature of marketing explicit recordings. Eleven of the 14 marketing plans reviewed for this Report discussed efforts to promote explicit recordings on popular music or general sites with significant teen audiences, including *mtv.com*, *bet.com*, *getmusic.com*, *iturf.com*, *music.com*, *launch.com*, *teenpeople.com*, and *seventeen.com*.<sup>95</sup> These efforts included artist interviews and chats, banner ads, featured artist pages with audio and video samples, listening parties, merchandise giveaways, and reviews of labeled recordings.

### **3. Analysis of industry practices since the September 2000 Report**

The Commission's review reveals no changes in industry practices since the September 2000 Report. The industry members continue to advertise explicit content recordings in the most popular teen venues in all media – television, radio, print, and online.

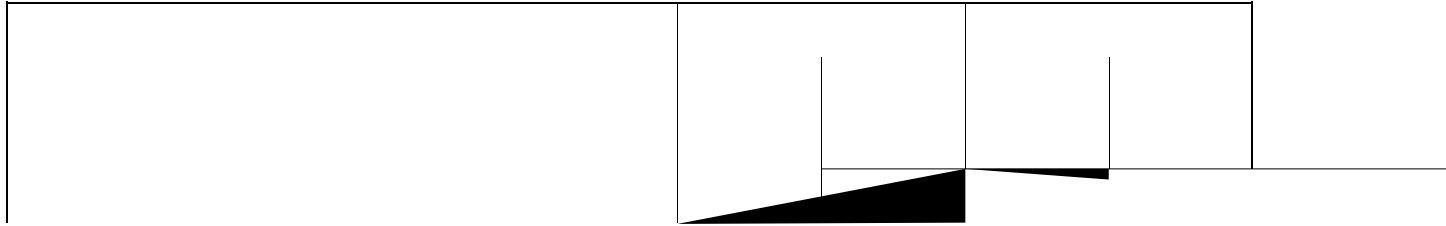
#### **B. Advisory Labels and**

adverti

## **b. Print ads**

The Commission's review of print advertising shows a mixed picture. With a few exceptions, the sample print advertisements provided for 14 explicit content recordings did not display any advisory. When the label appeared in advertising, it usually was a black and white blur too small for consumers to read. Most of this advertising was disseminated in fall and winter 2000, shortly after the RIAA's guidelines for print advertising went into effect in October 2000.

To assess more recent print advertising, the Commission reviewed the June through September 2001 issues of 11 magazines.<sup>109</sup> This four-month review uncovered few clear advisories in advertisements for explicit content recordings: 17 out of 111 ads for labeled recordings (15%) contained clear and conspicuous disclosures about an album's explicit content.<sup>110</sup> Most of the ads (80 of 111) did not carry an advisory at all; some advisories (14 of 111) appeared as a black and white blur, too small or inconspicuously placed to be noticed or read. However, in the most recent magazine issues, 21 out of 37 ads for labeled recordings contained an advisory, 18 of which we



abbreviation “PA.”<sup>116</sup> Samgoody.com has continued to use the disclosure “clean” next to the edited version, providing consumers with no information about the content of the explicit version.

### Music Retailer Web Site Review

	Amazon	Best Buy	CDNow	Sam Goody	Tower Records
Does the site contain album cover art?	5 of 5	5 of 5	5 of 5	5 of 5	5 of 5
Does the advisory appear on the cover art?	4 of 5	4 of 5	2 of 5	3 of 5	4 of 5
Is the advisory readable?	4 of 4 when enlarged	0 of 4	0 of 2	0 of 3	0 of 4
Is there other clear and conspicuous information about explicit content?	5 of 5 “explicit lyrics”	5 of 5 “parental advisory”	5 of 5 “explicit” and “explicit version”	0 of 5 only “clean” version noted	5 of 5 “explicit”
Are clear disclosures at every stage of the purchasing process?	5 of 5	0 of 5	0 of 5	0 of 5	1 of 5
Is there a link to <a href="http://www.parentalguide.org">www.parentalguide.org</a> ?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5

### 3. Analysis of industry practices since

### **C. Industry Efforts to Enforce the Rating System at Point-of-Sale**

In its September 2000 Report, the Commission reported that its nationwide undercover study had found that 85% of unaccompanied children ages 13-16 were able to buy explicit-content labeled records at retail stores.<sup>117</sup> A survey of 300 music stores conducted for this Report shows a similarly high percentage of sales: 90% of the unaccompanied teens, ages 13-16, were able to buy an explicit content recording.<sup>118</sup> Eighty-seven percent of the youngest shoppers – 13-year-olds – were able to buy explicit-content recordings. A breakout by age of the mystery shop results follows:

#### **FTC Mystery Shop Results By Age - Music**

##### **Q. Was the shopper able to make the purchase?**

	<b>13 years old</b>	<b>14 years old</b>	<b>15 years old</b>	<b>16 years old</b>	<b>Total</b>
<b>No</b>	<b>13%</b>	<b>10%</b>	<b>9%</b>	<b>10%</b>	<b>10%</b>
<b>Yes</b>	<b>87%</b>	<b>90%</b>	<b>91%</b>	<b>90%</b>	<b>90%</b>
<b># of shoppers</b>	<b>71</b>	<b>80</b>	<b>79</b>	<b>70</b>	<b>300</b>

Such high percentages are not surprising, given the recording industry’s emphasis that its self-regulatory system does not limit the sale of explicit-content recordings to children.

This survey also found that only 12% of shoppers noticed information about the parental advisory system or about the store’s sales policy regarding explicit-content labeled recordings in the stores.<sup>119</sup>

## **IV. ELECTRONIC GAMES**

### **A. Marketing to Children: Ad Placement**

#### **1. Industry commitments since the September 2000 Report**

In its September 2000 Report, the Commission found widespread marketing of Mature(“M”)-rated electronic games to children under 17<sup>120</sup> – a practice that violated the anti-targeting provision of the game industry’s comprehensive self-regulatory code.<sup>121</sup> The Commission recommended that the industry improve compliance with its code and also clarify what constitutes

targeting. Responding to the Commission's Report, the IDSA adopted standards to limit advertising placements – the only industry to do so. Specifically, it set limits on the percentage of the audience under 17 that could be viewing, listening, or watching ads for M-rated games on TV and radio (35%), print (45%), and the Internet (45%).<sup>122</sup> As the Commission noted in the April 2001 Report,<sup>123</sup> this is a positive step that forecloses advertising M-rated games in some of the venues previously used to reach young teens. Nonetheless, the thresholds permit continued ad placements for M-rated games in many of the youth-oriented magazines, television programs, and Web sites that industry members had previously included in marketing and media plans that targeted 12- to 17-year-olds.

In addition, all three industry members contacted for this Report indicated that they are making efforts to avoid targeting their M-rated games to an under-17 audience. One company indicated that it will go beyond the industry's anti-targeting threshold and adopt a 35% threshold for print publications.<sup>124</sup>

Finally, the Entertainment Software Rating Board ("ESRB") recently informed industry members that, beginning in November 2001, it will levy a substantial fine against companies that engage in inappropriate target marketing.

## **2. Industry advertising placements since the September 2000 Report**

In April, the Commission reported that its review of print and television advertising uncovered no advertising of M-rated games on television programs popular with teens, but continued widespread advertising in game magazines popular with teens.

For this Report, the Commission's review of marketing plans submitted by three companies for four M-rated personal computer ("PC") games and nine M-rated television console games revealed ad placements for these products in all media venues popular with teens. Although none of the plans for the four PC games expressly targeted an under-17 audience, plans for two of the nine M-rated console games did; both plans were from the same company, and both post-dated the release of the September 2000 Report. Further, 12 of 13 marketing plans specified ad placements for M-rated game in venues with substantial, and at times majority, audience shares under 17.



The sections below review the practices of the electronic game industry in placing ads in the major media, including television, print, radio,<sup>125</sup> and online.

**a. Television ads**

Unlike the marketing plans reviewed for the September 2000 Report, which showed widespread advertising of M-rated games on popular teen television programs, only two of the 13 marketing plans reviewed for this Report (both console games) mentioned television advertising. Both, however, did plan placements on shows popular with teens, including MTV's *Jackass*, *Total Request Live*, and *WWF Heat, Titus, Dark Angel, King of the Hill, Simpsons, Malcolm in the Middle, Mad TV, That 70's Show*, and *Xena*.<sup>126</sup> The Commission confirmed that these planned ads ran after the release of the September 2000 Report. Some of these ad placements would have run afoul of the industry's advertising code's recently-enacted prohibition against placing ads for M-rated games on shows with a 35% or greater under-17 audience.<sup>127</sup>

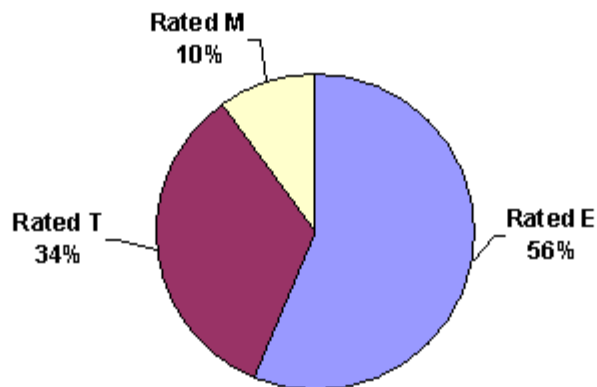
To supplement information from the marketing plans, the Commission monitored advertising on network, cable, and syndicated programs popular with teens for an eight-week period commencing in June 2001. It found little advertising for M-rated games – only three advertisements for a single M-rated game, *Twisted Metal: Black*, published by Sony Computer Entertainment America Inc., which appeared on *Titus* and MTV's *Jackass* and *Sunday Night Heat*. A separate review of all first-run ads for M-rated games between January 1, 2001 and August 20, 2001 reveal

such media, including publications such as *GamePro*, *Electronic Gaming Monthly*, *Expert Gamer*, *The Official U.S. Playstation Magazine*, *Playstation Magazine*, and *Tips & Tricks*.<sup>128</sup>

To monitor industry-wide ad placements, the Commission reviewed advertising during a four-month period (June-September 2001) in *GamePro* and *Electronic Gaming Monthly*, both with at least 40% readership under 17. This review showed that the percentage of ads for M-rated games in these publications has dropped slightly to 10% from the 13% the Commission reported in the September 2000 Report. A breakout of the magazine ads by rating<sup>129</sup> is presented below.

**Game Pro and Electronic Gaming Monthly Advertising  
Composition by Rating  
June - September 2001**

(\*"rating pending" ads are grouped by the rating they later received)



<b>Total Numbers</b>	
Total # of Ads:	179
# of E-rated ads:	101
# of T-rated Ads:	60
# of M-rated ads:	18

The Commission also conducted a more extensive review of five game enthusiast magazines with a high teen readership – *GamePro*, *Electronic Gaming Monthly*, *Expert Gamer*, *100% Independent Playstation Magazine*, and *Tips & Tricks*. This review indicated that nine industry members placed a total of 51 ads for twelve M-rated games over that four-month period: Capcom (*Onimusha*, *Resident Evil: Code Veronica*), Eidos (*Legacy of Kain: Soul Reaver 2*), Infogrames

(*Alone in the Dark: The New Nightmare*, *Unreal Tournament*), Interplay (*Giants: Citizen Kabuto*), Konami (*Zone of the Enders*), Sierra (*Half-Life*), Sony Computer Entertainment America (*Twisted Metal: Black*, *Extermination*), Take 2 Interactive (*Rune: Viking Warlord*), and THQ (*Red Faction*).

The four issues of *GamePro* reviewed contain four M-rated game ads. Although not in effect until November, the industry's revised advertising code would likely affect continued placement of M-rated game ads in *GamePro*.<sup>130</sup> Such ads would still be allowed in *Electronic Gaming Monthly*, *The Official U.S. Playstation Magazine*, *100% Independent Playstation Magazine*, and other publications with a very substantial, but presently less than 45%, readership under 17.<sup>131</sup>

### **c. Internet ads**

In the September 2000 Report, the Commission found that ten of the 11 game publishers studied had placed ads for M-rated games on Web sites popular with teens. Marketing documents reviewed for this Report show that these practices continue. Plans for three of the four PC games indicated ad placements on Web sites which typically have a higher percentage (e.g., 33%) of youth visitors than found in the general Internet population (20%). These sites include *avault.com*, *cdmag.com*, *gamespot.com*, *gamespy.com*, *ign.com*, and *ugo.com*.<sup>132</sup> Two of ten plans for console games also indicated online advertising targeting teen-popular Web sites, such as *ign.com*, *ugo.com*, and *gamespot.com*. These ads, however, would not appear to violate the new prohibition in the industry's advertising code against ads for M-rated games on web sites with a 45% or greater under-17 audience.<sup>133</sup>

### **3. Analysis of industry practices since the September 2000 Report**

The Commission's review of print, television, and Internet ads and of game publisher marketing plans suggests that the electronic game industry is limiting its advertising on popular teen television programs, while continuing to advertise in game magazines and Web sites popular with teens. Although these ad placements reach substantial under-17 audiences, most would appear to comply with the new advertising code's anti-targeting requirements. In short, the new guidelines are having only a limited effect on altering placement practices, particularly for print and on-line advertisements, in the industry.

## **B. Ratings and Reasons for Ratings in Ads**

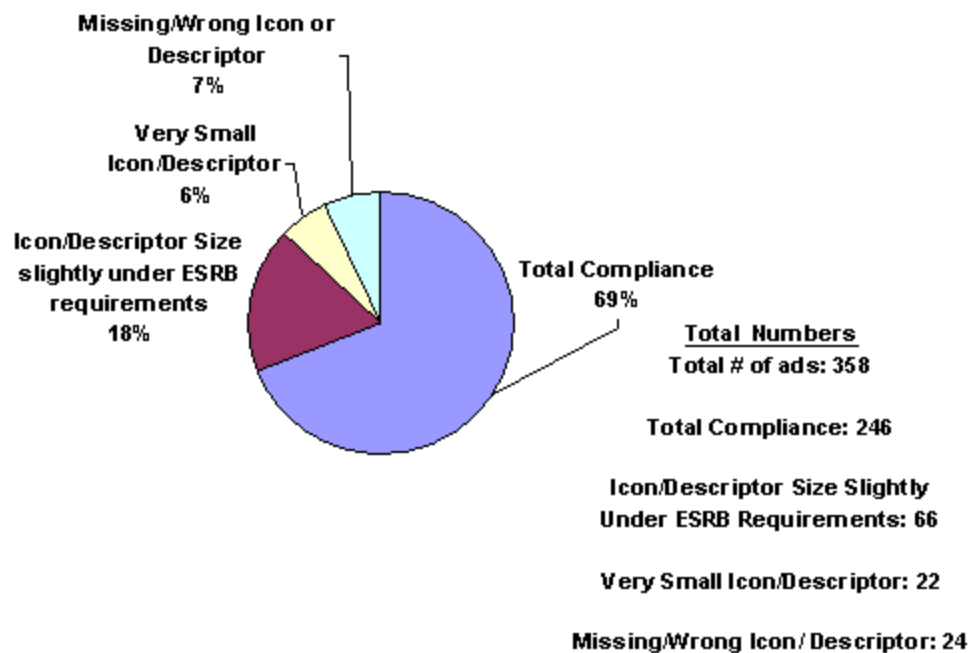
### **1. Industry commitments since the September 2000 Report**

At the time of the September 2000 Report, the electronic game industry's code required the display of rating icons and, in most cases, content descriptors (*e.g.*, "Realistic Violence," "Animated Blood and Gore") on packaging, in print ads, and online. In television ads it required a voice-over stating the game's rating, but not the content descriptor.<sup>134</sup> In its report, the Commission recommended that *all* advertising contain both the rating and the content descriptors.

Shortly before issuance of the April 2001 Report, the industry revised its code to strengthen and clarify its disclosure requirements in TV, radio, print, and Internet advertising,<sup>135</sup> although it still did not require content descriptors in television or radio advertising. These revisions included improving the TV voice-over for 15-second ads,<sup>136</sup> specifying that rating information (rating icon and content descriptors) must be displayed in print, radio, and Internet advertising.

advertising code, no television ad contained a content descriptor. These results are quite similar

## Disclosure of Rating Information in Game Ads June - September 2001



Although retailers are not subject to





**(2) Retailers**

As noted above, retailers have been encouraged to follow the ESRB rating system. For this Report,<sup>161</sup> the Commission reviewed the marketing of five M-rated games on five retailer sites (Amazon.com, BestBuy.com, EBGames.com, GameStop.com, and ToysRUs.com<sup>162</sup>). Only one retailer (EBGames.com) attempted to provide content descriptors during the purchase process. On the positive side, all but one retailer uniformly displayed the correct rating icon during the purchase process.<sup>163</sup> The rating icon usually was clear and conspicuous, with the “Mature” icon clearly visible on the page describing the game and listing its price.<sup>164</sup>

All of the sites, except BestBuy.com, had pages with extensive ESRB rating information. Most of the sites placed a “Mature” rating icon on the product-specific page that – if the viewer knew to click on the icon – linked to pages with ESRB information or the ESRB web site.<sup>165</sup> GameStop.com and EBGames.com allowed the visitor to browse for games by the ESRB rating.

**Electronic Game Retailer Web Site Review**

	<b>Amazon</b>	<b>Best Buy</b>	<b>EBGames</b>	<b>Gamestop</b>	<b>Toys ‘R’ Us</b>
<b>Is rating icon displayed during purchase process?</b>	5 of 5	4 of 5	5 of 5	5 of 5	5 of 5
<b><i>Clear and conspicuous?</i></b>	5 of 5	4 of 4	5 of 5	5 of 5	5 of 5
<b>Are the content descriptors displayed during the purchase process?</b>	0 of 5	0 of 5	3 of 5	0 of 5	0 of 5
<b><i>Clear and conspicuous?</i></b>	0 of 0	0 of 0	3 of 3	0 of 0	0 of 0
<b>Is there a link to ESRB info. or ESRB.orgnt during purchase process?</b>	0 of 0	0 of 0	0 of 0	0 of 0	0 of 0

to make substantial progress in providing accurate and prominent rating information to the public.<sup>166</sup>

**C. Industry Efforts to Enforce the R**


seven





1. See Letter from William J. Clinton, President of the United States, to Janet Reno, Attorney General of the United States, and Robert Pitofsky, Chairman, Federal Trade Commission (June 1, 1999) (on file with the Commission).

2. Legislation calling for the FTC and the Justice Department to conduct such a study was introduced in both houses of Congress following the Columbine incident. See Amendment No. 329 by Senator Brownback *et al.* to the *Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999*, S. 254, 106th Cong. § 511 (1999); H.R. 2157, 106th Cong. (1999); 145 Cong. Rec. S5171 (1999).

3. The April 2001 Report described the following industry-wide initiatives:

- The MPAA's 12-point initiative promised: to avoid running trailers for violent R-rated films before G-rated feature films; to review policies regarding marketing violent R-rated movies

magazines, television shows and Internet sites popular with teens. The Entertainment Software Rating B

For a description of the ESRB rat



18. September 2000 Report at 14.

19. *Id.*

20. One of the studios, Warner Bros., publicly committed not to advertise on any program with a 35% under-17 audience. Both of the other studios, without announcing the policy formally, internally committed to respect the 35% threshold, but excepted certain programming from the 35% standard, *e.g.*, they may advertise on programs with an audience share greater than 35% that air after 9 p.m. or on certain programming formats such as sports. Additional studios, as noted above, have announced that they have adopted a 35% standard, but ot

that appear to violate a studio's commitment may have been based on projected youth audiences under 35%. Indeed, studio documents that provided both actual and estimated audience demographics indicate that some ads aired on programs with actual audiences over 35% that had been projected to have audiences under 35%. Although it is not possible to predict the composition of the actual audience that will view a program, when studios advertise on programs with an estimated youth audience approaching 35%, it is likely that they will exceed that threshold from time to time.

It is also possible that audience data for some of these programs on the precise dates ads aired would indicate youth audience shares below 35%. At least some of the programs, such as *Jackass*, *Road Home*, and *106<sup>th</sup> & Park*, would very likely have been projected to have youth audiences above 35%, however, because the programs and/or the day part and channel on which they are aired perennially reach an audience over 35%. See note 25, *infra*.

25. The Commission's television monitoring suggests that at least five movies were advertised on programs with a youth audience of 35% or greater. For example, ads for MGM's *Original Sin* appeared on *Jackass*, *WWF Smackdown*, and *Drew Carey*; Sony's *Brother* on *106<sup>th</sup> & Park*, *Jackass*, and *Sunday Night Heat*; Sony's *Baby Boy* (repeatedly) on *Jamie Foxx*, *WWF Smackdown*, and *Sunday Night Heat*; 20<sup>th</sup> Century Fox's *Kiss of the Dragon* on *The Simpsons* (repeatedly), *Fresh Prince*, *Moesha*, *Jamie Foxx*, *Jackass*, *Home Improvement*, and *Drew Carey*; and Warner Bros.

percentage during the networks' early morning day part. Data are for shows airing more than once in the same time period.

28. These were the top ten Nielsen-ranked programs in terms of the number of viewers 2-17 years old. Of the top ten syndicated weekday programs based on the number of viewers 2-17 years old, only three have a youth audience share over 35%.

29. As noted in n.20, *supra*, the three studios that submitted documents to the Commission for this report used television demographic data for people 18 and above. Teens age 17 make up approximately 1.4% of the U.S. population, *see* Resident Population Estimates of the United States by Age and Sex: April 1, 1990 to July 1, 1999, with Short-Term Projection to November 1, 2000 (Population Estimates Program, Population Division, U.S. Census Bureau), and make up a slightly larger percentage of the television viewing audience. A program with a 35% under-18 audience would have a lower percentage of under-17 viewers. The size of the difference would vary depending on the particular program.

30. These programs aired in December 2000. It is likely that parents watching these programs with their children make up a portion of the audience for these programs, reducing the percentage of children in the measured audience.

31. These programs were identified in another studio's media plan, for a PG-13 film, as "Teens" programs.

Even studio marketing plans that expressly target teens advertise on programs with youth audience shares below 35%. This was evident from the media plans examined by the Commission for the September 2000 Report which found that youth-targeted films were primarily advertised th

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35. In April, the Commission also reported it found no ads for R-rated films in youth-oriented publications. April 2001 Report at 6.

36. Demographic data are not available on radio audiences for children under age 12. Nevertheless, some stations have audiences with 35% of the listeners in the 12-17 age group, and in some cases almost 50% of the audience in that age group.

37. Although that studio apparently did in fact advertise during restricted day parts on some occasions, its compliance with that policy in general suggests that those placements were made mistakenly. On other occasions, when the studio's tracking indicated that some radio buys were proposed for restricted times, those buys were not made.

38. Some of these PG-13 films were targeted at audiences as young as six years old. September 2000 Report at 15.

39. September 2000 Report at 16.

40. All but one MPAA member, plus Dreamworks, agreed that they would request that theaters not show trailers for R-rated violent movies before G- or PG-rated films. *See Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File. Paramount Pictures, while not adopting the industry policy with respect to trailers before PG-rated films, did agree to request theaters not to show trailers for violent R-rated films before G-rated films. NATO pledged that each member theater would not show such trailers before any G or PG film, and only before PG-13 films if the trailers are consistent in tone and content with the feature film.

41. The few violations of the pledge not to run trailers for R-rated films before G- or PG-rated feature films appeared to be the result of decisions by individual theater operators. A few NATO member theaters showed trailers for R films before PG-13 films that were arguably inconsistent in tone and content with the feature film.

42. The Commission contracted with TES, a commercial trailer checking service. It checked 125 theaters across the country showing *Tomb Raider*, 128 showing *Atlantis*, and 85 showing *Princess Diaries*. The check took place June 15-17 and August 3-5, 2001. *Princess Diaries* was the only major G-rated movie release during summer 2001.

43. The Commission checked more theaters and more screens than had been tested previously. It found trailers for five PG-13-rated films shown before the G-rated *Princess Diaries*; most of these films' trailers were shown in only a few theaters. These trailer placements do not violate either the MPAA's or NATO's commitments. It should be noted that incompatibility of trailers with feature films – whether trailers for R-rated films before PG-13 features or trailers for PG-13 rated films before PG- or G-rated features – does give rise to complaints from parents. *See, e.g.*, Cindy Richards, *Terror in the Trailers*, Chicago Sun-Times (July 25, 2001) at 37 (suggesting that exhibition of trailer for PG-13-rated *Planet of the Apes* before PG-rated *Shrek* was inappropriate).

44. Showing trailers for R-rated films before PG-13-rated features does not violate MPAA commitments, and only violates NATO's pledge if the two films' tone and content are inconsistent. Theaters frequently preview R-rated movies before PG-13 films.

45. One studio requested that a trailer for an R-rated film be shown before one PG-rated feature.

46. The NATO and MPAA initiatives do not forbid the exhibition of trailers for films *likely to* garner an R-rating – but not yet rated – before G or PG films. Yet, only one trailer for an unrated film that was later rated R was shown before a G- or PG-rated movie – a trailer for Universal's then-unrated *American Pie 2* was shown before PG-rated *Atlantis* at one theater. *American Pie 2* was not rated R on the basis of violent content, however.

47. September 2000 Report at 17. The Commission found that street marketing teams distributed items at places popular with teens, such as mal

56. In addition to the 17 magazines with a substantial youth audience that were reviewed to assess ad placement, the following seven pub



77. *See id.*, Table I.

78. In the September 2000 Report, the Commission, as it has done for the other reports, applied the age limit (17) of the movie and electronic game industries' self-regulatory programs to its analysis of ad placements for music recordings. Its review of marketing plans for 55 recordings revealed detailed plans to market the recordings in media that would reach a majority or a substantial percentage of teens. The plans for 15 of the 55 explicit content recordings expressly identified teenagers





at 11 (Annenberg Pub. Policy Ctr. U. Pennsylvania) (2000) (indicating that over 50% of children ages 10-17 watched MTV each year from 1996 through 1999)); Viacom Form 10-K for the year ending Dec. 31, 1999 at I-3 (“MTV targets viewers from the ages of 12 to 34” and “The Box Network targets viewers from the ages of 12 to 34”). According to an interview with Curtis Gadson, Senior VP of Entertainment Programming for BET, the core BET audience is viewers between 12-34 and this group is its primary target. Barry Garron, *Novel Ideas*,

*People*, and *Thrasher*. WEA ran ads in *Metal Edge*, *Right On!*, and *YM*.

95. See Appendix C, Section III for demographic information from Nielsen/NetRatings.

96. September 2000 Report at 29.

97. [www.riaa.com/Parents-Advisory-5.cfm](http://www.riaa.com/Parents-Advisory-5.cfm).

98. See April 2001 Report at 5-18. In February 2001, the RIAA informed the Commission that its members were focusing on compliance with the requirement that parental advisories appear in print and Internet advertising, but that because print advertising must be reserved far in advance, the complying print disclosures could take several months to appear. In March, the RIAA stated it was considering a recommendation that *all* advertising for explicit content recordings (*e.g.*, television, radio, and artist Internet sites) provide an advisory. See Letter from Mitch Glazier, Senior V.P., Recording Industry Ass'n of America, to FTC staff (undated but faxed Mar. 28, 2001) [hereinafter *RIAA March 2001 Letter*], at 4. In addition, the National Association of Recording Merchandisers ("NARM") supported formulating a recommendation for the inclusion of a standardized parental advisory in radio advertising for explicit content recordings. See Letter

104. All of the companies require that television spots for labeled albums contain the parental advisory label or text regarding the explicit content. One company requires radio ads for labeled albums to contain a clear tagline “Parental Advisory, Explicit Content. Edited Version also available” (if in fact an edited version is available); another company is considering a similar disclosure: “Parental Advisory – Contains Explicit Content” for inclusion in its radio ads.

The companies also have developed written procedures for the clear and consistent use of a parental advisory in print advertising for explicit content recordings. One company specifies that the advisory must be “clear and conspicuous” in print ads. The other two companies adopted specific size requirements for the parental advisory label or advisory text in their print advertising. All the companies require the advisory label or advisory text to appear in all outdoor or “street” advertising (*e.g.*, billboards, bus shelters, and smaller posters) that mention a labeled album or utilize its artwork. Two companies require an advisory at point of purchase and other retail marketing materials.

     The companies also require clear advisories in online promotions. One company stated that artist Web sites that it owns or controls will include a parental advisory on pages that include cover art images or sound samples.

105. One company requires .001 seconds of silence before the start of a recording.

109. *CosmoGirl, Metal Edge, Right On, Rolling Stone, Spin, Seventeen, Teen, Teen People, Thrasher, Vibe, and YM.*

110. BMG ran 17 ads for explicit content recordings: 12 with no advisory, three with an unreadable advisory, and two with a clear advisory. EMI ran six ads for explicit content recordings: four with no advisory, one with an unreadable advisory, and one with a clear advisory. Sony Music ran three ads for explicit content recordings: all with clear advisories. UMG ran 37 ads for explicit content recordings: 32 with no advisory and five with a clear advisory. WEA ran 13 ads for explicit content recordings: ten with no advisory and three with a clear advisory. Independent recording labels ran 19 ads for explicit content recordings: 16 with no advisory and three with an unreadable advisory. Music retailers ran 16 ads for different explicit content recordings: six with no advisory, seven with an unreadable advisory, and three with a clear advisory.

111. Advertisements for the following recordings contained clear and conspicuous disclosures: *One Twelve Part III, Instructions* (video), *The Saga Continues, Thug On Da Line, Project English, The Very Best of DAS EFX, Break The Cycle* (retailer ad), *Greatest Hits, Iowa, Tweekend, God Hates Us All, Strictly 4 Da Streets, What's The Worst That Could Happen* Soundtrack (retailer ad), *Miss E ... So Addictive* (retailer ad), *This Ain't A Game, Wu Chronicles Chapter II.*

112. The Commission selected the Web sites based on a listing of the top 200 albums as ranked by Billboard on June 16, 2001. The official site was the artist, band, recording label, or recording company site.

113. The RIAA states that it has clarified to its members that “the parental advisory logo and any accompanying language indicating that an edited version is available used in consumer print advertising should be ‘clear and conspicuous.’” RIAA March 2001 Letter at 3.

114. Although several recording company sites provide an advisory, many of the online advisories are still provided by retail sites. Many of the recording sites reviewed allowed a consumer to purchase an album by linking directly to a specific page on a retail site. It is these retail Web sites that often contain the improved disclosures.

115. See [www.riaa.com/Parents-Advisory-5.cfm](http://www.riaa.com/Parents-Advisory-5.cfm).

116. Best Buy provided the disclosure “parental advisory” near the picture of the cover art, but not throughout the purchasing process. CDNow at times used the terms “explicit” and “edited” next to the album cover art, but in other cases either provided no information regarding an album’s explicit content or provided this information buried several screens down, after the consumer could purchase, read about, and listen to clips from the album. Tower Records would at times use the disclosure “explicit” but more often provided the cryptic abbreviation “PA” throughout the purchasing process.

117. See September 2000 Report at 36.

118. See Appendix B.

119. *Id.* The survey collected data on whether the shoppers *saw* any sign, poster, or other information about the labeling system or the retailer's enforcement policy, not whether such information was actually posted. The NARM recently told the Commission that music retailers are renewing efforts to ensure that information about the advisory is posted in stores.

120. September 2000 Report at 45.

121. The industry's Advertising Code of Conduct ("AdCode") (on file with the Commission) prohibits the marketing of games to children under the age designated in the rating. The AdCode recently was revised, and some of the revised provisions became effective March 14, 2001. Other provisions, such as the guidelines for marketing M-rated games in television, print, and Internet media, became effective in November 2001. In this report, citations to "AdCode" refer to the unrevised AdCode provisions that were in effect at the time the Commission compiled information for this report. Where relevant, the revised AdCode provisions are referred to and cited as "Revised AdCode."

122. IDSA explained the different percentages used for print and television advertising as follows:

The distinction between the 45% under 17 audience allowed for print publications and the 35% under 17 audience allowed for TV advertising recognizes that the most effective and in some cases the **only** cost-effective way to reach **adult game enthusiasts** is through magazines that have a substantial adult readership along with some younger readers. The 35% demographic for TV advertising is utilized because TV is a mass medium and does not present the same issues when seeking to reach an adult audience.

*See Guidelines Addressing Marketing of Mature Rated Games to Persons Under 17, attached to Letter from Douglas Lowenstein, President, IDSA, to FTC staff (Mar. 225mj3.60ugv*

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124. The revised AdCode calls for a 45% threshold for print advertising. Revised AdCode, *supra* note 121, at 28.

125. The marketing plans for five games indicated that radio promotions had been planned. The Commission was not provided with sufficient information – namely, radio stations and daypart advertising times – to determine whether these promotions were targeted to a substantial under-17 audience.

126. The media plan for one of these games went through numerous iterations. The first version indicated “M12-17” as the primary target and listed teen-popular programming such as *That 70’s Show*, *Malcolm in the Middle*, *Simpsons*, *Titus*, *Smackdown*, *Xena*, and programming on MTV. The fifth version, which post-dated the Commission’s September 2000 Report, still listed M12-17 as the primary target, but shows like *Malcolm in the Middle*, *Simpsons*, *King of the Hill*, and *Titus* no longer appeared on the plan. The seventh version listed the primary target as “M18-34,” with no mention of M12-17. However, with the exception of XFL Football and the Fox show *Freakylinks*, the shows listed on the plan were identical to the shows on the previous plans which had listed M12-17 as the primary target.

127. Revised AdCode, *supra* note 121, at 17.

128. Although plans for four of these console games predate the September 2000 Report, the Commission confirmed that ads for all of these games ran in the media outlined in the marketing plans.

129. In preparing the chart, Rating Pending (“RP”) ads were included in the rating category that the game later received. The IDSA’s AdCode provides that if “a title has a ‘Rating Pending’ status, companies must use their best efforts to place ads for that title only in publications or outlets whose audiences would be appropriate for the content portrayed in the title.” Revised AdCode, *supra* note 121, at 15. “Such efforts should be based on the companies’ good faith expectations regarding the likely rating.” *Id.* The chart does not include 24 ads for games that as of October 2001 had not yet received their final rating.

132. The Commission examined Internet audience statistics over a three month period, May through July 2001. According to Nielsen//NetRatings data, 2- to 17-year-olds comprised about 20% of the general Internet population during this time period. In the chart below, percentages indicate the portion of the Web site’s audience between age two and 17, unless a different age range is indicated in parentheses.

Web Site	May 2001 (2-17)	June 2001	July 2001
avault.com	28%	26% (12-17)	20% (12-17)
cdmag.com	32%	N/A	N/A
gamespot.com	33%	31%	38%
gamespy.com	32%	36%	31%
ign.com	43%	46%	47%
ugo.com	23%	39%	33%

A plan for a T-rated game, which was targeted to boys 12 to 17, specifically noted that ign.com provides “[s]trong delivery” against that target audience.

133. Revised AdCode, *supra* note 121, at 28.

134. A



the game had subsequently received a rating; or f) used rating icons that were substantially smaller than the size required by ESRB regulations. These regulations do not require advertisements for multiple titles to include descriptors (although the Commission recommended that all ads display both the rating and the descriptors). Those mult

148. AdCode at VII.B, D. The provision f

the bottom of the screen or putting a lot of unrelated information – either words or graphics – between a claim and a disclosure. See Federal Trade Commission Business Education Publication, *Dot Com Disclosures: Information about Online Advertising* (May 2000), at 7.

153. Take 2 Interactive's *Green Berets* site had very prominent descriptors, displayed in large black letters inside a white box that is larger than, and next to, the rating icon.

154. In the context of hyperlink disclosures, the Commission has recommended that the hyperlink be labeled to convey the importance, nature, and relevance of the information to which it links. A hyperlink should give consumers a reason to click on it. See *Dot Com Disclosures*, *supra* note 152, a

159. These five games were Rockstar Games' *Max Payne*, Sony's *Syphon Filter 2* and *Extermination*, and Electronic Arts' *Alice* and *Clive Barker's Undying*. The warnings preceding the two Sony sites were particularly prominent, featuring a large rating icon and box with content descriptors and requiring visitors to certify that they are 17 or older before entering the sites.

160. These games were Capcom's *Onimusha: Warlords* and *Heavy Metal: Geomatrix* and Blizzard Entertainment's *Diablo II*.

161. For the September 2000 Report, the Commission's spot-check of five online retailers' Web sites revealed that the sites generally indicated that the product had a Mature rating in a place the user would likely see it, either by displaying the "M" icon or the word "Mature." Only one game retailer provided content descriptors. For the April 2001 Report, the Commission's spot-check of six online electronic games retailers' sites found that most displayed a game's rating on the product specific page, but only a few provided descriptors for the games surveyed.

162. Amazon.com and ToysRUs.com use the same Amazon.com site. For the purpose of this report, they will be referred to separately.

163. This percentage could be lower, depending on how a visitor locates a game on a retail site. If, instead of searching a site for a particular game title, a visitor searches for a list of all games sold for a particular game system (*e.g.*, PC, Playstation 2) and classified under a particular genre (*e.g.*, Action/Adventure, Shooter), the visitor usually is taken to a "browsing" page that displays a list of game titles. In the review conducted for this Report, none of the retailers displayed ratings on their checkout pages, while all of the retailers allowed visitors to go directly from the browsing pages to the checkout pages, bypassing the product-specific pages where rating information usually was provided. Thus, a visitor to a retail site like BestBuy.com searching for a game by category – as opposed to by the specific title – could purchase a game without ever having to view a game rating.

164. BestBuy.com was the only retailer that did not use the ESRB rating icon, instead displaying the words "ESRB Rating: M = Mature" in the text next to the cover art for the game.

165. Amazon.com and ToysRUs.com had links to rating information from their browsing pages as well. None of the sites imposed an age-based restriction on purchasers of M-rated games.

166. However, the industry could improve its practices by requiring the disclosure of content descriptors in television advertising (now done routinely by advertisers of motion pictures), by requiring that descriptors be more clearly disclosed on industry Web sites, and by increasing compliance with new disclosure requirements when games are not yet rated.

167. *See supra* note 145.

168. This also suggests some improvement since the Commission's September 2000 Report, where the Commission found that 81% of the underaged shoppers were able to purchase an M-rated game at the four retailers that had adopted the "Commitment to Parents" program at the

time of the Commission's shop.

169. In addition to permitting credit card purchases, one other retailer permitted purchases by gift card, and two other retailers permitted purchases by gift card, personal check, or money order, potentially making it easier for children under 17 to make an online purchase of an M-rated game.

170. Although closely connected with the ToysRUs.com Web site, Amazon.com did not offer this intermediate stop in the "Kid-Safe Zone."

171. *See* Appendix C (identifying programs monitored by the Commission). The monitored programs had a substantial percentage of young viewers, or had a large number of youth viewers.



it has the absolute right to market music to chi

## **Appendix A**

### **SELF-REGULATORY RATING SYSTEMS**

This Appendix provides a brief overview of the ratings and labels applied by the self-



absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; one use of the harsher sexually derived words may be heard.

**R Restricted - Under 17 requires accompanying parent or adult guardian (age varies in some locations).**

This signifies that the rating board has concluded that the film rated contains some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sex or its portrayal of drug use.

**NC-17 No one 17 and Under Admitted.**

This signifies that the rating board believes that most American parents would feel that the film is patently adult and that children age 17 and under should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, or scenes of excessive violence. The NC-17 designation does not, however, signify that the rated film is obscene or pornographic.<sup>2</sup>

Each film assigned a rating other than G also receives a brief explanation for the film's rating, *e.g.*, "Rated R for terror, violence and language," or "Rated PG-13 for intense sci-fi violence, some sexuality and brief nudity."

## **II. MUSIC RECORDINGS**

The Recording Industry Association of America ("RIAA") created a parental advisory program in 1985. Under the program, music recordings that contain explicit lyrics, including strong language, are labeled with the following:

**PARENTAL  
ADVISORY  
EXPLICIT CONTENT**

## ENDNOTES

1. See September 2000 Report, Appendix D, for a detailed history of the entertainment media industries' self-regulatory systems.
2. See [www.filmratings.com](http://www.filmratings.com) (visited October 29, 2001).
3. See Memorandum from the RIAA to the Federal Trade Commission, *The Voluntary Parental Advisory Program: What It Is and What It Is Not* (July 2000), at 8 (on file with the Commission).
4. The parental advisory label may appear on an album with only a few expletives and no other explicit content, as well as on an album with repeated references to graphic violence and/or sex.
5. Before January 1, 1998, the Everyone category was called the "Kids to Adult" or "K-A" category. ESRB *Video & Computer Games Ratings, About Ratings and Descriptors*. [www.esrb.org/esrb\\_about.asp](http://www.esrb.org/esrb_about.asp) (visited October 29, 2001).
6. *Id.*
7. The ESRB defines the rating categories as follows:
  - *EC* titles have "content that may be suitable for children ages three and older and should not contain any material that parents would find inappropriate."
  - *E* titles have "content that may be suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. . . . They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language."
  - *T* titles have "content that may be suitable for persons ages 13 and older. Titles in this category may contain violent content, mild or strong language, and/or suggestive themes."
  - *M* titles have "content that may be suitable for persons ages 17 and older. These products may include more intense violence or language than products in the Teen category. In addition, these titles may also include mature sexual themes."
  - *AO* titles have "content suitable only for adults. These products may include graphic depictions of sex and/or violence. Adults Only products are not intended to be sold or rented to persons under the age of 18."
  - *RP* titles are awaiting a final rating from the ESRB.
8. This descriptor means that the game contains "[a]nimated/pixilated or cartoon like depictions of blood." *Id.*

9. This descriptor means that the game contains “depictions of blood.” *Id.*
10. This descriptor means that the game contains “depictions of mutilation or dismemberment of body parts.” *Id.*
11. This descriptor means that the game “[c]ontains scenes depicting activities characterized as slapstick or gross vulgar humor.” *Id.*
12. This descriptor means that the game contains “[s]cenes or activities, which depict characters in unsafe and/or violent situations.” *Id.*
13. This descriptor means that the game contains “[s]cenes or activities, which involve violent acts.” *Id.* Since the publication of the September 2000 Report, the ESRB has discontinued the use of other violence content descriptors, including “Mild

## **Appendix B**

### **MYSTERY SHOPPER SURVEY**

This Appendix sets out available data on the extent to which the entertainment industries restrict children's access to R-rated movies, explicit-labeled music recordings and M-rated games at the retail level. It is the retailers who implement any sales restrictions included in the self-regulatory rating and labeling programs.<sup>1</sup>

#### **The 2000 Mystery Shopper Survey and Industry Response**

For the September 2000 Report, the Commission conducted a nationwide undercover survey of stores and theaters, or "mystery shopper" study, to collect data on the extent to which retailers prevent children from purchasing entertainment products that have been rated or labeled by entertainment producers as potentially inappropriate for children. The Commission, through a contractor, recruited 13- to 16-year-olds across the country to attempt, unaccompanied by a parent, to purchase movie tickets, music, or electronic games at 1,158 theaters and stores.

The 2000 survey found that 85% of the teenage shoppers were able to buy M-rated games, and 85% were able to buy explicit-labeled recordings. Less than 17% of the music and game store clerks (16% and 15%, respectively) asked the ages of the children attempting to purchase the products. Movie theaters were much more lik

policies restricting sales to those under 17.<sup>2</sup> The Video Software Dealers Association (“VSDA”) designated the month of June 2001 as “Ratings Awareness Month,” and encouraged retailers to review their ratings education and enforcement policies to ensure compliance with VSDA’s standard that R-rated movies and M-rated video games not be sold or rented to persons under age 17 without parental consent.<sup>3</sup> VSDA also recently started a program to certify retailers that comply with this standard.<sup>4</sup>

For music recordings, the industry’s labeling program provides no age-based guidance, and the decision to restrict sales based on age is left to the retailer’s discretion.<sup>5</sup>

### **The 2001 Mystery Shopper Survey Methodology**

To assess changes in sales practices at the cash register and box office since the September 2000 Report, the Commission conducted a second “mystery shopper” survey. Using the same contractor, Second to None, the Commission recruited 13- to 16-year-olds across the country to visit 900 theaters and stores selling entertainment products. During July and August 2001, the shoppers attempted to purchase 300 tickets to R-rated movies, 300 explicit-content labeled music recordings, and 300 “Mature” or M-rated electronic games.

The contractor recruited “mystery shoppers” from 46 states and the District of Columbia.<sup>6</sup> Each teenage shopper visited one retail location for one or more of the entertainment products<sup>7</sup> and attempted to purchase either a ticket to an R-rated movie, an explicit-content labeled CD, or an M-rated electronic game.<sup>8</sup> Parents transported the children to the store or theater but were instructed not to accompany the children during the transaction. The contractor required shoppers to submit proof of age and verification for completed purchases by submission of a receipt.<sup>9</sup> About half of the shoppers (49%) were male; half (50%) were 13 or 14 years of age, and half were 15 or 16.

After the visit, the shopper completed a questionnaire on the contractor’s proprietary Web site.<sup>10</sup> The questionnaires focused on three substantive questions:

1. Was there a sign, poster, or other information to inform customers of the rating/advisory system or the store/theater’s policy on rating/advisory enforcement?
2. Was the child able to buy the product or admission ticket?

3. Did the cashier or clerk ask the child's age before purchase?

The results of the survey are reported in Table 1 below.

**Table 1: Total Frequencies and Percentages of Yes and No Responses to Each of Questions 1, 2, and 3 for Each Product Line.**

Product		Movies		Music		Games	
		Shoppers (#)	Percent	Shoppers (#)	Percent	Shoppers (#)	Percent
Q1 Was rating information posted?	NO	123	41	265	88	223	74
	YES	177	59	35	12	77	26
Q2 Was the child able to make a purchase?	NO	157	52	31	10	67	22
	YES	143	48	269	90	233	78
Q3 Did an employee ask the child's age?	NO	183	61	270	90	238	79
	YES	117	39	30	10	62	21

As detailed below, the data show that theaters, more consistently than game and music retailers, displayed rating information, asked young shoppers their ages, and restricted purchases. The data also show that music retailers were the least likely to provide information, check shoppers' ages, and restrict purchases. The electronic game retailers improved their performance from last year in all three areas, but remained well below the performance levels of the movie theaters.

### C. Availability of Rating Information at Stores and Theaters

At theaters, 59% of the shoppers reported seeing posters, signs, or other information about the rating system. At electronic game retailers, the figure was 26%, and at music retailers, 12%.<sup>11</sup> The improvement of the game retailers from the prior survey was the only statistically significant





electronic game retailers that have announced specific commitments to enforce purchase restrictions<sup>22</sup> had slightly better compliance than

### Mystery Shopper Survey Questionnaire

1. Item child attempted to purchase  
\_\_\_\_ R-rated Movie Ticket  
\_\_\_\_ M-rated Video Game  
\_\_\_\_ Music Recording with Parental Advisory
  
2. Name of movie, music recording or video game child attempted to purchase (For movies, provide title; For music recordings, provide artist's name and title; For video games, provide manufacturer name and title): \_\_\_\_\_
  
3. Did you see any sign, poster, or other information to inform customers of the rating/advisory system or the store/theater's policy on rating/advisory enforcement?
  
4. Was the child able to buy the product?
  
5. Did the employee at the store/theater ask your child's age?
  
6. Purchase Comments (Describe any interaction that occurred between your child and store/theater employees. For movie theaters, please indicate whether the movie theater was showing only R-rated movies at the time of the evaluation.)
  
7. Name of store/theater visited: \_\_\_\_\_
  
8. City/State where store/theater is located: \_\_\_\_\_
  
9. ZIP Code where store/theater is located: \_\_\_\_\_
  
10. Number of screens at the movie theater (Answer N/A if the evaluation did not occur at a movie theater).



**Was the shopper asked his/her age?**




**2. Table of Mystery Shopper Results**



### 3. Table of Pur






1. Some type of retailer enforcement currently is an element only of the movie and electronic game industry self-regulatory systems. The music recording industry does not require that stores restrict sales of explicit-content labeled albums to children under a certain age. *See* September 2000 Report Section V.C.

11. Note that differences cited in the analysis of the mystery shopper data are statistically significant differences, with  $p < 0.05$ , unless otherwise noted. Rating information may have been posted in additional stores, but not noticed. These data, however, are consistent with the data obtained in the 2000 survey.
12. In the 2000 survey, the figure for game retailers was 12%; for theaters, it was 54%; and for music retailers it was 12%.
13. The figure in the 2000 survey was 54%.
14. The 2000 survey showed 85% of the shoppers were able to buy an M-rated game.
15. The earlier survey showed shoppers were able to purchase explicit-content labeled music at 85% of the stores.
16. Only 39% of movie cashiers, and 10% of music store clerks, asked shoppers' age in this survey, compared to 48% and 16%, respectively, in last year's survey.
17. This improvement was marginally statistically significant ( $p = 0.066$ ).
18. So-called "major" chains include only the largest theater circuits and retailers in each industry. The "non-major" category includes independent stores as well as chains that are not among the



23. Seventy-nine of 109 shoppers were able to purchase successfully at these stores; 35 (32%) noted information about the rating system in the store, and 27% were asked their age. Compared to the other stores shopped, rounding to two decimals, these retailers were more likely to have an advisory that is noticed ( $p=0.05$ ) and more likely to ask the age of the shopper ( $p=0.05$ ). There is weak evidence ( $p=0.1$ ) that these retailers were stricter in enforcing purchase restrictions as well.

24. Girls appeared to be somewhat more successful in purchasing tickets to R-rated films than boys, but the difference was not statistically significant ( $p=0.062$ ). Girls were significantly more successful than boys in purchasing movie tickets in the 2000 survey.

## Append



<b>Jackass</b>	530	1400	38	MTV
<b>Total Request Live</b>	344	593	58	MTV
<b>WWF Livewire</b>	335	1150	29	TNN
<b>WWF Superstars</b>	292	1113	26	TNN
<b>106th &amp; Park</b>	235	501	47	BET
<b>Direct Effect</b>	177	354	50	MTV

The syndicated programs monitored included those set out in Table B, as well as *The Simpsons*. Demographic data are not available for that program, but it is perennially ranked as one of the most popular programs for youth.<sup>3</sup>

**Table B: Syndicated Television Programs Monitored**

<b>Program</b>	<b>Average Audience Age 2-17 (thousands)</b>	<b>Average Total Audience (thousands)</b>	<b>Audience Under 18 (%)</b>	<b>Network</b>
<b>Friends</b>	1569	7897	20	Syndicated
<b>Sabrina the Teenage Witch</b>	1161	2451	47	Syndicated
<b>Drew Carey</b>	1093	4782	23	Syndicated
<b>7<sup>th</sup> Heaven</b>	928	2346	40	Syndicated
<b>3<sup>rd</sup> Rock from the Sun</b>	905	4333	21	Syndicated
<b>Home Improvement</b>	819	3122	26	Syndicated
<b>Spin City</b>	765	3847	20	Syndicated
<b>Moesha</b>	756	1967	38	Syndicated
<b>Jamie Foxx</b>	628	1962	32	Syndicated
<b>Sister, Sister</b>	569	1407	40	Syndicated
<b>The Nanny</b>	448	2020	22	Syndicated

## B. “First Airing” Data for Television Advertisements

To supplement the monitoring data described above, the Commission obtained “first airing” data from contractor Video Monitoring Services (“VMS”) to gain additional information about where industry members placed their advertisements. The first airing data provide, among other information, the date, time, station, and program on which each different advertisement for a violent R-rated movie, explicit content recording, or violent M-rated game first aired. These data document only the first showing of an advertisement, and provide no information about additional airings of the ad on that program or others.

The Commission reviewed first airing data for the period January 2001 to early August 2001. Focusing on advertisements initially shown on programs airing between 4:00 p.m. and 9:00 p.m., the Commission found that 28 ads<sup>4</sup> for 15 violent R-rated films premiered on monitored programs – identified in Tables A and B – or on other programs with substantial teen audiences. <sup>scdm</sup> ~~secret~~


Boot Camp	1484	11043	13%	FOX
Malcolm in the Middle (Wed.)	1405	9581	15%	FOX
Titus	1187	8530	14%	FOX
WWF Smackdown	1182	6942	17%	UPN
Grounded for Life	1159	7734	15%	FOX
That '70s Show	1118	9415	12%	FOX

**Table D: Top Ten Cable Programs in Terms of Youth Audience Size (Age 12-17)**

<b>Program</b>	<b>Average Audience 12-17 (Program)</b>			








Atlanta Journal-Constitution	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Boston Globe	6/8/01, 6/15/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Chicago Sun-Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Chicago Tribune	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Dallas Morning News	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Los Angeles Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
New York Post	6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01
<b>Newspapers (Table H continued)</b>	<b>Issues Reviewed (Table H continued)</b>
New York Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Newsday	6/8/01, 6/22/01, 7/6/01, 7/20/01, 7/27/01
The [Cleveland] Plain Dealer	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
San Francisco Chronicle	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
San Jose Mercury News	6/1/01, 6/8/01, 6/22/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Seattle Post-Intelligencer	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Seattle Times	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01
Washington Post	6/1/01, 6/8/01, 6/15/01, 6/22/01, 6/29/01, 7/6/01, 7/13/01, 7/20/01, 7/27/01

### **C. Demographics of Magazines in Music Marketing Plans**

Table I sets out the demographics for certain youth-oriented magazines in which music producers planned to advertise music recordings, according to the marketing plans submitted.

**Table I: Demographics for Youth-Oriented Magazines for Planned Music Recording Advertisements**

Magazine	Demographic Data
Big Brother	Average age: <b>16</b> Median age: <b>18</b>
Black Beat	Female median age: <b>15</b> Male median age: <b>18</b>
Heckler	


gamespot.com	33%	31%	38%
gamespy.com	32%	36%	31%
getmusic.com	35%	37%	37%
ign.com	43%	46%	47%
lturf.com	46%	55%	36%
launch.com	31%	29%	32%
limpbizkit.com	51%	69%	N/A
mtv.com	42%	41%	46%
music.com	48%	46%	48%
rollingstone.com	26%	31%	35%
seventeen.com	63%	66%	71%
teenpeople.com	46%	72%	69%
ugo.com	23%	39%	33%
winamp.com	28%	33%	35%
wwf.com	29%	37%	36%

1. The syndicated programs aired in New York City on Fridays on Channels 9 and 11 from 6 to 8 p.m. and Channel 5 from 5 to 8 p.m. from June 1 to July 20, 2001, and in Los Angeles on Mondays on Channels 5 and 11 from 5 to 8 p.m. from June 4 to July 23, 2001.
2. *WWF Smackdown* airs between 8:00 p.m. and 10:00 p.m.
3. See Appendix I to the September 2000 Report at 1; Appendix A to April 2001 Report at A-4 and n.7. Although older episodes of *The Simpsons* are actually no longer in “barter syndication,” the term is applied here to distinguish older episodes from new ones.
4. Where a particular motion picture or recording appears two or more times in the first airing data, different ads for that film or recording initially aired on those programs.
5. Using Nielsen data, the Commission identified other programs with substantial youth audiences in addition to those monitored. For motion pictures, these included *Road Home* on MTV (50% under 18), *Making of the Fast [and the Furious]* (39%), *Buffy the Vampire Slayer* (29%), and *WCW Thunder* (22%).
6. For music recordings, these included *Daria* (53% under 18) and *Celebrity Deathmatch*

td H

