

**TESTIMONY OF DR. ARTHUR POBER
PRESIDENT OF
THE ENTERTAINMENT SOFTWARE RATING BOARD
BEFORE THE COMMISSION ON CHILD ONLINE PROTECTION
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Good afternoon, Mr. Chairman, and thank you for the opportunity to appear before your commission as it examines technologies and methods that may reduce online access by minors to harmful materials within the meaning of the Child Online Protection Act ("COPA"). My name is Dr. Arthur Pober and I am President of the Entertainment Software Rating Board ("ESRB"). Prior to establishing the ESRB, I was the Vice President and Director of the Children's Advertising Review Unit ("CARU"), the self-regulatory arm of the Council for Better Business Bureaus. I am also an educator and served as principal of the Hunter College Elementary School as well as Director of Special Projects for 26 elementary, and 11 intermediate schools in New York City. Today I will be speaking specifically about ESRB's online rating and labeling methods, as that is my area of expertise. It is an honor to testify before you today.

The ESRB is an independent, self-regulatory entity that provides comprehensive support services to companies in the interactive entertainment industry. Established in 1994, the ESRB is the nation's leading non-profit, entertainment software rating body. Although originally charged with developing a standardized rating system for entertainment software, since its inception the organization has grown proactively in protecting consumers and anticipating the evolving industry. Today – after rating over 6,500 game titles and having been praised by Senator Joe Lieberman as the "most comprehensive rating system of any entertainment medium in this country" – the ESRB has evolved into a dynamic and effective self-regulatory organization. This organization has established itself as one of the preeminent institutional models for effective and meaningful self-regulation for interactive entertainment. We now provide services not only for rating software titles, but also for rating websites and online games, for ensuring online privacy protection, and for reviewing advertising created by the interactive entertainment industry.

ESRB Interactive ("ESRi") is the division within the ESRB that provides the ratings for websites and online games in conjunction with online oversight and enforcement mechanisms. The mission of ESRi is to provide parents, web consumers, and the online community-at-large, with objective information that facilitates informed decisions regarding Internet use and online content. ESRi issues ratings that provide information on the age appropriateness of a site and information on the site's content. It is the only interactive entertainment rating service that does both. There is no cost to the consumer. Publishers pay a nominal fee to obtain ratings for sites.

ESRi does not in any way restrict access to games or websites. Like other effective and meaningful rating mechanisms, the ESRB operates independently to realize its goal of affording objective information, rather than dictating taste or censoring content. The ESRB and ESRi ratings are designed to give consumers information about the content

of an interactive video, website, online game, or computer entertainment title and for which ages it is appropriate. Our goal is to provide information to consumers so that they can apply their own values, experiences, and standards to determine what kind of interactive entertainment is and is not appropriate for their home. Choices about interactive entertainment should be no different than the choices made about films, music, TV shows, and books. To make the system work best for the consumer, the ESRB has invested significant time and money into numerous educational initiatives, public relations campaigns, and also maintains a website (www.esrb.org) and a toll-free line (800-771-ESRB), where consumers can get the most current ratings for each product we have rated. Currently, our site receives an average of one-million hits per month, and our toll free line averages over one-thousand calls per day.

How ESRBi Works

Interactive ratings are generated by raters, randomly selected from a demographically diverse pool, who independently review the submitted materials and the site and generate a consensus rating based on ESRBi rating criteria. ESRBi raters have no ties to the interactive entertainment industry and are trained intensively in evaluating interactive entertainment content. After an interactive rating has been issued the site is monitored periodically to ensure that the constant areas remain unchanged and/or that the rating is accurate.

If an entire website is rated, the ESRBi symbol is located on the home page of the site. If only a section of the website is rated, the symbol will appear on the first page of the rated web page section. If an online game or interactive arena is rated, the symbol will appear where the arena or game is accessed. There are five rating symbol categories:

- Early Childhood Interactive (ECi) – content may be suitable for ages 3 and older.
- Everyone Interactive (Ei) – content may be suitable for ages 6 and older.
- Teen Interactive (Ti) – content may be suitable for ages 13 and older.
- Mature Interactive (Mi) – content may be suitable for ages 17 and older.
- Adults Only Interactive (Ai) – content suitable only for adults.

The “i” represents websites that contain chat rooms, bulletin boards, multi-player games and/or any space that can provide open forums or interactive exchanges that result in an ever-changing environment on the Internet. Any person who is about to participate in this kind of fluid site is cautioned by the symbol “i” to be aware that the user can exchange information with other users who may have differing and/or controversial opinions, or who may influence game play.

Content descriptors, located on the rating icon, give consumers more detailed information about the product in terms of violence, sexual themes, language, and other

areas that may be of interest or concern. If there is no content descriptor, the Rating Board believes that the product does not include content that should be highlighted.

ESRBI issues ratings in two areas on the Internet:

1. Contained Areas receive the traditional ESRB ratings. These areas, known as *Finite Space Arenas*, are websites that allow no interaction between website and user. These would also include sites where users can leave messages, comments or e-mails, but there is no exchange of content or other information that could influence suitability of use. In addition, such sites do not allow users to advance to a more controversial or sophisticated level.
2. Interactive Sites receive the ESRBI icons. These areas, known as *Free Space Arenas*, provide opportunities for users to engage in an interactive experience. These may take the form of an entertainment site (i.e., game) with another interactive option (i.e., bulletin boards, chat rooms, additional participants). Sites where users can influence or create content are classified as interactive and represent a *Free Space Zone* where there is less control.

Following is a step-by-step overview of the ESRBI rating process:

1. Application is submitted with either the website address, videotape of game-play, interactive software or printout of the website.
2. ESRBI reviews the application.
3. Three raters evaluate the content.
4. The raters issue a rating based on a consensus of at least two raters.
- 5a. An interactive rating with content descriptors is issued.
- 5b. If the publisher accepts the rating and descriptors, the submitting party signs the rating certificate.
- 5c. If the publisher does not accept the rating and descriptors, the publisher may edit and/or adjust the content and resubmit the website. Upon resubmission, steps 3 – 5 are repeated.

Oversight and Enforcement

Companies participating in the ESRBI rating program agree to the same Terms and Conditions letter used for ratings on packaged goods. Submitters are informed that inaccurate representations may result in the imposition of penalties, including but not limited to, the revocation of a rating, issuance of a new rating and/or the commencement of litigation. Additionally, companies are required to notify ESRBI upon making any major modifications to the content of the website.

In addition to the notice requirement, interactive and online game sites are reevaluated at least four times a year by a monitor. Each monitor is specially trained and randomly views online game sites to ensure that the companies are properly posting the rating icon. Failure to comply with ESRBi requirements may result in the imposition of penalties, including but not limited to, the revocation of a rating, issuance of a new rating and/or the commencement of litigation.

America Online Initiative

ESRBi is committed to increasing the public's awareness and understanding of the interactive rating system. We are committed to informing web users of their choice regarding what kinds of websites and interactive entertainment they and their children are exposed to. In an effort to fulfill this commitment, ESRBi has joined forces with America Online ("AOL"), the world's largest online service.

AOL now requires all games played on its service to be rated by ESRBi, and will work with others in the interactive entertainment industry to push for widespread adoption of game ratings throughout the Internet. Games rated Adults Only or not rated at all will not be available on the AOL service. AOL also requires their commerce partners, such as eToys.com and Beyond.com, to prominently display the ESRBi ratings. Additionally, AOL and AOL.com have each established an online education area with information for consumers about this new policy, including a link to the ESRB website as well as other helpful resources for parents. AOL is also developing new Parental Control functions that will let parents block their children's access to any or all games on AOL based on the ESRBi ratings.

To make our alliance with AOL most effective, ESRBi and AOL have formed a task force focused on obtaining broad support for industry-wide adoption of ratings for all online games, demos, and games editorial sites. The task force is comprised of members of the academic, business, retail (both online and traditional), governmental, and media communities. This task force will meet periodically to discuss and facilitate its mission.

Online retailers such as Blockbuster.com, Amazon.com, GameDealer.com, and ElectronicBoutique.com also carry the ESRB ratings.

ESRBi is pleased to receive support from a major entity like AOL, and we look forward to creating more alliances with other online services.

What is the relevance of traditional labeling or rating of movies, music, TV shows and video games to the Internet?

Based on consumer research done by the ESRB, we found that the traditional labeling seen on movies, music, TV shows and video games is the most easily understood and common mechanism of product information relied on by consumers. Because

consumers already trust and rely on the information contained in traditional labeling, using a variation of this system such as the ESRBi rating icons and descriptors on the Internet is the best way to inform web users about the content of certain websites and online games.

What information is available regarding parents' awareness and attitudes about Internet filtering, rating/labeling?

ESRB furthers its commitment to consumer education by distributing information about the rating system through brochures, pamphlets, print ads, retailer outreach, organizational partnerships, public relations campaigns and public service announcements.

What legislation would be most appropriate to promote awareness and effective use of filtering, rating or labeling systems?

The most important factor in promoting awareness and increasing effectiveness of rating and labeling systems is education. For example, 35 years ago the MPAA implemented the independent and effective rating system consumers rely on today. Governmental intervention was not necessary because the MPAA educated and informed consumers and industry leaders as to the importance and relevance of the rating system.

In the six years the ESRB has been in existence we have remained ahead of the curve in implementing a standardized rating system. Consumer research and education has been the foundation upon which the rating system has grown. By sharing information about the labeling system with consumers, retailers, and web publishers we have become a major force in interactive entertainment self-regulation. However, because the global electronic medium is in its nascent stage, education regarding the use of Internet rating systems is still developing. As such, the e-marketplace requires experienced and capable hands to assist it in achieving its fullest potential. The online interactive entertainment industry is highly motivated to adapt quickly to marketplace changes and employ meaningful measures that will protect consumer rights. The people and companies that deal with the industry's constant change and unique requirements are those in the best position to guide and refine its development. As all successful and responsible business people realize, consumer education and protection is an essential element of this development. An online business that cannot assist parents in protecting children from harmful content is a business that will fail.

Government regulation could well obstruct the existing market incentives that have already begun to inspire industry dedication to consumer protection. Furthermore, governmental regulations are jurisdictionally self-limited. In a global electronic marketplace, differing jurisdictions and incompatible regulations will surely generate wasteful conflicts between nations, federal and state governments, and between the states themselves. The result will certainly be the accompanying protracted litigation of choice-of-law statutes, provisions, and agreements.

The government's role should be to encourage and facilitate industry-led self-regulation. To be effective, the online industry requires speed and flexibility to self-regulate the dynamic e-marketplace. By combining adaptability with stability, self-regulatory programs led by industry and nurtured by government provide the most effective protection for consumers in the online arena.

Should government conduct, sponsor or fund research into improving filtering, labeling and rating systems?

The interactive entertainment industry has shown it is capable of researching and implementing ways to improve labeling and rating systems. In the six years the ESRB has been in existence, we have grown in response to changes in technology and consumer need. Today, ESRB provides services not only for rating software titles, but also for rating websites and online games, for ensuring online privacy protection, and most recently, for reviewing advertising created by the interactive entertainment industry. The development of these additional services came as a result of conducting thorough consumer research and having highly trained, experienced employees to implement any necessary changes to improve our methodology.

With the industry already taking on the responsibility of conducting research into improving labeling and rating systems it would be duplicative and fiscally imprudent for the government to sponsor similar research. Furthermore, the private sector is better equipped to interpret the research and implement necessary changes. Failure to do so will result in unhappy consumers thus, a failed business.

Must a filtering, labeling or rating system be international in order to be effective?

For this global medium, an international application is crucial. With the increase in online retail transactions and the advent of online gaming, in order for a labeling or rating system to be meaningful and effective, it must address the lack of international borders within the Internet. ESRB is in the process of doing just that, through various alliances in Canada, Europe, and South America.

What are the implications of filtering and labeling technologies for privacy, first amendment rights and law enforcement?

Sensitivity to issues of privacy and the First Amendment is needed in balancing the interests of consumers and web publishers. At ESRB, we believe we have struck the ideal balance. We do not restrict access to websites or online games. We do not censor or dictate taste. We merely make available effective and meaningful ratings that provide consumers with the necessary information to make an independent decision regarding whether to purchase or participate in an interactive entertainment product.

For example, companies participating in our ESRB Privacy Online program do not collect personal information from children under 13 years old. The ESRB Privacy

Online program combined with the ESRBi rating and monitoring program provide an interactive environment where parents can exercise control by deciding what content their children are exposed to.

Furthermore, participating companies that violate any element of the Privacy or ESRBi programs are subject to the imposition of penalties, including but not limited to, the revocation of a rating and /or the commencement of litigation. The ESRB rating and monitoring system carefully balance the interests of consumers and web publishers while providing for legal remedies in the event of program violations.

How do current labeling and rating systems operate?

Following is a step-by-step overview of the ESRBi rating process:

1. Application is submitted with either the website address, videotape of game-play, interactive software or printout of the website.
2. ESRBi reviews the application.
3. Three raters evaluate the content.
4. The raters issue a rating based on a consensus of at least two raters.
- 5a. An interactive rating with content descriptors is issued.
- 5b. If the publisher accepts the rating and descriptors, the submitting party signs the rating certificate.
- 5c. If the publisher does not accept the rating and descriptors, the publisher may edit and/or adjust the content and resubmit the website. Upon resubmission, steps 3 – 5 are repeated.

Oversight and Enforcement

Companies participating in the ESRBi rating program agree to the same Terms and Conditions letter used for ratings on packaged goods. Submitters are informed that inaccurate representations may result in the imposition of penalties, including but not limited to, the revocation of a rating, issuance of a new rating and/or the commencement of litigation. Additionally, companies are required to notify ESRBi upon making any major modifications to the content of the website.

In addition to the notice requirement, interactive and online game sites are reevaluated at least four times a year by a monitor. If the monitor finds anything inconsistent with the rating, ESRBi automatically changes the rating to reflect the content and sends a letter to the company notifying it of such change. If the company disagrees with the new rating, it may avail itself to the Appeals Board for a final determination. Furthermore, a trained, experienced monitor randomly views the online game sites to ensure that the companies are properly posting the rating icon. Inaccurate

representations may result in the imposition of penalties, including but not limited to, the revocation of a rating and/or the commencement of litigation.

What evidence exists regarding the effectiveness of current labeling technologies at restricting access to material that is harmful to minors as defined in COPA?

With the implementation of the AOL initiative, task force, and various retailer initiatives, minors have increasingly less access to age inappropriate information. For example, AOL will not make available on its service games deemed by ESRBi as suitable for adults only, or games not rated at all. Also, AOL is developing new Parental Control functions that will let parents block their children's access to any or all games on AOL based on the ESRBi ratings. Additionally, online retailers such as eToys.com and Beyond.com are enforcing AOL's policy.

AOL is the largest Internet service provider with over 19 million users. The fact that AOL has enough trust and confidence in the ESRBi rating system to create new policies and form a task force dedicated to increasing Internet game ratings is evidence of the effectiveness of the ESRBi rating system.

To what extent if any do such systems also have the effect of restricting access to harmless material of interest to minors?

ESRBi provides ratings in the form of labels on and throughout websites. We do not restrict access to any information. An effective rating system provides information that allows parents to make informed and educated decisions about what material their children have access to and, if they choose to, restrict and filter such information from their children.

How many labeling and rating systems are in the marketplace, and to what extent are websites labeled or rated?

ESRBi has rated 282 websites. Each of these websites may host one or several hundred online games, which are also rated by ESRBi. Additionally, each of these sites may host one or several hundred non-gaming interactive arenas also rated by ESRBi.

What prevents more widespread adoption of rating/labeling by websites and what can be done to further their adoption?

ESRBi needs the same kind of commitment from Internet service providers as it receives from AOL. ESRB became successful through the support of retailers enforcing our ratings and the same kind of support from online retailers is still needed. Our alliance with AOL and its commerce partners sets a precedent for all Internet service providers and online retailers. ESRBi is confident that our relationship with AOL will sharply increase the visibility and overall use of our interactive rating system.

Conclusion

The emergence of the Internet and electronic commerce has brought the issue of online content control to the forefront of the electronic age. In the battle for electronic survival of the fittest, the companies that thrive will be the ones that implement and maintain effective, meaningful measures that assist parents in choosing the appropriate content for their children. We believe that the ESRB Interactive program is the most complete, cost-effective and comprehensive means to achieve that goal. Backed and administered by the experience, expertise and success of established authorities in self-regulation and the Internet, ESRBi provides clarity, support and direction for providing maximum online consumer choice.

I thank the Commission for the opportunity to share these views and discuss these critical issues.