COMMENT

IT'S ALL FUN AND GAMES UNTIL SOMEONE GETS HURT: THE EFFECTIVENESS OF PROPOSED VIDEO-GAME LEGISLATION ON REDUCING VIOLENCE IN CHILDREN*

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I. INTRODUCTION

Recently, one military expert described video games as “firearms trainers at best, murder simulators at worst.” Since the infancy of the video-game industry, there has been controversy. Early critics voiced concern that video games turned children into brainless zombies. Now the critics suggest that children are turning not only into brainless zombies, but brainless zombies with a disturbing penchant for gross violence. It is estimated that 92% of children between the ages of two and seventeen play video games, and 20% of adolescents play video games compulsively. Those percentages

4. See id. at 543–55 (documenting the May 1999 Senate hearing concerning the impact of violent video games on children, especially the testimony of Lieutenant Colonel Dave Grossman).
result in a large number of violent zombies, both on the screen and glued to the controller.

With the recent controversy surrounding Grand Theft Auto: San Andreas (GTA: San Andreas), proponents of video-game regulation have begun clamoring for a change once again, specifically calling for regulation similar to the proposed Protect Children from Video Game Sex and Violence Act of 2003 (Violent Video Game Act). In June 2005, video-game players discovered a secret minigame in GTA: San Andreas. As the objective of this minigame, players attempt to engage in sexual acts with a virtual female character. The discovery of this minigame catalyzed cries from politicians and various watchdog groups for governmental regulation of the video-game industry. These cries renewed fervor over the already existing controversy surrounding violence and sex in video games.

The technology available in recent video games—allowing the game player a first-person interaction with the game’s graphical surroundings and characters—has advanced the controversy. As the reality, albeit virtual, of these new games


12. KENT, supra note 3, at 90–92 (indicating that the furor over violence in video games stretched as far back as 1976 with the release of Death Race, a car game aimed at running over “gremlins” with surprisingly human vocalizations).

increases, so too might the effect these games have on the realities and choices of their youthful players. Some current research supports a causal link between violent video games and violence in children, while other research rejects the existence of any such link.

This Comment examines how enacting the Violent Video Game Act, or a similar statute, would fail to reduce the problem of violence in children, if any problem actually exists. The Violent Video Game Act, which imposes criminal liability upon retail sellers, is an incomplete solution. It fails to remedy all of the market failures that allow exposure of violent and sexual video games to children. Specifically, the proposed legislation fails to provide for educational programs aimed at parents. Including a parental education component in the legislation would address the persistent market failure of parents allowing their children access to violent video games.

Part II of this Comment summarizes the history of the video-game controversy and examines the main complaints lodged against the video-game industry from a variety of sources. Part III analyzes the evidence supporting and refuting a causal link between violence and video games. Part IV examines the current regulatory scheme, the proposed legislation, and suggests additional provisions necessary to make any regulatory system effective. In Part V, this Comment concludes that any proposed legislation similar to the Violent Video Game Act would address a potentially nonexistent problem—violence in children attributable to video games. Furthermore, assuming a problem does exist, the Act’s costs far outweigh any prospective benefits because the Act fails to adequately address parents allowing their children to access potentially dangerous video games.

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15. See infra Part III (acknowledging the litany of evidence supporting and, on the other hand, refuting any causal link between video games and violence in children).

16. See Protect Children from Video Game Sex and Violence Act of 2003, H.R. 669, 108th Cong. sec. 3(a), § 2733 (2003) (delineating the proposed penalties for violating the Act, which are limited to retail sellers only).

17. Id.

18. See also infra Part IV.B.1 (discussing at length the market failure in which parents buy their children violent games, ignoring the possibility that the games might be harmful); cf. H.R. 669, sec. 3(a), § 2733 (penalizing only retailers and ignoring the impact parents have on the potential problem).
II. A HISTORY OF THE VIDEO-GAME CONTROVERSY

One might believe that controversy surrounding video games is novel, arising with the new, more graphically capable, sexually explicit, and violent video games. However, violent and sexual video games have been the target of cries for regulation since the inception of the industry. Recently, the cries have intensified.

Death Race was released in 1976, resulting only in a rally by political leaders for video-game regulation to curb the portrayed violence. Using the crude graphics available in the 1970s, Death Race required players to drive a car over stick-figure “gremlins” that screamed like people when run over. Tombstones replaced these gremlins, providing an additional obstacle the gamer had to avoid. The game’s original title—Pedestrian—highlights the cause for the controversy. The original title obviously indicates that the preliminary game design called for players to run over stick-figure humans, and not “gremlins” as advertised.

The controversy continued with the release of other violently and sexually themed games like Custer’s Revenge, Night Trap,

19. See, e.g., Steve Lohr, In Video Game, A Download Unlocks Hidden Sex Scenes, N.Y. TIMES, July 11, 2005, at C3 (documenting the controversy surrounding GTA: San Andreas due to the discovery of a lewd scene buried in the game’s code, playable with a simple download).


21. See, e.g., Brian D. Crecente, Gaming Industry Braces for Backlash After Raunchy Discovery in “San Andreas,” ROCKY MOUNTAIN NEWS, July 29, 2005, at 26D (illustrating that video-game controversy is alive today and has intensified with more frequent calls for regulation).

22. See KENT, supra note 3, at 90–92; see also Gonzalez, supra note 2, at http://www.gamespot.com/features/6090892/p-2.html.

23. See Gonzalez, supra note 2, at http://www.gamespot.com/features/6090892/p-2.html (describing the Death Race arcade game in detail, the turmoil surrounding it, and specifically the gremlin-human interchangeability of the onscreen characters).

24. Id.; see also KENT, supra note 3, at 90–92 (noting the disturbing similarity between the “gremlins” and humans that sparked the first real controversy about violence in video games).


26. See id. The human targets would more closely mirror the movie Death Race 2000, after which the game was modeled. Id. Death Race 2000, starring Sylvester Stallone, had the tagline, “In the year 2000, hit and run driving is no longer a felony. It’s the national sport!” Id.

27. See id. at http://www.gamespot.com/features/6090892/p-3.html (noting that the goal of Custer’s Last Revenge is the rape of a Native American girl, rewarding players that win the game with a low-tech scene of the rape taking place).

28. See id. at http://www.gamespot.com/features/6090892/p-4.html (indicating that Night Trap mainly involves scenes of vampires laying in wait in the rooms and showers of unsuspecting coeds while players watch the coeds, and lay traps for the vampires).
and *Duke Nukem*.\(^{29}\) However, two games in particular brought the controversy to a crescendo in the 1990s—*Mortal Kombat* and *Doom*.\(^{30}\) These two games shared a striking similarity: copious amounts of graphic carnage.\(^{31}\) *Mortal Kombat*, released in 1992, pitted players against each other in a side-view hand-to-hand fighting arcade game, similar to other coin-operated arcade games popular during the 1990s.\(^{32}\) It became (in)famous for both its spectacularly medieval settings, rife with opportunities for fantastic deaths, and its exceedingly gory finishing moves, called “fatalities.”\(^{33}\)

*Doom*, released in 1994, absolutely revolutionized the video-game industry.\(^{34}\) *Doom* is a so-called “first-person shooter” game.\(^{35}\) First-person shooter games harness advances in visual graphics technology, allowing the game players to see onscreen exactly what the video-character would see in the virtual environment.\(^{36}\) Because of this first-person perspective, players interact with the virtual environments in a more personal way, often mentally inserting themselves into the action.\(^{37}\) Some critics observe that the digital characters in first-person shooter games lack an identifiable personality; this homogenization of the virtual characters allows players to further project themselves into the

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29. See id. (explaining that *Duke Nukem* provides a unique game because, in addition to the excitement of a “shooting game” via a first-person interface, *Duke Nukem* offers a main character that has a strong personality that is both “abrasive and sexist”).


31. See Hamilton, supra note 30, at 184–86.

32. See KENT, supra note 3, at 465–66 (detailing the phenomenon of *Mortal Kombat*).

33. Id. at 464; Stephanie Griest, ‘*Mortal Kombat*’s Bloodless Coup, *Washington Post*, Aug. 28, 1995, at D1 (comparing the lack of blood and gore in *Mortal Kombat*, the movie, to the copious amounts in *Mortal Kombat*, the video game, and relaying a child’s description of the dangerous settings for the fights).

34. See KENT, supra note 3, at 457, 459–60 (emphasizing the long-lasting impact *Doom* has had on the video-game world).

35. Id. at 459.

36. See Woods, supra note 14 (opining that, when a first-person perspective is utilized, the decisions of the character and the player become intertwined and confused, thus allowing a much more personal interaction with games using the first-person interface).

37. Id.
virtual action. \(^{38}\) *Doom* exemplifies this technique—deftly coupling the ability of game players to visualize themselves in the action with a simple plotline. Players meander through mazes and use an assortment of weapons from chainsaws to rocket-launchers, destroying anything and everything in the player's path in order to escape from hell. \(^{39}\)

These games prompted the introduction of the Video Game Rating Act of 1994 by Senators Joseph Lieberman, Herb Kohl, and Byron Dorgan. \(^{40}\) The Video Game Rating Act sought to create the Interactive Entertainment Rating Commission, a regulatory agency designed to enforce the ratings of video games and penalize the selling of games to underage purchasers. \(^{41}\) To preempt federal regulation, the video-game industry began self-regulation in September 1994 by establishing the Entertainment Software Rating Board (ESRB). \(^{42}\) The ESRB rates and labels video games according to their age-appropriateness, and then relies on the retailers of video games to sell only to age-appropriate customers. \(^{43}\)

Nevertheless, the creation of the ESRB did not halt violent video games or the concerns surrounding them. \(^{44}\) With the release of the *Grand Theft Auto* (GTA) series, the turmoil rose to its current pitch. \(^{45}\) GTA cleverly blends solid gameplay and bloody,
complex missions into an appealing mix for diehard video gamers.\textsuperscript{46} This cocktail has made GTA one of the most successful video-game series to date.\textsuperscript{47} The GTA series requires players to mug, torture, carjack, murder for money, and assassinate police officers.\textsuperscript{48} The series gained infamy when players discovered that a recent installment of the series, GTA: San Andreas, could be enhanced by downloading a modification (mod) that allowed players to engage in crude sexual acts with a female character.\textsuperscript{49} The mod, dubbed “Hot Coffee,”\textsuperscript{50} drew severe backlash from politicians, watchdog groups, and video-game insiders.\textsuperscript{51} As a result, the ESRB changed the rating for GTA: San Andreas from M (Mature) to AO (Adults Only).\textsuperscript{52} Most retailers, like Wal-Mart, refuse to sell any AO games and thus promptly removed the game from their shelves.\textsuperscript{53}

Even before the GTA: San Andreas controversy, politicians called for government regulation in order to ensure that children could not obtain age-inappropriate games because they believed that violent video games increased violence in children.\textsuperscript{54} Most
notably, Representative Joe Baca introduced the Violent Video Game Act. The Act placed liability on any retailer selling “Mature” games to customers under the ESRB-recommended age of seventeen. The proposed fines were $1,000 for the first infraction and up to $5,000 for repeat offenses. This type of retailer liability closely parallels that imposed on retailers for selling alcohol, tobacco, or pornography to underage purchasers. The proposed bill ultimately failed to pass in the House because the video-game industry lobbied against governmental regulation, pointing to the successes of the ESRB.

With the recent controversy surrounding violent video games like *GTA: San Andreas*, Senator Hillary Clinton and other politicians continue to malign the ESRB and to promote video-game legislation nearly identical to Representative Baca’s proposal. Because the Violent Video Game Act serves as the model legislation for proponents of video-game legislation, the Act also serves as the model legislation in this Comment.
Some states and cities have adopted similar acts limiting the sale of violent, sexual, or disturbing games to minors. However, courts have found most of these state laws to be unconstitutional infringements on the right to free speech protected in the First Amendment. The remaining state laws are being contested by the video-game industry on similar First Amendment grounds but have not yet come before a court.

III. THE EVIDENCE CONCERNING A CAUSAL LINK BETWEEN VIDEO GAMES AND VIOLENCE IN CHILDREN

A. Evidence Supporting a Causal Link Between Video Games and Violence in Children

Some psychological and statistical evidence claims to demonstrate a causal link between violent video games and violence in children. However, the studies do not necessarily provide conclusive results because psychologists cannot perform pure clinical experiments, only observational studies, which do not lend themselves to qualitative results. To address these

the same analysis applies to state legislation that focuses myopically on regulating retailers, rather than addressing all of the market failures that lead to children obtaining violent video games. See infra Part IV.B (discussing the inability of the federal bill to redress all necessary aspects of the problem and the high enforcement costs, both criticisms apply to state legislation attempting to enforce video-game legislation similarly).

62. See, e.g., Clay Calvert & Robert D. Richards, The 2003 Legislative Assault on Violent Video Games: Judicial Realities and Regulatory Rhetoric, 11 VILL. SPORTS & ENT. L.J. 203, 203–10 (2004) (discussing the various state and city laws prohibiting the sale of violent video games to minors that have recently been struck down on First Amendment grounds). Interestingly, these cases suggest that sexual games might be subject to regulation as obscene material analogous to pornography, while violent games might be protected as free speech. Id. at 210.

63. See Gledhill, supra note 44 (recounting a California law to enforce age ratings struck down on First Amendment grounds). The constitutionality of video-game legislation has been debated at length and is beyond the purview of this Comment. This Comment asserts that any such legislation, whether ultimately deemed constitutional or not, would fail to correct the perceived problem of children obtaining violent video games.

64. William Triplett & Ben Fritz, Naughty Vidgames in Pols’ Line of Fire, DAILY VARIETY, Dec. 1, 2005, at 1 (discussing a St. Louis ordinance enforcing age limits on video games that has been struck down, and similar California, Michigan, and Illinois statutes being challenged).

65. See Baca, supra note 54 (summarizing some of the psychological and statistical data that supports a causal link between violent video games in violence in children).

66. See, e.g., Jeffrey Goldstein, Does Playing Violent Video Games Cause Aggressive Behavior? (Cultural Pol’y Ctr., Univ. of Chi., Conference Working Paper, 2001), available at http://culturalpolicy.uchicago.edu/conf2001/papers/goldstein.html (criticizing some of the psychological methods used to evaluate the link between violence and video games). Professor Goldstein explains that clinical experiments fail to capture the impact of
limitations, some researchers recently have advocated a General Aggression Model (GAM) with which to study the effects of violent video games on players. Using this new method, some researchers have concluded that “[e]xposure to violent video games causes increases in aggressive behavior, cognitions, and affect.”

The GAM technique supports the already existing idea that violent video games, as well as other violent media, encourage violent behavior. Additionally, literature notes that the effect is more pronounced, or observable, in younger children rather than in teenaged or college-aged persons. This more pronounced effect is to be expected as younger children are more susceptible to developmental stimuli than older individuals. The theory that violent video games cause violent behavior has been bolstered by countless studies claiming to reach similar conclusions.

playing video games on the behavior of children because a laboratory cannot replicate the home environment where games typically are played. Id.; see also Mark Griffiths, Violent Video Games and Aggression, 10 PSYCHOLOGIST 397, 397–401 (1997), available at http://www.academiccarnageyadd.co.uk/library/GRIF.htm (criticizing the conclusions that violent video games cause violence because those conclusions were made with a paucity of empirical evidence).


71. Id. at 705; see also Kirsh, supra note 68, at 378.

72. See, e.g., Craig A. Anderson & Karen E. Dill, Video Games and Aggressive Thoughts, Feelings, and Behavior in the Laboratory and in Life, 78 J. PERSONALITY & SOC. PSYCHOL. 772, 782–89 (2000) (claiming a link between violent video games and violent behavior in children); see also Craig A. Anderson et al., The Influence of Media Violence on Youth, 4 PSYCHOL. SCI. PUB. INT. 81, 105 (2003), available at http://www.blackwell-
Some of these researchers acknowledge that there exist only “weak evidence from correlation studies” linking violent stimuli to crime.\textsuperscript{73} This “weak” link to crime becomes important when dealing specifically with any proposed legislation aimed at curbing violent crimes attributable to video games.

In addition to psychological research, other data support the enactment of the Violent Video Game Act.\textsuperscript{74} More than 70\% of teenaged boys have played the M-rated, GTA: Vice City—a single game in the GTA series—even though this rating should have prevented children sixteen and younger from obtaining access to the game.\textsuperscript{75} Additionally, one study by the Federal Trade Commission (FTC) found that 78\% of underage children were able to purchase age-inappropriate games from retailers.\textsuperscript{76}

The fact that so many underage players apparently have open access to violent video games, coupled with the belief that violent video games cause violent behavior in children, seems to be a logical justification for the U.S. government to regulate the video-game industry. This justification intensifies when one considers the sensational current events involving video games and violence in children.\textsuperscript{77} For example, after the tragic Columbine massacre, investigations revealed videotapes of the
fun and games

killers making references to their favorite violent video games. In the videos, one of the killers, Eric Harris, calls his shotgun Arlene, a character in Doom, and describes the shotgun as “straight out of Doom.” Harris went on to describe the pending massacre: “It’s going to be like f[***]ing Doom.” The discovery of these videos presented a challenge for opponents of governmental video-game regulation, but it was not a “fatality” for their cause.

B. Evidence Supporting No Causal Link Between Video Games and Violence in Children

Despite the evidence suggesting a link between violent behavior in children and violent games, other psychological research and statistical data suggest a causal relationship does not exist. Psychological research doubting any causal relationship between violent video games and violence in children is nearly as voluminous as the literature supporting the connection. Those who question a causal relationship recognize the logical fallacy in post hoc, ergo propter hoc. Because a simple correlation exists between violent video games and violent children does not mean that a causal relationship exists. Hence, those acknowledging the logical fallacy observe that authors of carefully written psychological articles tread cautiously between the words “link” and “cause,” refusing to say that violent video games cause violent behavior.

78. See id.; see also Kent, supra note 3, at 544–45 (recounting the events surrounding the Columbine massacre and the connection to the video game Doom).
79. Gibbs & Roche, supra note 77, at 40–43.
80. Kent, supra note 3, at 545 (alteration added).
81. See Jeanne B. Funk et al., Presentation at the Annual Meeting of the American Psychological Association, Session 4157: Asking the Right Questions in Research on Violent Electronic Games (Aug. 7, 2000) (arguing that analysis in previous studies is incorrect, that there is no link between video games and violence, and that the personalities of children caused aggressive responses to video games more than the video games themselves), cited in News Release, Am. Psychological Ass’n, Children’s Personality Features Unchanged by Short-Term Video Play (Aug. 2000); see also Jenkins, supra note 1, at 40–41 (offering an alternative approach to the video-game debate that critically examines the regulatory reaction by suggesting positive uses and benefits of video games); Andrew Lynn, No Strong Link Seen Between Violent Video Games and Aggression, NEWS BUREAU UNIV. OF ILL. AT URBANA-CHAMPAIGN, Aug. 9, 2005, http://www.news.uiuc.edu/news/05/0809videogames.html (same).
82. Richard H. Underwood, Logic and the Common Law Trial, 18 AM. J. TRIAL ADVOC. 151, 175–78 (1994) (explaining that correlation does not necessarily imply causation). Post hoc, ergo propter hoc translates to “after this, therefore because of this.” BLACK’S LAW DICTIONARY 1205 (8th ed. 2004).
games “cause” violence.\textsuperscript{84} Furthermore, most of the articles denouncing a causal link posit that violent children simply choose to play violent video games—resulting in a chicken-and-egg conundrum.\textsuperscript{85} Some experts argue that video games represent a very minor risk factor, if any, in changing a person’s behavior.\textsuperscript{86} Instead, those experts identify home environment, current setting, and social development as more influential risk factors.\textsuperscript{87}

Statistical data illustrate that violence in children has, in fact, decreased during the time video games have been played.\textsuperscript{88} The Bureau of Justice Statistics at the Department of Justice (DOJ) compiles figures for crime rates on a national scale.\textsuperscript{89} The DOJ figures demonstrate that the victimization rates for violent crimes peaked in 1994 with one person victimized for every twenty people in the United States over the age of eleven; the figures show that the victimization rate dropped to about one in fifty in 2005.\textsuperscript{90} Further, DOJ studies show that, after spiking around 1993, “the offending rates for [homicide by] young teens reached the lowest levels recorded and have fallen below those for 25–34 year olds.”\textsuperscript{91} Moreover, the DOJ states: “Offending rates for [homicide by] children under age 14 increased in the late 1980s and early 1990s, but have recently fallen to the lowest levels recorded.”\textsuperscript{92} Thus, since the release of\textit{Mortal Kombat} and\textit{Doom} in 1992 and 1994, respectively, the rates of both violent crimes and homicides committed by children have decreased sharply.\textsuperscript{93} If games like\textit{Mortal Kombat} and\textit{Doom} cause violence in children, then why is the rate of violent crimes committed by children at an all-time low? Why is the rate of homicides

\textsuperscript{84} Id.
\textsuperscript{85} See id.
\textsuperscript{86} See id.
\textsuperscript{87} Id.
\textsuperscript{90} DOJ REPORT ON VIOLENT CRIMES,\textit{ supra} note 88. The DOJ defines violent crime as homicide, rape and sexual assault, robbery, and assault.\textit{ Id}.
\textsuperscript{92} Id.
\textsuperscript{93} Id.; DOJ REPORT ON VIOLENT CRIMES,\textit{ supra} note 88 (painting a far different picture than all of the evidence “proving” violent video games cause violence in children).
committed by children likewise down? Statistics like these draw into sharp doubt the validity of the psychological reports expressing a causal relationship between violent video games and violent children.

Some researchers have pointed to “moral panic” as the reason people desire to find video games and other violent media the cause of the violence sensationalized in today’s society. Moral panic is the reaction society has to glamorized antisocial behavior, and this reaction usually includes a “deviancy amplification spiral.” A deviancy amplification spiral occurs when the media sensationalizes antisocial behavior, thereby causing what are actually rare and minor antisocial events to look more serious and common. This misconception, in turn, causes the public to look for the antisocial behavior, and for others to engage in the “common” scandalous behavior. Ultimately, misplaced public concern forces law enforcement, judges, and politicians to expend resources dealing with what, in reality, should not have been an issue.

When applied to the violent video-game debate, the moral panic analysis evolves as follows. There are a few isolated incidents of antisocial, violent behavior linked to video games, such as the Columbine killers’ statements. The media sensationalizes the effects that violent video games had on the event in order to create entertaining stories for the evening news. The public reacts by searching for similar links between


96. See McAlinden, supra note 95, at 379 n.17.

97. Id.

98. Id.

99. Example extrapolated from Jenkins, supra note 1, at 44–45.

100. See KENT, supra note 3, at 544–45 (outlining a few of the tragic school shootings occurring in the late 1990s).

101. See Gibbs & Roche, supra note 77, at 40–41 (exemplifying the way in which Time magazine glorified the events surrounding the Columbine horror). This phenomenon breeds what pejoratively has been labeled “infotainment.” See Matt Nisbet, That’s Infotainment!, Apr. 30, 2001, http://www.csis.org/genx/infotainment. Infotainment exists when the media tries to sensationalize the news in order to capture the biggest audiences. Id. This “soft journalism” clouds truth, cloaks news, and helps create moral
video games and violence, and, because they want to find a link, they “find” it in other places.\textsuperscript{102} The media picks up and runs these newly discovered stories about the “epidemic” of videogame violence, even though very few links are authentic or newsworthy.\textsuperscript{103} The events are further sensationalized, and copycats arise—such as the recent Virginia Tech shooting.\textsuperscript{104} And

panic by glamorizing and tantalizing tragic events. \textit{See id.}

\textsuperscript{102} See Chris Williams, \textit{Canadian Shootings Linked to Website, Videogames}, \textit{Register}, Sept. 15, 2006, http://www.theregister.co.uk/2006/09/15/canadian_shooting (exemplifying the “blame game” that occurs after a violent incident when people try to discover the cause of the violent behavior, turning attention to violent video games and other media that provides alternative views, such as vampirefreaks.com).

\textsuperscript{103} \textit{See, e.g.}, Developments to Watch, \textit{A Simple, Low-Cost Way to Lock Those Guns}, \textit{Bus. Wk.}, Mar. 27, 2000, at 109 (advancing ways to stop “[t]he many school shootings of the past few years”).

\textsuperscript{104} See \textit{Kent}, supra note 3, at 544–45 (demonstrating that once a school shooting occurred a few copycats followed); \textit{see also} Gadi Dechter & Liz Bowie, \textit{Copycat Crime Can Feed More Violence}, \textit{Baltimore Sun}, Oct. 3, 2006, available at http://www.baltimoresun.com/news/local/bal-te.school03oct03,0,3506787.story?coll=bal-local-columnists&?track=store-recon (“A spate of school shootings in less than a month has raised fears that even more ‘copycat’ crimes lie ahead—with psychologists warning that news media attention could, in fact, perpetuate the violence.”).


However, a bit more patience seems to have been in order. When the police searched the shooter’s dorm room at Virginia Tech, they found no video games; thus, demonstrating exactly how media outlets and personalities sensationalize what, in reality, was a non-issue. \textit{See Nate Ahern, No Games Found in Shooter’s Dorm at Virginia Tech}, \textit{GW.com}, Apr. 19, 2007 (listing the items police actually found in the shooter’s dorm room, notably not mentioning any video games), available at http://www.gwn.com/news/story.php?id=12287/No_Games_Found_in_Shooters_Dorm_at_Virginia_Tech.html; \textit{see also} John Bardinelli, \textit{No Video Games Found in VT Shooter’s Dorm}, \textit{Joystiq.com}, Apr. 19, 2007 (commenting on the quickness to blame video games for the violence, even though no games were found in the shooter’s dorm), available at
so on, until this unfounded panic forces the government to respond to cries for regulation of a harmless industry—enter Representative Joe Baca and his Violent Video Game Act. This example of moral panic illustrates one reason why so many people try to find a causal link between violent video games and violence in children despite DOJ statistics suggesting that these critics are chasing the wind.

C. Weighing and Interpreting the Conflicting Evidence

Before a problem can be solved, a problem must actually exist, and the proponents of the Violent Video Game Act remain unable to prove a problem in fact exists. The amount of evidence both supporting and denouncing a causal link between violent video games and violence in children is remarkable. Researchers from both sides of the debate present potentially valid evidence for their respective positions. Other statistical
evidence by governmental agencies, such as the FTC and the DOJ, lends credibility to both sides of the debate.\textsuperscript{111} Even those psychological researchers urging that some link exists admit that only weak evidence proving the correlation between violent stimuli and actualized crime exists.\textsuperscript{112}

So much equally weighted, conflicting evidence prevents proponents of video-game regulation from demonstrating that a problem in need of correction actually exists. The proponents’ major claim, that video games are causing children to become more violent, directly contradicts the DOJ reports and some psychological research.\textsuperscript{113} Moreover, it seems that no problem actually exists because violence in children has not grown proportionately with the violent video-game market, but has, in fact, decreased dramatically.\textsuperscript{114} Thus, the Violent Video Game Act is flawed at the outset because it aims to correct a problem that has not been proven to exist.

However, if proponents of video-game regulation could, in the future, demonstrate that a causal relationship exists between violent video games and violent children, would the Violent Video Game Act prevent violent games from reaching children? The answer to this question requires an analysis of how well the mechanisms put into place by the Act keep violent games out of the hands of the country’s youth.

IV. THE IMPACT OF THE VIOLENT VIDEO GAME ACT

A. The Current Regulatory Scheme for Video Games—The ESRB

Any changes the Violent Video Game Act would produce must be compared against the backdrop of the existing regulatory scheme, the ESRB.\textsuperscript{115} As discussed above, the videogame industry created the ESRB to self-regulate the sale of

\begin{itemize}
\item \textsuperscript{111} FTC Report, \textit{supra} note 76, at 33 (containing statistics relevant to the debate as to the ability of video games to cause violent behavior); see also DOJ \textit{Report on Homicide Rates}, \textit{supra} note 91 (same); DOJ \textit{Report on Violent Crimes}, \textit{supra} note 88 (same).
\item \textsuperscript{112} See Browne & Hamilton-Giachritsis, \textit{supra} note 70, at 702 (admitting that the translation of violence in children to actual criminal activity perpetrated by children is attenuated at best).
\item \textsuperscript{113} See \textit{supra} Part III.B.
\item \textsuperscript{114} Id.
\item \textsuperscript{115} Joyce Appleby et al., \textit{Telling the Truth About History} 10 (1994) ("What historians do best is to make connections with the past in order to illuminate the problems of the present and the potential of the future.").
\end{itemize}
violent video games to children. The effort resulted in a mix of successes and failures.

1. An Overview of the ESRB. The ESRB is the means through which the video-game industry self-regulates. In response to the congressional hearings and Senate investigations into video-game violence, the Entertainment Software Association created the ESRB as an effort to pacify those leaders calling for governmental regulation of video games. To date, the ESRB has reviewed and rated for age-appropriateness well over 10,000 games.

The ESRB reviews the games submitted to it by video-game publishers in the United States. After a thorough review, the ESRB issues a rating on a scale from EC to AO.

- “EC” indicates video games suitable for players in early childhood, three years of age, or older.
- “E” denotes a video game suitable for everyone over six years of age.
- “E10+” signifies video games appropriate for ages ten and up.
- “T” video games are deemed suitable for teenagers and older persons.
- “M” video games should be played only by mature gamers, meaning seventeen or older.
- “AO” video games are restricted to adult use, with adult being defined as eighteen years old or older.

116. See KENT, supra note 3, at 480 (discussing the birth of the ESRB as an independent rating organization); see also supra text accompanying note 42.


118. See supra text accompanying notes 40–43.


120. See id. (detailing the way in which the ESRB operates).

121. See Entertainment Software Rating Board, Game Ratings & Descriptor Guide, http://www.esrb.org/ratings/ratings_guide.jsp (last visited Mar. 31, 2007) (describing the various ratings, the information displayed on the front of the box, and the rating explanations present on the back of the box). An additional designation, “RP,” indicates video games for which the rating is pending, and this designation only appears in advertisements for the game prior to release. Id.
The ESRB ratings appear conspicuously on the front of videogame boxes in large, black type; they are not removable stickers. Additional information pertaining to the nature of the ratings, such as the presence of “mature humor,” “mild violence,” or “sexual themes,” appears in similar type on the back of videogame boxes. In 2006, 8% of rated video games received an M and less than 1% of rated games received an AO rating.

The current ESRB framework places the responsibility on retailers and parents to enforce the age guidelines and to limit underage access to inappropriately violent video games. The ESRB has no official enforcement powers over retailers, and video-game publishers are free to bypass the rating system altogether. The ESRB does have some limited, unofficial enforcement power at the retail level, which derives from the ESRB's informal partnership with the majority of video-game retailers in the United States. These retailers will not carry AO games and are supposed to sell video games only to age-appropriate patrons.

2. Effectiveness of the ESRB on Preventing Underage Gamers from Playing Age-Inappropriate Video Games. The effectiveness of the ESRB at preventing violent video games from reaching underage children has been simultaneously praised and impugned. Proponents of governmental regulation argue that

122. Id.
123. Id.
124. See Entertainment Software Rating Board, Rating Category Breakdown, http://www.esrb.org/about/categories.jsp (last visited Mar. 31, 2007); see also Godinez, supra note 9 (noting that in 2004 the percentages of games receiving the M and AO rating were 12% and less than 1%, respectively).
125. See Entertainment Software Rating Board, supra note 119 (detailing the nonbinding relationship between retailers and the ESRB, which provides the only measurable enforcement power of the ESRB).
126. See id.
127. See id. (“In the United States, virtually all major national retailers, countless independent retailers and many game center operators are working with the ESRB to educate their customers and employees about ESRB ratings and store policies regarding the sale or rental of M (Mature) and AO (Adult Only) rated games.”).
128. See id.; see also Godinez, supra note 9 (observing that Wal-Mart removed the GTA: San Andreas video games containing the “Hot Coffee” mod upon the game receiving an updated AO rating from the ESRB).
the ESRB lacks effectiveness, while others commend the ESRB’s efforts at educating customers about video-game content.

The FTC applauded the ESRB, stating “there is much in the game industry’s rating disclosure requirements that merits duplication by [other industries].” Senator Joseph Lieberman lauds the ESRB ratings system for being the “most comprehensive [rating system] in the media industry.” The founder of Action for Children’s Television also has praised the effectiveness of the ESRB. The National PTA’s 2000 report card gave the video-game industry an “A” for creating the ESRB.

The ESRB’s role in educating the consumer becomes particularly important in light of the FTC’s finding that adults choose the video games played by their children 70% of the time; sometimes guided by the input of children. Moreover, 83% of the time, adults actually purchase the video games, sometimes with the child present. Therefore, parents seem to support the video-game choices of their children.

On one hand, the ESRB has been praised as an effective, reliable, and enviable self-regulatory measure adopted by the video-game industry. On the other hand, some critics of the ESRB voice concern that the lack of retail enforcement undermines the ESRB’s effectiveness and continues to allow children access to age-inappropriate video games. The Violent

132. Kristi Turnquist & Sarah Allen, What’s the Controversy, OREGONIAN, Nov. 17, 2000, at E01 (expressing the view of Peggy Charren, founder of Action for Children’s Television).
133. Id.
135. See id.
136. See FTC Follow-Up, supra note 130, at 30 (praising the strides the ESRB has made to self-regulate effectively).
137. See Baca, supra note 54 (noting that 78% of children ages thirteen to sixteen
Video Game Act seeks to close this loophole by preventing children from obtaining age-inappropriate games.\textsuperscript{138}

The 2001 FTC report found that 73\% of underage children were able to purchase M-rated video games from retailers.\textsuperscript{139} This finding demonstrates the perceived drawback of the ESRB: the organization has no real enforcement power at the retail level.\textsuperscript{140} New legislation modeled after the Violent Video Game Act would enforce the ESRB-recommended age limitations on video games.\textsuperscript{141}

B. The Proposed Legislation—The Violent Video Game Act

1. The Act Does Not Remedy All Market Failures. Assuming, arguendo, that the violence in video games causes children to act violently, the Violent Video Game Act does not offer the solution—it does not cure all of the market failures that allow children access to violent video games.\textsuperscript{142} Market failures create industry-wide ills not corrected by natural market forces.\textsuperscript{143} Because natural market forces will not correct the

had access to M-rated games.).

\textsuperscript{138} See id. (elucidating the aim of the Act). Of course this goal assumes that violent video games do, in fact, cause violence in children.

\textsuperscript{139} FTC REPORT, supra note 76, at 33 (listing the purchase statistics for video games).

\textsuperscript{140} See Entertainment Software Rating Board, supra note 119 (admitting that no real enforcement power exists at the ESRB). There has been further controversy surrounding the ESRB for its unwillingness to give a rating of AO based upon violence alone. Critics point to the game \textit{Manhunt}, which clearly depicts excessive human gore, murder, and even decapitation, as evidence; the game only received an M rating. See Gonzalez, supra note 2, at http://www.gamespot.com/features/6090892/p-12.html (commenting on the extreme gore present in \textit{Manhunt}). Of the current twenty-three AO titles, only two received this listing without significant sexual content; the ESRB gives gambling as the explanation for one AO rating and “Animated Blood and Gore, Animated Violence” for the AO rating of \textit{Thril Kill}. See Entertainment Software Rating Board, http://www.esrb.org (select “Adults Only”; then follow “Search” link) (last visited Mar. 31, 2007). Moreover, \textit{GTA: San Andreas} received its AO rating only after the game’s hidden “Hot Coffee” mod, which allowed players to engage in sexual acts with a female character, was discovered. Godinez, supra note 9. This reluctance to give a video game like \textit{Manhunt}, complete with graphic decapitations, an AO rating begs the question: What level of violence is required to earn an AO rating?

\textsuperscript{141} See Baca, supra note 54 (demonstrating that Representative Baca’s Act seeks to stop children from buying violent games by forcing retailers not to sell to the minors).


\textsuperscript{143} See Abbie Crites-Leoni & Angellee S. Chen, \textit{Money for Life: Regulating the Viatical Settlement Industry}, 18 J. LEGAL MED. 63, 86 (1997) (discussing the nature of market failures in the viatical settlement industry where speculators purchase the damages or insurance awards of terminally ill patients unable to use the entire award
problem, governmental regulation seeks to fix the market failure and ensure an efficient marketplace. A few possible market failures lead to children receiving and playing violent video games. These include: (1) retailers being ignorant of, or apathetic to, the dangers violent games pose to children and, thus, not enforcing the ESRB ratings; (2) irrational children not knowing or underestimating the possible dangers of violent games; and (3) parents underestimating or not understanding the risk that violent games present children. The Violent Video Game Act attempts to prevent minors from purchasing video games by forcing retailers not to sell age-inappropriate video games to underage customers. Thus, the Act seeks to rectify two market failures: retailers who do not appreciate the potentially harmful consequences of selling violent video games to underage patrons and children who do not understand the dangers of playing such games. The Act addresses retailer apathy by penalizing lack of adherence to the ESRB ratings with fines, and child ignorance by preventing minors from buying the games.

Although the Act attempts to remedy retailer- and child-related market failures, it neglects the parent-related market failure. The proposed Video Game Act states that “[w]hoever sells at retail or rents, or attempts to sell at retail or rent, to a minor any video game that depicts nudity, sexual conduct, or other content harmful to minors, shall be fined under this chapter.” The bill, in essence, would force retailers to apply the ESRB age limits strictly, removing the supply of violent games from young persons. The decrease in supply of violent games accessible to children, the argument proceeds, will cause a

because of their impending deaths).

144. Id.
145. See Baca, supra note 54 (pointing only to retailer irresponsibility).
146. Id.
147. See H.R. 669 (putting the liability squarely on the shoulders of retail sellers, not on the child purchasers or irresponsible parents).
148. See id. (demonstrating that the Act prohibits retailers from selling to children, thereby remedying that market failure directly, and at the same time making it more difficult for children to purchase age-inappropriate games, thereby correcting that market failure indirectly).
149. Id.
150. Id. (neglecting to mention any parental control measures).
151. Id. sec. 3, § 2732.
152. See id. sec. 3(a) (stating regulations that mirror the standards established by the ESRB even though the proposed legislation does not refer to the ESRB directly).
decrease in the rate of violence in children.\textsuperscript{153} Furthermore, the Act tries to counteract irrationality in children by removing their ability to choose to purchase violent video games.\textsuperscript{154} These measures seem to be a reasonable way to limit children’s exposure to violent video games, but in reality the proposed legislation misses the target.

As drafted, the Violent Video Game Act ignores the most important market failure: parental ignorance or apathy.\textsuperscript{155} Stopping retailers from selling and prohibiting children from buying violent video games will not necessarily stop these potentially dangerous video games from reaching children.\textsuperscript{156} As the 2001 FTC report demonstrated, 83% of video games, including violent games, are purchased with parents present.\textsuperscript{157} This leads to a few possible conclusions: parents do not understand the ESRB ratings, disregard the ESRB ratings, or underestimate the risk that violent video games pose.\textsuperscript{158} Limiting a child’s ability to purchase age-inappropriate video games will do little to prevent violent video games from reaching children because parents will not be prohibited from buying or renting the games on behalf of their children.

The rectification of retailer and child market failures is necessary to prevent violent video games from getting to impressionable children; these remedies alone, however, are not sufficient.\textsuperscript{159} Parental education is an essential piece of the puzzle, without which the puzzle is incomplete and ineffective.\textsuperscript{160}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{153} See id. sec. 2 (substantiating the compelling state interest in regulating video-game sales with scientific findings indicating that violent video games can lead to aggressive attitudes and values in children); see also Baca, \textit{supra} note 54 (indicating that the ultimate goal of the Act, a decrease in violence in children, will be brought about by punishing “those who profit from selling [violent video games] to our kids”).
\item \textsuperscript{154} See H.R. 669, secs. 2(8), 3(a) (eroding the ability of children to purchase violent video games from retail stores that would be subject to liability).
\item \textsuperscript{155} Id. (ignoring parents as a possible conduit through which children gain access to games and focusing only on retail sales of age-inappropriate games to minors).
\item \textsuperscript{156} See \textit{MARKETING VIOLENT ENTERTAINMENT TO CHILDREN}, \textit{supra} note 134, at 52 (explaining that younger children can often purchase M-rated video games despite an already existing policy in many stores not to sell to underage children).
\item \textsuperscript{157} See id. at 42.
\item \textsuperscript{158} See id. The FTC does not explain why parents elect to purchase video games, but the statistic indicates a market failure exists.
\item \textsuperscript{159} See Baca, \textit{supra} note 54 (promoting the idea that retailer liability is necessary to curb children’s exposure to violence because it limits retailer sales of, and child purchases of, graphic video games).
\item \textsuperscript{160} See Jenkins, \textit{supra} note 83 (citing parental education as the lynchpin to curbing child access to violent games).
\end{enumerate}
\end{footnotesize}
Any legislation addressing violent video games is useless without provisions that correct parental apathy towards video games. Just as underage children access other prohibited items, such as alcohol, tobacco, or pornography, children might gain access to violent video games using a number of alternative avenues.  

Friends and parents remain the most significant source of tobacco for minors, while store clerks selling illegally to underage customers represent a minor factor. Likewise, a child’s risk of exposure to violent video games includes not only direct access to the games but also parents and friends’ parents who provide children with access to potentially harmful games. Thus, the proposed Violent Video Game Act, which limits child access at the retailer level, will do very little by itself to correct the problem of violent games reaching children.

The Violent Video Game Act does not target all of the market failures through which children gain access to violent video games. In order to have a significant impact, any proposed legislative or regulatory measure must target the market failure perpetuating parents’ ignorance of, or apathy toward, the possible aggressive behavior caused by violent video games.

2. The Benefits of the Violent Video Game Act as Drafted. The Violent Video Game Act, incomplete as it is, may have some attenuated and indirect beneficial impacts on the problem of children playing violent video games. If federal or state lawmakers seriously consider enacting a law similar to the Violent Video Game Act, they should carefully determine if the new law’s benefits will outweigh the potential costs.

As discussed above, the Act seeks to decrease the number of underage players of violent games. This targeted benefit will be undermined by parents acting as conduits for violent games. Nonetheless, some benefits might be derived from the Act. Increased awareness and media coverage may prompt parents to

161. See Joseph R. DiFranza & Mardia Coleman, Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws, 10 TOBACCO CONTROL 323, 323 (2001) (citing parents and friends as the most common source of tobacco for minors, as opposed to the illegal sale of tobacco to minors by retailers).

162. See id.

163. See Jenkins, supra note 83 (pointing to parental education as the missing element required to keep violent games from children).

164. See Baca, supra note 54 (seeking to reach this goal by imposing penalties on retailers who sell or rent to under age children).

165. See Jenkins, supra note 83.
buy fewer violent video games for their children.166 This could
serve the purpose of the Act by indirectly decreasing the number
of children playing violent video games and, assuming a causal
link, decreasing violence in children.167 However, the effect is
highly theoretical because other avenues still exist for exposing
children to violent video games.168 Moreover, unlike pornography,
tobacco, or alcohol, which parents more readily identify as
harmful, video games are perceived as harmless “kids’ toys”—as
demonstrated by the fact that 83% of parents purchase video
games for their children.169 Without provisions addressing
parental education or responsibility, the regulation would be
ineffective.

Other positive externalities might result from the enactment
of the Violent Video Game Act. Less exposure to video games
could mean less video-game addiction and more physical activity
in children, including involvement in team sports.170 This
increased activity could help decrease the obesity epidemic
affecting American youth.171 Any possible decrease in violence in
children would, in turn, decrease the necessity for police activity
attributed to responding to that violence.172 These benefits,
however, are indirect and attenuated at best. The Violent Video
Game Act seems a poor and expensive vehicle to affect such
small, indirect benefits.

3. The Costs of the Violent Video Game Act as Drafted. Any
benefits of the legislation will be offset by the gross costs the
Violent Video Game Act produces. Video games do provide

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166. See, e.g., Triplett & Fritz, supra note 64 (demonstrating the publicity that
enacting video-game regulation naturally creates). This benefit might become a detriment
if the media draws sufficient attention to feed into the moral panic phenomenon. See
supra notes 99–107 and accompanying text.
167. See Baca, supra note 54 (implying that violent video games create violent
children).
168. See supra Section IV.B.1 (detailing the inability of the Violent Video Game Act
to stop children from playing violent games).
169. See MARKETING VIOLENT ENTERTAINMENT TO CHILDREN, supra note 134, at 42;
Jenkins, supra note 83.
170. Elizabeth A. Vandewater et al., Linking Obesity and Activity Level with
(reporting a causal link between video-game use and childhood obesity and concluding
that time spent playing video games displaces time spent engaging in more physically
demanding activity).
171. See id. at 83.
172. See Rosalind S. Helderman, Loudoun Boy’s Defiance Draws Police Response,
WASH. POST, Dec. 15, 2004, at B1 (documenting the police response to remarks a child
made in a threatening manner).
benefits to gamers; benefits that may be jeopardized if video games become more difficult to obtain. In April 2005, Dr. James “Butch” Rosser commented that there is “a positive correlation between videogaming and increased hand-eye coordination, reaction time, spatial visualization, neuro-psychological tests, visual attentiveness and mental rotation.” Any limitations to the availability of video games would adversely impact these potentially beneficial effects of playing video games, even violent ones.

The stereotypical video-game fan is a shut-in, socially-challenged teenaged boy. However, according to one author, today’s video-game players are “consistently more social, more confident, and more comfortable solving problems creatively” than their nongaming colleagues. One cannot ignore the potential social benefit that video games like Pokémon provide to children. Pokémon consists of players interacting by swapping digital characters and challenging other players’ characters to virtual, and violent, duels. An underlying premise of this wildly popular game is the social interaction between players. Moreover, some researchers have observed an increased ability to socialize in hyperactive children due to video-game play. In addition, video games have been shown to provide diversionary pain management options to distract patients undergoing chemotherapy and other painful treatments.

173. See Steven Johnson, Your Brain on Video Games, DISCOVER, July 2005, at 39, 42 (citing a Harvard Business School study to illustrate some of the benefits that can be obtained from video-game playing).


177. See generally KENT, supra note 3, at 566–68 (chronicling the history of Pokémon and highlighting the social element of the popular game).

178. See id.

179. See, e.g., Mark Griffiths, Video Games and Health, 331 BMJ 122, 122 (2005), available at http://www.bmj.com/cgi/content/full/331/7509/122.

180. Id. at 122. Furthermore, our national defense could be negatively affected by limiting access to certain video games. See Marc Saltzman, Army Enlists Simulation to
Video games can, and do, offer many real benefits to the users in addition to simple escapism. The current ESRB rating system does not unduly hamper children’s access to these benefits. Any change to the current system could adversely affect these beneficial aspects of video games. Moreover, enforcement costs of any legislation could be high. Additional police officers will be needed to check for violations; undercover stings similar to the ones used to uncover alcohol and tobacco violations will be necessary to ensure compliance, and collection procedures will need to be implemented to ensure fine payments. These enforcement procedures would be very similar to those carried out by the Bureau of Alcohol Tobacco and Firearms, and therefore should be expected to be similarly expensive. Because the Act responds to a problem that has not been proven to exist with a solution that provides only indirect relief, all of the costs constitute an extremely inefficient use of taxpayer money.

Help Tackle Terrorists, USA TODAY, Oct. 2, 2001, at 3D (explaining that the armed forces are using video-game technology to train a new generation of soldiers). Certain video-game technologies are used as training tools in the military. Therefore, young players who play these games assist in lowering training costs for the Department of Defense (DOD) by becoming familiar with the games quickly. Cf. Rutheford B. Campbell, Jr., Corporate Fiduciary Principles for the Post-Contractarian Era, 23 FLA. ST. U. L. REV. 561, 580–81 (1996) (defining wealth transfers as transaction which redistribute wealth or value from one group to another). Any cost that can be shifted away from the DOD helps to reign in that department’s expenditures. See id. Given the DOD’s penchant for overspending, this trend could present a useful tool for the DOD. This argument is slightly tongue-in-cheek. However, for an eye-popping accounting of rampant and irresponsible government overspending, including $25 billion in unaccounted expenses, $100 million in unused plane tickets, and hundreds of thousands in government-issued credit card frauds, see Brian M. Riedl, The Top 10 Examples of Government Waste, BACKGROUNDER, Apr. 4, 2005, available at http://www.heritage.org/Research/Budget/bg1840.cfm#_ftn2 (quoting various government reports and audits revealing wasteful government spending).

181. See Kevin Maney, Video Games Aren’t Necessarily Turning Kids’ Brains to Mush, USA TODAY, July 12, 2005, at 3B (documenting some of the positive effects of playing video games).

182. See supra Part IV.A.

Thus, the Violent Video Game Act is premature at this time. The Act does not cure all of the necessary market failures—specifically ignoring parental acquiescence of video game purchases. The Act must be redrafted to address all the market failures if it is to achieve its goal of limiting the exposure of children to violent video games. As currently drafted, the costs of the Act outweigh the benefits; thus, the Act should be avoided at the present time. Even if video games could be proven to cause violence in children, wisdom suggests avoidance of any legislation modeled after the Violent Video Game Act. However, if it can be proven that violent video games cause violence in children, what remedies would achieve the goal of limiting child exposure to these video games?

4. An Alternate Solution Remediying All Market Failures. Assuming that violent video games cause violence in children, something should be done to limit the exposure of these games to impressionable children. In addition to addressing the retailer- and child-related market failures, any new regulation from the federal government, the states, or the ESRB needs to address the market failures that allow parents to act as conduits transporting violent games to children. Parents buying or renting these games for their children do not understand the ratings, underestimate the risk these “kids’ toys” present to children, or just do not care. In any event, limiting children’s exposure to violent video games requires the inclusion of a method for educating parents about the dangers of video games in the Act itself. The answer is supplemental education, not the proposed legislation.

Educating parents offers the key to preventing children from obtaining violent games. Because 83% of video-game purchases occur with the parent present, parents can restrict the purchase of violent, age-inappropriate video games. Of course, parental

184. See supra Part IV.B.1.
185. See English, supra note 74 (citing Gallop Poll figures indicating many youth have played GTA, despite its M rating).
186. See supra Part IV.B (indicating that the proposed video-game legislation deals satisfactorily, with retailer and child market failures).
187. Jenkins, supra note 83.
188. Id. (noting that today video games are anything but “kids’ toys”: “62 percent of the [video game] console market and 66 percent of the PC market is age 18 or older”).
189. Id.
190. See Marketing Violent Entertainment to Children, supra note 134, at 42 (reporting the finding of the FTC in the 2000 report on the video-game industry).
education does not solve the entire problem if children can purchase the violent video games without parents present. The Violent Video Game Act addresses this narrow issue and should assist in limiting the exposure of children to violent video games. The Act is necessary but not sufficient.

Video games are not simply “kids’ toys.” Parents, and society as a whole, need to realize that some of the content might harm their children. The Act will not succeed at educating parents by merely imposing liability on retailers for selling games to age-inappropriate consumers. Analogous to the misconception that video games are innocent kids’ games is the belief that smokeless tobacco causes less harm than smoked tobacco. Simply holding the retailers liable does not, on its own, educate parents or children about product dangers.

The liability-only approach surrounding smokeless tobacco does not compare favorably to the liability-plus-education approach used for cigarettes. Following the mass cigarette litigation in the 1990s, as part of the Multistate Settlement Agreement, tobacco companies ran counter-advertisements disclosing the dangers of smoking. Since that time, cigarette use has dropped significantly. During the same time, smokeless tobacco sales dipped, and then returned to prelitigation levels. Most counter-advertisement focuses on educating consumers about the dangers of smoking. Smokeless tobacco is not

191. Id. at 52 (revealing that underage children can easily purchase M-rated games).
192. See Jenkins, supra note 83 (“The game industry caters to adult tastes.”).
194. Id. (disavowing the common misconception that smokeless tobacco is any less dangerous than smoked tobacco).
afforded the same degree of attention. Both products result in liability if sold to minors. This anecdotal evidence suggests that educational programs produce a larger decrease in the consumption of dangerous items than liability-only legislation. Establishing an independent education program would address the failure of parents to recognize the potential dangers violent games pose to their children.

A supplemental parental education program would effectively limit the exposure of violent video games to children, like smoking counter-advertising education, because this provision would address parent-related market failures. Without the additional market correction of parental education, the Violent Video Game Act is nothing more than a useless gesture. Limiting child access to violent games needs to be attacked with a double-edged broadsword; both retailers and parents have an important part to play in limiting the exposure of violent games to children. Parents play a necessary role because without a shift in their thinking they will continue to purchase these “kids’ toys” for their children, ignoring the fact that some mature games might harm their children. Thus, parental education is the missing, yet most important, factor to keep violent games out of the hands of children.

Any costs associated with this parental educational program could be paid by the funds generated from retailer fines for violating the Act, thereby limiting the strain on taxpayers. This cost-effective, dual approach to the problem of child exposure to violent video games ensures that potentially violent video games rarely get into the hands of children. Of course, the necessity of the dual approach is predicated upon proving a causal relationship between violent video games and violence in children in the first place.

V. CONCLUSION

The Violent Video Game Act as drafted fails at many levels and will operate as an utterly inefficient piece of legislation. As a threshold matter, the Act attempts to correct a problem that might

199. Id.
200. See Jennifer McCullough, Note, Lighting up the Battle Against the Tobacco Industry: New Regulations Prohibiting Cigarette Sales to Minors, 28 Rutgers L.J. 709, 727 n.114 (1997) (compiling a list of all state tobacco statutes prohibiting the sale to minors, most of which are punishable by fine).
201. Id. at 726 (listing educational programs as one weapon being used to fight underage smoking).
202. See Jenkins, supra note 83.
not even exist. The debate still rages concerning the causal relationship between violent video games and violence in children; no definitive answer has been found.\textsuperscript{203} There exists evidence supporting a causal relationship, and evidence denouncing any causal relationship. Enacting legislation to cure a problem that may not even exist is the epitome of inefficiency and moral panic.\textsuperscript{204}

Furthermore, assuming that a causal relationship exists, the Violent Video Game Act as drafted only corrects some of the market failures allowing children to be exposed to violent games: retailer ignorance or apathy and child irrationality or ignorance.\textsuperscript{205} Before the Act can achieve its goal, parental apathy or ignorance must be corrected. Without taking affirmative measures to educate parents, the Act is full of holes, thus allowing violent video games to reach, and possibly contaminate, young children.

The Violent Video Game Act itself, if enacted, would lead to costs that grossly outweigh any possible benefits.\textsuperscript{206} These costs are derived, ultimately, from the Act’s inability to effectuate the singular goal of the legislation, combined with the Act’s substantial enforcement costs. If a causal link can be proven to exist between violent video games and violence in children, then liability-only legislation is not the answer; it must be coupled with parental education.

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