

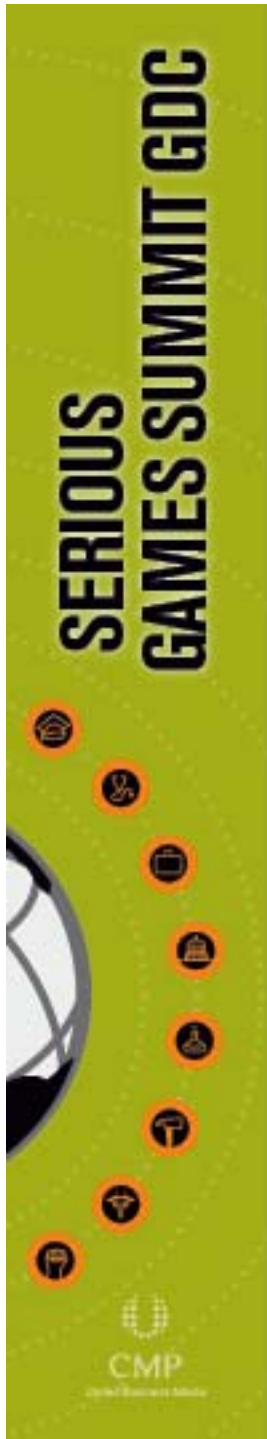


SERIOUS GAMES SUMMIT GDC

Censorship of Video Game Content: Time to Fight Back

Larry@LawrenceWalters.com



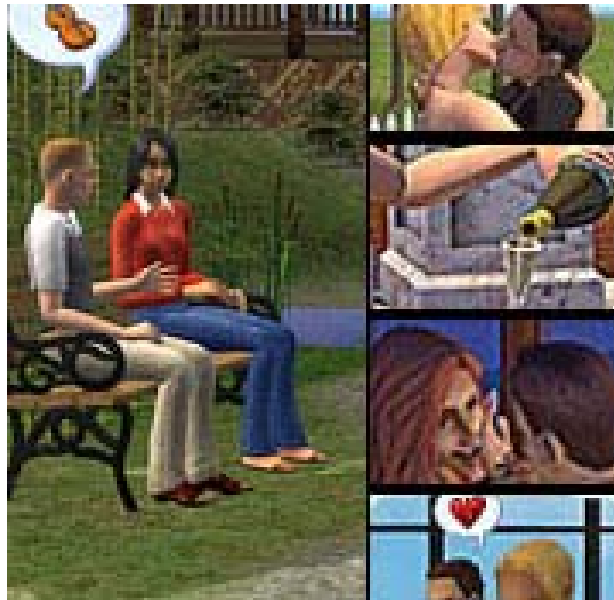


“Censorship is the bastard child of technology.”



SGS.GDCONF.COM

Introduction



- ⦿ Advances in technology have allowed for increased realism of sex and violence in games.
- ⦿ Explicit level of content and realism stirs parents and results in greater governmental attention.
- ⦿ Regulation focused on “protecting children.”
- ⦿ What does the future hold?
- ⦿ Finding a balance between the rights of game developers and parental controls.

The Reality of Virtual Reality

- ⌚ Increased realism creates concern for parents and lawmakers.
- ⌚ Video games take on more lifelike characteristics and increasingly adult themes.
- ⌚ Previous taboos of sex, drugs and violence falling by the wayside, as is the perception that video games are for kids.
- ⌚ Parents turn to lawmakers for legislative action.



Constitutional Protections

- ③ Video games = Free Speech.
- ③ In order to regulate speech, Government must establish:
 1. Compelling state interest.
 2. Use of least restrictive means.
 3. No censorial intent.
- ③ Few regulations meet this strict test.
- ③ Children entitled to First Amendment rights.

**FREE
SPEECH
ZONE**

Protecting Children

- ⊕ Usually accepted as compelling state interest.
- ⊕ Sexual content is capable of regulation, if it meets certain standards.
- ⊕ Violence, drugs, etc., are more difficult to restrict.
- ⊕ Continued push by lawmakers and groups to regulate non-erotic content.
- ⊕ Religious groups use child protection to further moral agenda.



Previous Legislative Attempts



- ⚙ The Courts have ruled nine times in six years that video games are protected speech.

Interactive Digital Software Association v. St. Louis County

- ⌚ Challenged St. Louis County Ordinance restricting sale of violent video games to minors.
- ⌚ 8th Circuit Court of Appeals reversed lower court decision because it violated the First Amendment.
- ⌚ The courts must analyze these laws with “strict scrutiny.”

The “Strict Scrutiny” Test

- ④ The government failed to show that the law addressed any real ‘harm’ resulting from games
- ④ The ‘strict scrutiny’ test has been the downfall of numerous video game laws



Video Software Dealers Ass'n. v. Maleng

- ⊕ Challenge to Washington law banning the sale (to minors) of video games that feature violence against public law enforcement officials.
- ⊕ Court invalidated law because it was unconstitutionally vague and because the government failed to demonstrate any evidence of harm, or that the law prevents such harm.

California Legislation

- ④ Cal. Civil Code § 1746 – restricts violent video games that depict “killing, maiming, or assaulting of any image of a human being.”
- ④ Required label conflicted with current ESRB rating system.
- ④ Prohibited the sale/rental to minors.

VSDA v. Schwarzenegger



- ⌚ Trade Association sued alleging First Amendment violation.
- ⌚ The Court held:
 - Statute not unconstitutionally vague.
 - Labeling not invalid due to conflict with ESRB.
 - Probable First Amendment violation due to lack of compelling state interest in regulating these games.
 - Law enjoined.
- ⌚ Reaffirms that violence does not trigger valid regulation.

Illinois Legislation

- ④ 720 ILCS 5/12 B-15 – Violent Video Games Law (VVGL) & Sexually Explicit Video Games Law (SEVGL).
- ④ Prohibited sale/rental to minors.
- ④ Required forced labeling.
- ④ Prohibited self checkout procedures.
- ④ Required warning signs near checkout & ESRB rating system brochures.

ESA v. Blagojevich

- ⌚ Suit alleging First Amendment violation.
- ⌚ Court held:
 - Video games entitled to First Amendment protection.
 - No proof that violent video games incited lawless action, aggressive behavior or brain damage.
 - State's ability to regulate violence limited to prohibiting imminent lawless action.
 - Law not narrowly tailored: Self censorship likely.
 - Definitional problems with "harmful" materials.

ESA v. Blagojevich, cont'd

- ⌚ The 7th Circuit upheld the ruling on Appeal.
- ⌚ The state of Illinois owes ESA \$510,000 to reimburse for legal fees.



Michigan Legislation

- ⌚ SV 416 - Restricts the sale of violent video games to children.
- ⌚ Civil and criminal penalties, including imprisonment.
- ⌚ Challenged: September 2005.
- ⌚ Enjoined: November 2005.
- ⌚ Court found that the law implicated First Amendment concerns.



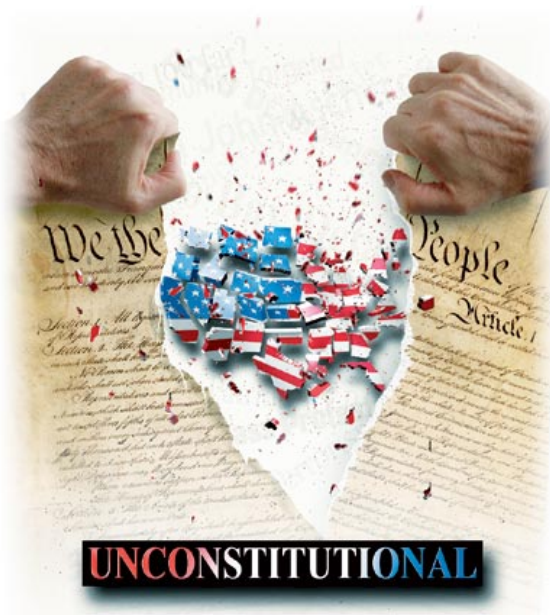
Louisiana Legislation

- ⌚ Act 441 – Restricted the sale of violent video games to minors.
- ⌚ Brainchild of Jack Thompson, Esq.
- ⌚ The legislation was drafted so as to withstand *any* court challenge...or so they thought.
- ⌚ Law drew largely on the *Miller* Test, overlooking the fact that the *Miller* Test applies to obscenity, not violence.

ESA v. Foti

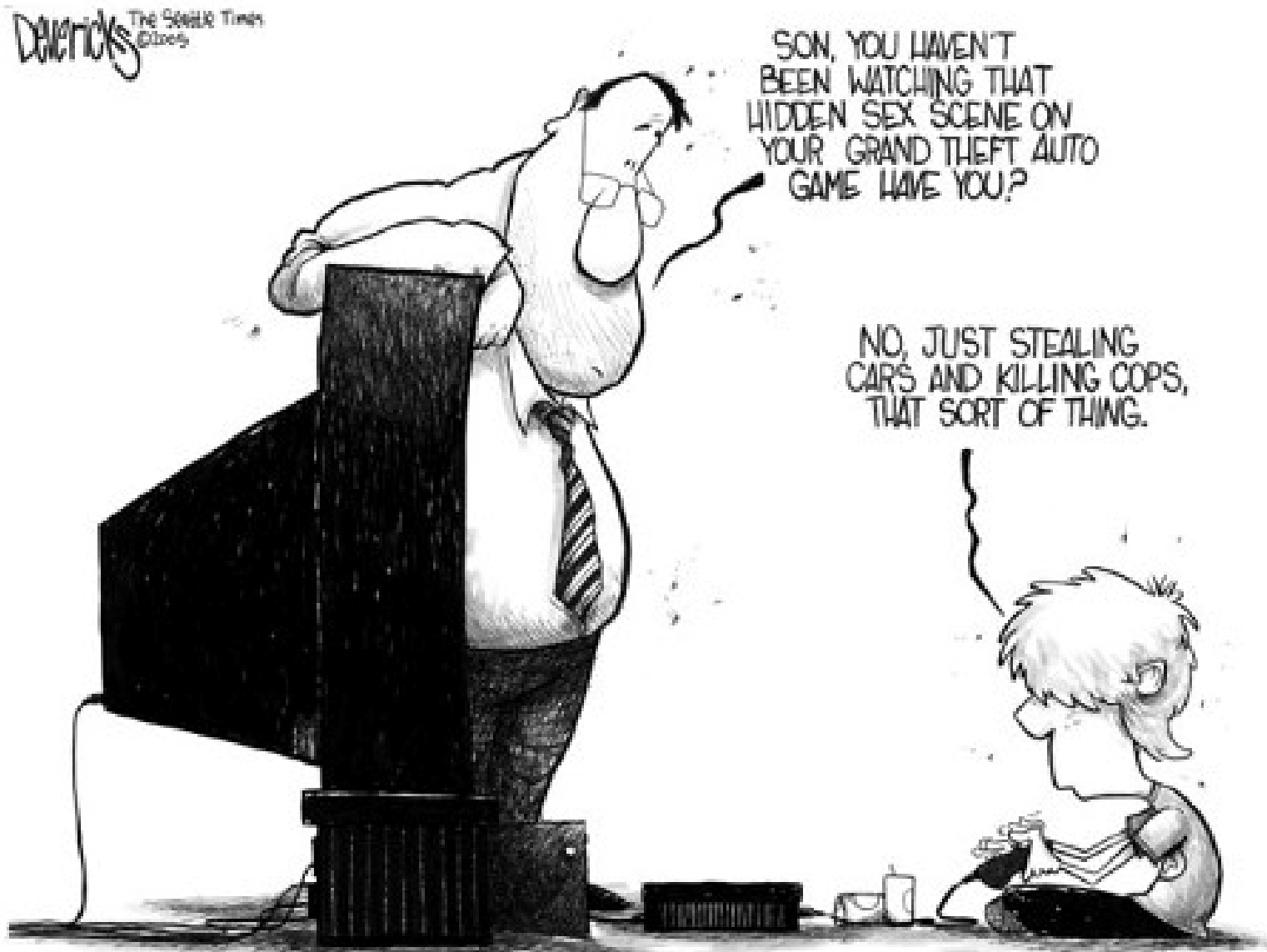
- ⊕ District Court issued a Preliminary Injunction in August 2006 based on previous rulings that found that video games are protected speech.
- ⊕ The Court also encouraged the use of less restrictive alternatives available, such as parental controls.
- ⊕ In November 2006, Judge Brady rendered final judgment declaring law unconstitutional.

Other Jurisdictions...



- ⌘ Indianapolis, Indiana.
- ⌘ Minnesota
- ⌘ Oklahoma
- ⌘ Results: All declared unconstitutional.

SGS.GDCONF.COM





Federal Legislation

- ④ Family Entertainment Protection Act (S. 2126) – Prohibits sale/rental of video games with an M or AO rating to minors. Bill died in Committee in 2006, but is likely to resurface this year.
- ④ Video Games Ratings Enforcement Act (H.R. 5345) – Requires ratings labels on video games and restricts minors access to violent video games. Bill died in Committee (2006).
- ④ Truth in Video Game Rating Act (S. 568) – Requires ESRB to review all content before assigning ratings. Introduced by Sam Brownback (R-KS) in 2007; referred to Committee.
 - A similar bill and House companion bill failed to move in the last Congressional Session and subsequently died.
- ④ CAMRA Act – Passed in 2006. Commissions \$90 million to study the effects of video game play on the development of children.

State Legislation



- ⊕ Mississippi (SB 2726) – Fined retailers who sell M-rated games to minors. Bill died immediately.
- ⊕ New York (A00547 & A02024) – Restricts sale of video games containing content that is profane or racist in nature. Requires ID for anyone under 30. Assembly Bill 02024 is more broad and restricts minors access to mature/violent games.
- ⊕ North Carolina (SB 87) – Prohibits sale/rental of materials harmful to minors and requires retailers to inform consumers that a rating system is available. Bill referred to Judiciary Committee.
- ⊕ Utah (HB 50) – Felony offense to expose minors to violent or adult themed video games. After a turbulent introduction and warnings of unconstitutionality, the bill died, and is being replaced by a non-binding Resolution, HJR 15.
- ⊕ Virginia (SB 368) – Requires labeling for M-rated games. Action deferred until 2007 Session.

Player Haters:

Anti-Game Activist, Jack Thompson

- Has helped draft numerous failed bills targeted at the video game industry in Utah, Louisiana, Massachusetts, etc.
- Called for the impeachment of Utah A.G. Shurtleff after warnings that recent legislation is likely unconstitutional.
- Thompson told GamePolitics.com regarding Shurtleff, "...morons like Shurtleff need to be called out as morons."

(<http://gamepolitics.com/2007/01/23/thompson-impeach-utah-attorney-general/>)



Funny man, Jon Stewart of *The Daily Show*, Comedy Central

SERIOUS GAMES SUMMIT GDC



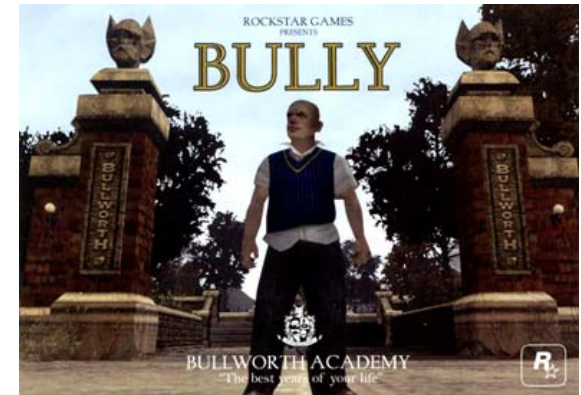
Jack Thompson is currently facing 5 counts of professional misconduct and a disciplinary hearing before the FL Supreme Court.

- ③ 3 counts of misconduct are related to Thompson's involvement in *Strickland v. Sony*, an Alabama case, in which he was also stripped of his *Pro Hac Vice* status.
 - One of the counts of misconduct derives from an email sent to Judge Moore, the Bars of Alabama and Florida, and opposing counsel that reads: "These are your corporate criminal buddies, Judge Moore. These are the folks with whom you made your bed, the folks whom your good friend said he could fix the case."

[-http://gamepolitics.com/2007/02/03/jack-thompson-faces-florida-bar-disciplinary-hearing](http://gamepolitics.com/2007/02/03/jack-thompson-faces-florida-bar-disciplinary-hearing)
- ③ When GamePolitics asked for Thompson's comment regarding the disciplinary hearing, he said, "A referee is appointed and we have a trial. The Supreme Court reviews it later. The trial isn't going to happen, however. I have sued The Bar in Circuit Court. It's in far more trouble than I am." (emphasis added)

Jack Thompson Bullies Bully

- Thompson initiated a fierce crusade to block the release of the game “Bully,” filing a Complaint against developers, Take Two Interactive. After reviewing the game behind closed doors, the Judge approved the game for release. Thompson was not too pleased, and the following are excerpts from an open letter sent to Judge Friedman in response to the ruling:



© Rockstar Games – no claim to original works

“Now that you have consigned innumerable children to skull fractures, eye injuries from slingshots, and beatings with baseball bats, without a hearing as to the danger, let me tell you a few things...”

“This was an *ex parte* proceeding that I was forced to watch, nearly gagging on the denial of due process that it constituted.”

“What you conducted in your chambers, Judge, was the equivalent of Iran leading UN weapons inspectors around the country taking them to places where illegal activity was not occurring.”

The Jack Thompson Rumor Mill...

- ⌚ After Jack Thompson referred to the game “Bully” as a “Columbine simulator,” other ‘player haters’ caught on quickly. In a recent Utah House hearing, while debating the Thompson-drafted HB 50, legislators repeatedly referred to the game, “Bully” as “that Columbine game,” further demonstrating their lack of understanding of the gaming industry.
- ⌚ Thompson’s next target: GTA IV – another blocking attempt. Email threats already sent to Rock Star and (of course) the media. Source: *Xbox 360 Magazine*.

What Does the Future Hold?

- ⊕ Numerous losses in court have yet to dissuade censorship advocates.
- ⊕ It may only be a matter of time before lawmakers tweak their strategies and carve new niches for drafting legislation.



Video Games On Demand

- ④ VGOD creates new challenges for regulators and parents.
- ④ Point of sale migrates from retail location to home computer or handheld device.
- ④ Age verification issues created.
- ④ Privacy rights implicated by home delivery via cyberspace.

MMORPG's

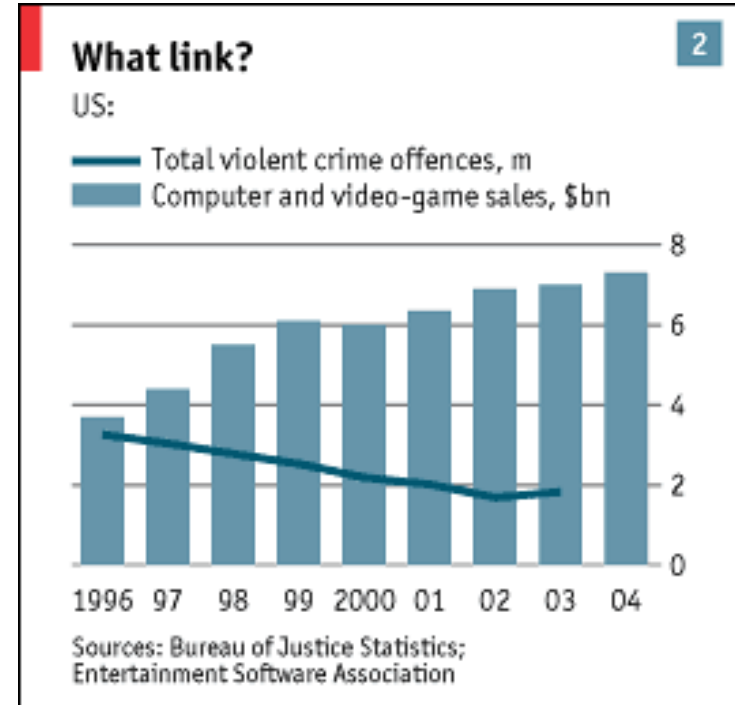
- ④ Host of new legal issues implicated
- ④ Can 'virtual crimes' occur?
 - Rape
 - Theft
 - Fraud
- ④ Should the government regulate or tax virtual money/value?
- ④ Is there a distinction between conduct and expression in online reality?

Future Regulatory Attempts

- ④ Lawmakers may begin to target sexually oriented content.
- ④ Changes could come about regarding how violent content is addressed by the courts.
- ④ More 'time, place and manner' regulations will be attempted.

Science & Law

- ⊗ The Government must establish causal relationships between pretend violence and aggression. Pretend sex and promiscuity?
- ⊗ Courts find existing studies inconclusive.
- ⊗ Cases coming down to a “battle of the experts.”
- ⊗ Univ. Missouri – Columbia study claims link established.
- ⊗ Industry must consider proactive research.



- From The Economist, August 4, 2005

Recommendations

- ③ Develop research bank of positive studies.
- ③ Consider descriptive labeling/rating.
- ③ Aggressive lobbying/public relations.
- ③ Continued litigation strategy.
- ③ Work with parents to facilitate a cooperative position and encourage use of available parental controls.



Conclusion

- ④ Industry growth and popularity creates significant opportunity.
- ④ First Amendment puts industry in strong legal position.
- ④ Politics will motivate continued legislative attacks.
- ④ Opportunity exists for pro-active cooperation
- ④ Industry must collectively prepare to win in the court of law, *and* in the court of public opinion.