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entertainment
software
association

AUGUST 2011



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ESA Welcomes Sweeping U.S. Supreme Court Ruling on Constitutional Protections for Video Games

On June 27, 2011, the Entertainment Software Association (ESA) welcomed the U.S. Supreme Court's landmark ruling that underscored constitutional protections for video games, developers, and video game industry artists. At issue was a 2005 California statute restricting the sale and rental of computer and video games. The ESA, the lead party in the case *Brown v. Entertainment Merchants Association/Entertainment Software Association*, argued that the statute presented unconstitutional limitations on expression, and the U.S. Supreme Court agreed, holding the California law unconstitutional under the First Amendment.

"This is a historic and complete win for the First Amendment and the creative freedom of artists and storytellers everywhere. Today, the Supreme Court affirmed what we have always known – that free speech protections apply every bit as much to video games as they do to other forms of creative expression like books, movies and music," said Michael D. Gallagher, president and CEO of the ESA. "The Court declared forcefully that content-based restrictions on games are unconstitutional; and that parents, not government bureaucrats, have the right to decide what is appropriate for their children."

In its 7-2 decision, the Supreme Court cited many of the same reasons cited by lower courts when striking down this and similar statutes: that video games contain expression that is protected as much as the best of literature; that California had not shown that video games were harmful to minors; that less restrictive means of achieving the state's intended goal of protecting children from violent content exist, including the Entertainment Software Rating Board rating system; and that parents rather than the government should have primary responsibility for what games their children play.

Because the California statute attempted to restrict free speech on the basis of content, the state had to prove a compelling government interest for the law and also that California's proposed remedy was the narrowest possible way of furthering that interest. The U.S. Supreme Court said California failed in both respects.



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In the decision, Justice Scalia, writing for the majority, stated with regard to the validity of the scientific evidence put forth, “The State’s evidence is not compelling. California relies primarily on the research of Dr. Craig Anderson and a few other research psychologists whose studies purport to show a connection between exposure to violent video games and harmful effects on children. These studies have been rejected by every court to consider them, and with good reason: They do not prove that violent video games cause minors to act aggressively (which would at least be a beginning). Instead, “[n]early all of the research is based on correlation, not evidence of causation, and most of the studies suffer from significant, admitted flaws in methodology.”

Of the “least restrictive” requirement, the majority opinion stated, “California also cannot show that the Act’s restrictions meet the alleged substantial need of parents who wish to restrict their children’s access to violent videos. The video-game industry’s voluntary rating system already accomplishes that to a large extent.”

In closing, Justice Scalia, again for the majority, writes, “California’s effort to regulate violent video games is the latest episode in a long series of failed attempts to censor violent entertainment for minors...Even where the protection of children is the object, the constitutional limits on governmental action apply.”

“We are very gratified that our arguments – and those of over 180 other groups and individuals from across the ideological spectrum – were heard in this case,” said Gallagher. “The Court has now definitively held that legislative attempts to restrict video game content will be struck down.

“It is time for elected officials to stop wasting time and public funds seeking unconstitutional restrictions on video games. Instead, we invite them to join with us to raise awareness and use of the highly effective tools that already exist to help parents choose games suitable for their children.

“Congratulations are due to our legal team, including Paul Smith of Jenner & Block who did a superb job in oral arguments before the Court. Ken Doroshov, the ESA’s former general counsel and lead architect of our industry’s legal strategy, also deserves an enormous amount of credit for spearheading our winning approach.”

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ESA Applauds Administration Proposals to Strengthen Intellectual Property Enforcement

On March 15, 2011, Victoria Espinel, the U.S. Intellectual Property Enforcement Coordinator (IPEC), offered a white paper conveying 20 legislative recommendations to enhance U.S. agency enforcement efforts against intellectual property rights (IPR) violations. The proposed measures would boost the efficiency of U.S. enforcement efforts, including actions taken to combat the spread of illegal circumvention devices.

“Congress should give serious consideration to these recommendations – many of which come from those on the front-lines of the government’s enforcement efforts,” said Michael D. Gallagher, president and CEO of the ESA “We applaud the leadership, vision and commitment to practical solutions demonstrated by the IPEC and her staff, aimed at protecting American intellectual property and American jobs. The thorough review by the IPEC and her staff and the recommendations offered will aid and increase efficiency of U.S. enforcement officials.”

The PRO-IP Act of 2008 charged the IPEC with advancing recommendations to improve the effectiveness of the government to combat counterfeiting and piracy. One recommendation made by the IPEC calls upon Congress to expressly approve the sharing of information with rights holders by Customs and Border Protection personnel following the seizure of illegal circumvention devices. Another recommendation authorizes limited sharing of suspect samples with rights holders to aid in determining the unlawful character of certain devices. These measures allow the government to increase the efficiency of its enforcement efforts. The IPEC’s White Paper, which includes all of the agency’s recommendations, is available at http://www.whitehouse.gov/sites/default/files/ip_white_paper.pdf.

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ESA Commends Mexican Law Enforcement for Raid on Notorious Pirate Marketplace

The ESA commended the Procuraduría General de la República (PGR) for their February 16, 2011 raids of three facilities involved in burning pirated copies of video games in the notorious Tepito area in Mexico City. Working with ESA's local counsel, law enforcement officers raided the three pirate game duplication facilities, seizing roughly 4,450 illegal copies of video games and more than 270,000 video game cover inserts.

"Mexico is a very important market for ESA members due to the local popularity of entertainment software and the potential growth for the industry in the region," said Ric Hirsch, senior vice president for intellectual property enforcement at the ESA. "Unfortunately Mexico also has an extremely high rate of game software piracy making it more difficult for the local marketplace for games to develop and grow. We are very grateful for the efforts of PGR in helping to combat game piracy and supporting the local legitimate game industry."

The Tepito market is one of the most popular shopping areas in Mexico City and is a local center of black market activity, including the manufacture and sale of pirated computer and video games. The raids and seizures highlighted the ready availability of pirated entertainment software product, making it extremely difficult for legitimate game retailers to earn a profit.

ESA and its member companies will continue to work with PGR and the Mexican government in pursuing enforcement against large-scale operations in Mexico that continue to flood local markets with pirated versions of games.

In addition to enforcement efforts in Mexico, ESA is also undertaking efforts to make Mexicans aware of the harm caused by purchasing pirated games and other counterfeit products through an educational program titled "Mexico Wins With The Original" aimed principally at school children ages 8-15 across Mexico.



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U.S. Chief Technology Officer Announces Winners Of The First Annual National STEM Video Game Challenge

On March 30, at the Newseum in Washington, DC, Aneesh Chopra, United States Chief Technology Officer, announced the winners of the National STEM Video Game Challenge, a competition to motivate interest in science, technology, engineering, and math (STEM) learning by tapping into the natural passion of youth for playing and making video games. The first year of the Challenge featured competitions for students and developers. Twelve students from across the U.S. in grades 5-8 were selected as winners of the Youth Prize for their original game designs. In the Developer Prize category, for emerging and experienced game developers, the science-themed game You Make Me Sick! was awarded the Grand Prize and a collection of math games titled NumberPower: Numbaland! received both the Collegiate and Impact Prizes.

“Three cheers for the National STEM Video Game Challenge for catalyzing this entertaining and educational approach to harnessing American ingenuity, all for the cause of science, technology, engineering and math education,” said Chopra. “It is efforts like these that will ensure our nation’s continued economic and technological leadership well into the 21st century.”

The Youth Prize winners were selected from a group of over 500 entries for their ability to use STEM concepts to design engaging, innovative and well-balanced games, with special recognition for those games that also incorporated STEM themes.

The students will receive an AMD-based laptop computer and educational software. A cash prize of \$2000 will also be awarded to their school or a non-profit organization of their choice. More information on the Youth Prize and a video featuring the winners can be found at www.stemchallenge.org.

For the Developer Prize, the Grand Prize was awarded to Filament Games’ Dan Norton and Dan White for You Make Me Sick! They will receive \$50,000 for their game which teaches children about the physical structure of bacteria and viruses, as well as, how they are spread. The game prototype can be played at www.filamentgames.com/projects/gils.

NumberPower: Numbaland!, produced by graduate students Derek Lomas of Carnegie Mellon University, Dixie Ching of New York University and Jeanine Sun of the University of California at San Diego, was the winner of the Collegiate and Impact Prizes and will receive \$50,000 in total. The collection of four games allows children in kindergarten to grade 4 to construct a set of skills that helps develop their sense of number concepts. The games will be available on different platforms, including the iPad later this spring. The prototype can be viewed at <http://numbaland.com>.

“The National STEM Video Game Challenge demonstrated that kids will eagerly tackle math and science when they can engage with the subjects using video game design,” said Allyson Peerman, President, AMD Foundation, one of the contest co-sponsors. “The challenge and the resulting video games are a testament to the power of this invaluable tool to help increase students’ critical STEM skills.”

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“The innovation and creativity in these games are the hallmarks of our industry,” said Michael D. Gallagher, president and CEO of the ESA.

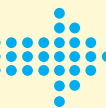
“As these great kids show us, video games can affect societal change. They can inspire and educate a new generation of leaders ready for 21st century jobs.”

The competition was created with generous support by the AMD Foundation, Entertainment Software Association and Microsoft and implemented by the Joan Ganz Cooney Center at Sesame Workshop and E-Line Media.

Founding outreach partners for the National STEM Video Game Challenge include the American Library Association, The American Association of School Librarians, Boys & Girls Clubs of America, The International Game Developers Association and BrainPOP.



Congress Calls Out High Piracy Countries



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On May 26, 2011, the Congressional International Anti-Piracy Caucus (IAPC) singled out Canada, China, Russia, Spain, and Ukraine on its “Watch List” of countries in which copyright piracy problems gravely harm U.S. creators of intellectual property. IAPC members and industry leaders urged policymakers in those countries to correct long-standing deficiencies that perpetuate piracy, and identified steps to strengthen protections for copyrighted works, including measures to address online piracy.

“Online piracy is inhibiting the video game industry’s innovation and throttling its job creation capability in the U.S. Export sales are critically important to U.S. video game publishers, but are disrupted in markets that are already flooded with unauthorized copies,” said Michael D. Gallagher, president and CEO of the ESA. “The countries on the IAPC Watch List do not allow our industry to achieve its full growth potential – all to the detriment of those who create and distribute computer and video games.”

- Canada appears on Congress’ priority list, having fallen short on efforts to pass comprehensive copyright reform, which would have included effective online remedies and prohibitions on devices, such as “mod chips” and “game copiers,” used to facilitate game piracy.
- Spain is on the IAPC Watch List due to online piracy rates that are crippling the entertainment industries. It will be important for Spain to implement its new Ley Sinde law in a manner which addresses adequate removal online of infringing content. Continued engagement with the Spanish government will be required in 2011, particularly to address P2P piracy, which is not currently addressed by the new law.
- During 2010, China placed second in the world in the number of connections made to share unauthorized copies of ESA members’ game products – accounting for more than 11.5% of the world’s total. China’s emerging consumer market remains largely closed off to American creators as a result of a combination market access restrictions which prevent legitimate products from competing in the marketplace and rampant piracy. The most onerous market access restriction remains the government’s outright ban on the importation or sale of game consoles.
- Russia’s failure to adequately respond to even the most damaging forms of piracy is typified by the fact that many of the nation’s leading chain stores openly sell pirated game product. Russia has not signaled a serious commitment to addressing piracy occurring through the Internet, which has exploded from having no legal framework for addressing online piracy, coupled with steadily growing consumer access to broadband.

Since 2003 the IAPC has provided information to Congressional delegations traveling to countries with significant piracy problems, sponsored briefings on international intellectual property protection and piracy, held demonstrations highlighting emerging technologies, and worked with House and Senate committees on related hearings and legislation.

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ESA Hosts Second Annual Law Enforcement Training Event in Los Angeles

On June 7, 2011 the ESA hosted its second annual law enforcement workshop in conjunction with the world-renowned E3 at the Los Angeles convention center. With over 100 law enforcement officials in attendance, the workshop provided the group with up-to-date information on how piracy and counterfeiting affects the entertainment software industry, including an extensive overview of tips on how to detect pirated software, an understanding of current and future piracy trends – online and offline, and information on educating the general public about intellectual property rights.

During the workshop, attendees heard from leading industry experts who reviewed for attending officials and agents the criminal elements of different kinds of pirate activity through hands-on demonstrations, panels, presentations, and the distribution of training materials. During the day-long workshop, each instructional session provided the building blocks necessary for law enforcement to fully understand entertainment software piracy from the ground up and thereby facilitate investigation and prosecution of those engaged in pirate activities.

Not only did the workshop provide law enforcement with an opportunity to learn about piracy within the interactive gaming world, but it also gave officials the chance to gain important insights into the rapidly growing game software industry with rare, direct access to E3 , the world's premiere trade show for computer and video games and related products. Following the training event, attendees were invited to explore the E3 exhibit floor, where they had the unique opportunity to see the newest and upcoming releases of the video and computer game industry, speak directly with industry representatives to gain further insight on all facets of the game software industry, and see first-hand the products and creativity ESA strives to protect.

If you would like additional information about the workshop or would like to schedule a workshop for law enforcement please contact the ESA's Zach Toczynski at zach@theESA.com.





ESA MEMBER COMPANIES

- 345 Games
- 505 Games
- Capcom USA, Inc.
- Crave Entertainment
- Deep Silver
- Disney Interactive Studios, Inc.
- Eidos Interactive
- Electronic Arts
- Epic Games, Inc.
- Her Interactive, Inc.
- Ignition Entertainment
- Konami Digital Entertainment
- Microsoft Corporation
- Namco Bandai Games America Inc.
- Natsume Inc.
- Nexon America, Inc.
- Nintendo of America Inc.
- NVIDIA
- O-Games, Inc.
- Perfect World Entertainment
- SEGA of America, Inc.
- Sony Computer Entertainment America
- Sony Online Entertainment, Inc.
- Square Enix, Inc.
- Take-Two Interactive Software, Inc.
- Tecmo Koei America Corporation
- THQ, Inc.
- Trion Worlds Inc.
- Ubisoft Entertainment, Inc.
- Warner Bros. Interactive Entertainment, Inc.
- XSEED Games



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