

Dated: March 22, 2006.

William Early,

Acting Regional Administrator, Region III.

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FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Reinstatement of Existing Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") intends to conduct a survey of parents who have one or more children, aged eight to 16, who play video or personal computer games. The FTC will also survey children aged eight to 16, who play video or personal computer games. The surveys are a follow-up to the Commission's surveys conducted in 2000 on consumers' use of and familiarity with the Entertainment Software Rating Board ("ESRB") electronic game rating system. The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501-3520).

DATES: Comments must be received on or before May 1, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Entertainment Industry Study: FTC File No. P994511" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions, please consider submitting your comments in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: entstudy@ftc.gov. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."¹

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit

request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available, to the extent practicable, to the public on the FTC Web site at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, such as requests for copies of the proposed collection of information (Supporting Statement and related attachments), should be addressed to Keith R. Fentonmiller, (202) 326-2775, or Richard F. Kelly, (202) 326-3304, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In 2000, OMB approved the FTC's request to conduct surveys on consumers' use of and familiarity with the rating or labeling systems of the motion picture, music recording, and video and personal computer game industries (OMB Control Number 3084-0120). After receiving OMB approval, the FTC conducted the consumer research and, in September 2000, the Commission issued a report requested by the President and Congress entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (hereafter "2000 Report").² The Commission found that

request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

² Available at <http://www.ftc.gov/reports/violence/vioreport.pdf>.

the electronic game industry had engaged in widespread marketing of violent electronic games to children that: (1) Was inconsistent with the ESRB rating system;³ and (2) undermined parents' attempts to make informed decisions about their children's exposure to violent content. Similar results were found for the motion picture and music recording industries. The Commission also found that advertisements for electronic games frequently failed to contain rating information. Further, the Commission's national surveys of parents and children found that only 61% of parents were aware of the ESRB system, and nearly half of those parents reported that they rarely or never used the ESRB system.⁴

In April 2001,⁵ December 2001,⁶ June 2002,⁷ and July 2004,⁸ the Commission issued follow-up reports to assess changes in industry practices. The first two follow-up reports documented progress by the video game industry to limit advertising in popular teen media. The third follow-up report found that the game industry was in substantial compliance with ESRB standards governing ad placements and disclosure of rating information in advertising. There were, however, some advertisements for Mature-rated games⁹ placed on television programs with large numbers of teen viewers and continued placement of such ads in game enthusiast magazines with large youth readership. The Commission's July 2004 report found substantial compliance with ESRB standards governing ad placements and that

³ As indicated on its Web site, <http://www.esrb.org>, the ESRB "is a self-regulatory body for the interactive entertainment software industry established in 1994 by the Entertainment Software Association, formerly the Interactive Digital Software Association. ESRB independently applies and enforces ratings, advertising guidelines, and online privacy principles adopted by the computer and video game industry. The ESRB rating system helps parents and other consumers choose the games that are right for their families. ESRB ratings have two parts: rating symbols that suggest what age group the game is best for, and content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern."

⁴ See 2000 Report, Appendix F at <http://www.ftc.gov/reports/violence/appendicesviort.pdf>. Appendix F also contains a detailed discussion of the underlying methodology and findings.

⁵ Available at <http://www.ftc.gov/reports/violence/violence010423.pdf>.

⁶ Available at <http://www.ftc.gov/os/2001/12/violencereport1.pdf>.

⁷ Available at <http://www.ftc.gov/reports/violence/mvecrpt0206.pdf>.

⁸ Available at <http://www.ftc.gov/os/2004/07/040708kidsviolencerept.pdf>.

⁹ According to the ESRB, Mature-rated games have content that may be suitable for persons 17 years of age and older. See http://www.esrb.org/esrbratings_guide.asp#symbols.

industry members generally were prominently disclosing rating information in advertising and on product packaging. A recent “mystery shopper” survey of video game retailers, conducted on behalf of the Commission between October 2005 and January 2006, showed that 42% of young teen shoppers (age 13–16) were able to purchase M-rated games.¹⁰ An additional mystery shopper study is planned for the summer of 2006.

There are continued concerns about parents’ knowledge and use of the ESRB system, parents’ agreement with the ratings that the ESRB has assigned to some games, and children’s ability to purchase Mature-rated games at the retail level. In response to these concerns and as part of the agency’s ongoing monitoring of the video game industry’s self-regulatory system, the FTC published a Notice seeking comments from the public concerning a new survey that would follow up on the 2000 survey with respect to the video game industry. See 70 FR 56703. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while requesting that OMB reinstate the clearance for the survey. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before May 1, 2006.

A. Comment Received From the ESRB

In response to its first Notice, the FTC received one comment, from the ESRB, raising a concern that the study would not examine consumers’ attitude toward the rating systems of other entertainment industries, and three additional concerns about the structure and content of the FTC’s proposed consumer research.¹¹ No other comments were received.

1. Surveys’ Exclusive Focus on Video Game Ratings

The ESRB suggests that the FTC survey consumers’ use and knowledge

¹⁰ Notably, the latest survey found that national sellers were much more likely to restrict sales of M-rated games to the shoppers, with only 35% of shoppers able to purchase a game. In contrast, regional or local sellers sold games to the shoppers 63% of the time. An earlier mystery shopper survey of retailers in 2003 found that 69% of young teen shoppers (age 13–16) were able to buy Mature-rated games, an improvement from undercover shopping surveys conducted in 2000 and 2001. See July 2004 Report, Appendix B at <http://www.ftc.gov/os/2004/07/040708kidsviolencerept.pdf>. The FTC’s September 28, 2005 Notice, 70 FR 56703, erroneously indicates this appendix is available at <http://www.ftc.gov/reports/violence/appendicesviortp.pdf>.

¹¹ The ESRB comment is available at <http://www.ftc.gov/os/comments/entertainindstrystudy/051123esrb.pdf>.

of not just the video game rating system, but other entertainment rating systems as well. The ESRB points out that the FTC’s 2000 research covered, in addition to the ESRB system, the rating systems for the motion picture and music recording industries. The ESRB asserts that the proposed research on the ESRB rating system will be significantly less useful than it would be if it also included the music and motion picture rating systems. However, each entertainment industry—whether music, movies, or video games— involves a distinct entertainment product and has a self-regulatory system tailored by its members. The self-regulatory challenges are not necessarily comparable across industries. The FTC’s research will track changes in consumers’ awareness and use of the ESRB system since 2000, and also will explore consumers’ agreement with video game ratings. The FTC’s gathering this data and tracking these changes is independent of consumers’ use and awareness of the music and movie industry rating systems.

The ESRB also asserts that the FTC’s focus on the video game rating system creates the impression that the FTC is unduly scrutinizing the video game industry. The FTC’s present focus on video game ratings responds, in part, to the recent increase in the popularity of video games and to concerns expressed by the public. Unlike the movie and music recording industries, the video game industry is relatively young and has experienced dramatic growth since the FTC’s survey in 2000. Video game software sales in the United States exceeded \$7 billion in 2005, during which more than 228 million video games were sold.¹² The ESA claims that the video game market has been the fastest growing sector of the entertainment industry over the past decade and that video game hardware and software sales now generate about \$25 billion in global revenue.¹³ The ESA has forecasted that video games will eclipse music as the second most popular form of entertainment by 2008¹⁴ and has cited to research claiming that video games are capturing increasing amounts of Americans’

¹² See Entertainment Software Association (“ESA”), *Top 10 Industry Facts*, available at http://www.theesa.com/facts/top_10_facts.php; ESA, *Essential Facts about the Computer and Video Game Industry*, at 11 (2005), available at <http://www.theesa.com/files/2005EssentialFacts.pdf> (last visited March 3, 2006).

¹³ See ESA, *ESA President Douglas Lowenstein Addresses Audience at China Joy Game Show in Shanghai*, available at http://www.theesa.com/archives/2004/10/esa_president_d.php.

¹⁴ *Id.*

leisure time at the expense of television and movies.¹⁵

Although the proposed survey covers only video game ratings, the FTC continues to monitor and report on the marketing activities and self-regulatory efforts of the music and motion picture industries, and future consumer research may study the music or motion picture rating systems as well.

2. Ability To Study the “Accuracy” of Video Game Ratings

The ESRB expresses concern that the FTC’s research will attempt to study the “accuracy” of ESRB ratings, even though there is no universal, objective standard through which to verify the accuracy of video game ratings. The FTC is seeking, however, only to assess parents’ general level of agreement with the ESRB ratings for games they have personally encountered through purchase or play with their children.

The ESRB further contends that the FTC will not be able to study whether parents agree with ESRB ratings through a telephone survey. The ESRB claims that not showing parents footage of the games “undermines the integrity of the research.” The survey questions about agreement with game ratings will be posed to parents who are familiar with the ESRB system and will inquire only into those parents’ direct, personal experiences in purchasing, playing, or viewing video games with their children. Thus, the survey is crafted to measure parental agreement with game ratings at the points parents actually have used game ratings and game content—that is, to measure parents’ real life experiences at the point of purchase or in front of the video monitor.

The FTC is aware that the survey data will depend upon parents’ memories of game content they saw prior to the survey, unlike a study involving the display of video game footage akin to the annual validity studies commissioned by the ESRB.¹⁶ Although

¹⁵ See ESA, *Americans Playing More Games, Watching Less Television*, available at http://www.theesa.com/archives/2004/05/esa_releases_re.php.

¹⁶ See http://www.esrb.org/downloads/validity_study_11_14_05.pdf; http://www.esrb.org/downloads/validity_study_11_22_04.pdf; http://www.esrb.org/downloads/study12_5_03.pdf. The ESRB’s validity studies involve the display of one to two minute clips of video game play to parents of children who play video games. The brevity of these clips may limit the use of the results because games typically take many hours to complete. Moreover, it is unknown whether the content selected for these brief video clips fully represents the range and frequency of content that caused the ESRB (whose raters rely on more extensive footage of game play as well as the publisher’s responses to a detailed questionnaire) to assign the game a particular rating.

different in design, the FTC's parental telephone survey, nonetheless, can provide useful information on this issue, and can serve to supplement the ESRB's validity studies as well as the ESRB's 2005 telephone survey on parental awareness and use of its rating system.¹⁷ Indeed, several of the questions in the Commission's survey are very similar to questions from the ESRB's awareness and use survey, in particular, a question about how confident parents are that ESRB ratings reflect their own views about the age-appropriateness of game content and a question about parents' attitude toward games rated M for Mature. The FTC's survey probes more deeply into parents' responses to these general questions about their confidence in or agreement with ESRB ratings.

3. Focus Group Design

The ESRB expresses several concerns about the focus groups proposed in the initial Notice. After consultation with market research experts, the FTC determined that the potential benefit of focus groups in developing new questions for the telephone survey did not justify the time and expense of conducting them. Thus, monies for the focus groups have been reallocated to expand the size of the telephone surveys.

4. Telephone Surveys

The FTC originally proposed to randomly call 1,000 households in order to survey 250 parents and 150 children; to be eligible to participate, parents needed to have had at least one child between the ages of 11 and 16. See 70 FR 56703 (September 28, 2005). The ESRB believed that the margin of error with these sample sizes would be too high and suggested a sample size closer to the size of the respondent pool in its own 2005 awareness and use survey (500 parents). The ESRB further stated that the survey is under-inclusive because it is limited to parents with at least one child between the ages of 11 and 16, thereby excluding parents of children between the ages of three and 11, who may be more likely to use ESRB ratings and restrict usage of Mature games than parents of older children. Last, the ESRB recommended against surveying children, given that its rating system is designed, not for children, but to help parents pick appropriate games for their children.

The FTC has decided to substantially increase the sample sizes for both the

parent and child surveys to 1,000 and 500, respectively. In addition, the FTC will expand the parent pool to include parents with at least one child between the ages of eight and 16 who play video games.

The design of this survey makes it impractical to further expand the respondent pool to include parents who have children only between ages three and seven. The parent survey focuses on the parent's awareness and use of the ESRB system in relation to one particular child. After the parent survey, the child who was the subject of the parent survey will be surveyed (with parental permission). At the conclusion of all the parent and child surveys, each parent's responses will be compared to his or her child's responses to similar questions. Based on consultations with market research experts, the FTC has determined that it is impractical to conduct a telephone survey of children younger than eight. Moreover, because the survey will include parents with children as young as age eight, the respondent pool will include virtually all parents who have actually used or are most likely to use the ESRB system to decide whether it is appropriate for their youngest children to play games designed for more mature audiences (e.g., games rated T for Teen¹⁸ and M for Mature). The FTC believes that these design changes adequately address the ESRB's under-inclusiveness concern and its concern about the margin of error for any results concerning the parent and children groups.

The FTC's 2000 survey demonstrates that the child survey component will provide an important perspective on the results of the parent survey. The 2000 survey revealed significant discrepancies between the responses of parents and children in several key areas. For example, compared to their children, parents claimed a much greater role in their children's selection and purchase of video games.¹⁹ Also, compared to children, parents claimed to restrict the games their children could play much more often than their children reported.²⁰ The 2000 child survey also yielded important information on whether: (1) Children had attempted to buy or play an M-rated game without their parents' permission; (2) store employees had tried to stop the unaccompanied child from buying the Mature-rated game; and (3) children had

asked someone to buy or rent a game for them out of concern that they would be checked because of their age. In short, what children think about video game ratings and their ability to purchase games with certain ratings provide an important supplement to parents' views about video game ratings and their children's game playing habits.²¹

B. Description of the Collection of Information and Proposed Use

The FTC has developed two questionnaires and will survey a random sample of 1,000 adult respondents who are parents of one or more children, age eight to 16 years, who play video or personal computer games. The FTC intends to pretest the survey questions on 100 parent respondents to ensure that all questions are easily understood. In many respects, the questionnaire will be similar to the one used for the 2000 Report. For example, the survey will continue to explore parents' awareness of and attitudes toward the ESRB system. In addition, the questionnaire includes questions regarding parents' level of agreement with ESRB ratings for games rated T for Teen and M for Mature that parents have personally encountered through buying, renting, playing, or watching games with their children.²² The FTC also has added questions about the number of different games that have been purchased or rented either by or for their children; content descriptors; parents' familiarity with the last video game purchased by or for children; and how regularly parents themselves play video games.

The FTC will also survey 500 children between the ages of eight and 16 who play video or personal computer games.²³ The survey will explore

²¹ The ESRB also is concerned that parents may be present at the time the children are surveyed, implying that children's responses may be compromised. The children's frank responses to the 2000 survey, including responses that arguably contradicted their parents' claims about their degree of oversight of their children, does not support that concern. In any event, the survey interviewer will record whether the parent was on the telephone line with the child for the entire call, nearby for at least part of the call, or did not appear to be close by. The data can then be analyzed for any discrepancies based on the presence of parents during the child survey.

²² In the interest of brevity, the FTC has not included specific questions about parents' level of agreement with the ESRB ratings for games in other rating categories, such as E for Everyone or E10+ (Everyone Ten Plus). Nevertheless, the FTC has included a general question regarding how often video game ratings match parents' personal views of whether or not a game may be suitable for children in the age group indicated by the game's rating.

²³ The children will be selected from the same household as the adult survey respondents.

¹⁷ For information on the ESRB's awareness and use study, see http://www.esrb.org/downloads/awareness_use_5_5_05.pdf.

¹⁸ According to the ESRB, Teen-rated games have content that may be suitable for persons 13 years of age and older. See http://www.esrb.org/esrbatings_guide.asp#symbols.

¹⁹ See 2000 Report, Appendix F, *supra* note 2, at 17.

²⁰ *Id.* at 18.

children's video game habits and preferences; whether their parents restrict them from playing certain video games; their familiarity with the ESRB system; and whether they have attempted to purchase Mature-rated games without their parents' permission or knowledge. As in the parent survey, questions on the child survey will be based upon those used for the 2000 Report, but some new questions have been added regarding their parents' attitudes toward games rated T for Teen and M for Mature; their attempts to purchase M-rated games on the Internet; and downloading games onto their cell phones.

The FTC has contracted with a consumer research firm to provide guidance on developing the survey questionnaires and, subject to OMB approval, to conduct the surveys. The results of the surveys will help the FTC evaluate whether and how consumers use the ESRB rating system and whether consumers generally agree with ESRB ratings for games with which they are familiar.

2. Estimated Hours Burden

For the parent telephone survey, the contractor will first identify eligible parents using screening questions in a telephone survey and then ask whether respondents, with a child between the ages of eight and 16, would participate in the children's survey. Allowing for non-response, the screening questions will be asked of approximately 9,100 respondents to provide a large enough random sample for the surveys. As noted, the child survey will be conducted as an adjunct to the parent survey, *i.e.*, by speaking to a child in the same household as eligible adult respondents. As a result, the extra time required to screen for child respondents will be *de minimis*.

The FTC estimates that the screening for the surveys will require no more than one minute of each respondent's time. Thus, cumulatively, screening should require a maximum of 152 hours (9,100 total respondents \times 1 minute for each).

The FTC intends to pretest the parent survey on 100 parents to ensure that all questions are easily understood. The pretests will take approximately 20 minutes per person. If the pretests do not lead to any material changes in the survey instruments, the data derived from the pretests will be used in the final analysis of the completed surveys. The hours burden imposed by the pretest will be approximately 33 hours (100 respondents \times 20 minutes per survey). Answering the parent surveys will impose a burden per parent

respondent of approximately 20 minutes and a burden per child respondent of approximately 10 minutes, totaling 383 hours for all respondents to the surveys ((900 parent respondents \times 20 minutes per survey) + (500 child respondents \times 10 minutes per survey)). Thus, the total hours burden attributable to the consumer research is approximately 568 hours (152 + 33 + 383).

3. Estimated Cost Burden

The cost per respondent should be negligible. Calls will be made to respondents' homes so that the time involved will not conflict with regular work hours. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Christian S. White,

Acting General Counsel.

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OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities: Submission for OMB Review; Comment Request for Extension of Approval for an Unmodified OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) a request for review and one-year extension of approval under the Paperwork Reduction Act (PRA) of the current (unmodified) version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report form (hereafter, OGE Form 450). The current OGE Form 450 is to continue to be accompanied by agency notification to filers of the adjustment of the gifts/travel reimbursements reporting thresholds as explained below.

The reason for this request is that paperwork clearance for the OGE Form 450 would otherwise expire under the PRA at the end of March 2006. In a first round paperwork notice published last summer in the **Federal Register**, OGE proposed a modified OGE Form 450. Because we received so many helpful comments in response to that notice, we have significantly redesigned the

proposed new modified OGE Form 450 and recently separately published another first round paperwork notice in order to provide a further comment period. OGE's present notice and submission to OMB requesting one-year paperwork renewal of the current version of the OGE Form 450 will allow the existing confidential report form to continue to be used by new entrant filers for the rest of 2006 while OGE pursues finalization of the new form. (OGE plans to waive this fall's incumbent OGE Form 450 filing, with the next annual incumbent filer reports to be due in February 2007 utilizing the new modified form once it is cleared for use starting next year.)

DATES: Comments by the public and agencies on this current information collection, as proposed in this notice with no modifications, are invited and should be received by May 1, 2006.

ADDRESSES: Comments should be sent to OMB Desk Officer for OGE, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; Telephone: 202-395-7316; FAX: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: James V. Parle, Associate Director, Information Resources Management Division, Office of Government Ethics; Telephone: 202-482-9300; TDD: 202-482-9293; Fax: 202-482-9237. A copy of the unmodified current OGE Form 450 may be obtained, without charge, by contacting Mr. Parle; it is also available in the Forms, Publications and Other Ethics Documents section of OGE's Internet Web site at <http://www.usoge.gov>.

SUPPLEMENTARY INFORMATION: The OGE Form 450 (OMB control #3209-0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the Federal Government executive branch departments and agencies. Agency ethics officials then use the completed OGE Form 450 reports to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990, 3 CFR, 1990 Comp., pp. 306-311,