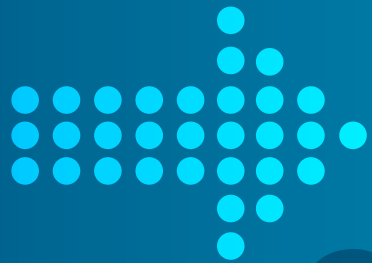
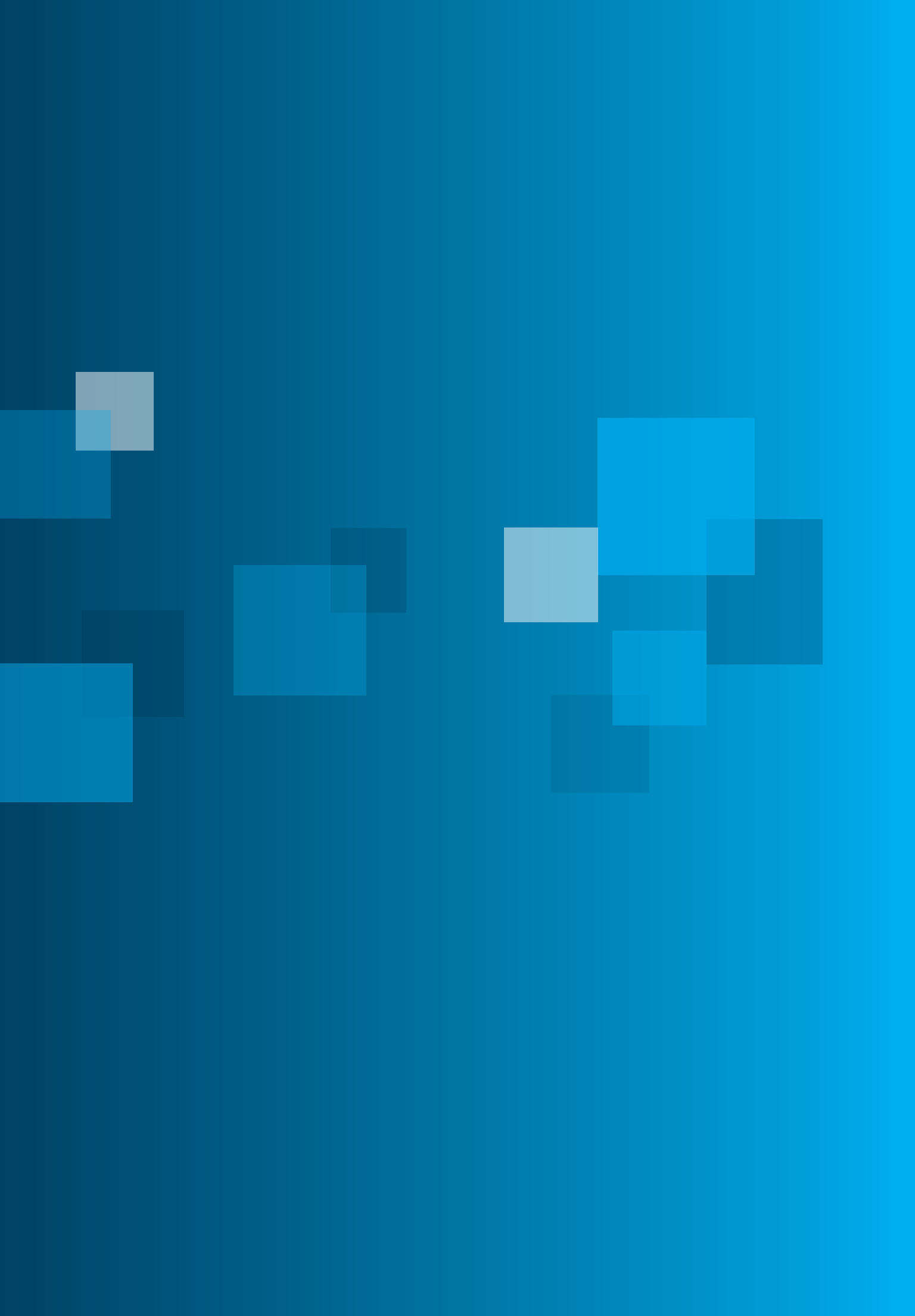




entertainment  
software  
association

# ANNUAL REPORT 2010





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# A Message From Michael D. Gallagher

Dear Friends:

I am pleased to present the 2010 Entertainment Software Association (ESA) Annual Report. Throughout the year, the ESA remained dedicated to serving the interactive entertainment software industry's business and public affairs interests, at a time when computer and video games are increasingly influencing diverse areas of our daily lives.

This past year, our industry confronted a historic challenge to the First Amendment rights of computer and video games, as the U.S. Supreme Court agreed to hear the case of *Schwarzenegger v. Entertainment Merchants Association/Entertainment Software Association*. The case centers around a 2005 California statute restricting the sale and rental of computer and video games based on their content. The ESA proudly presented our arguments against this law before the Court in November and vigorously defended the works of our industry's creators, storytellers and innovators.

We engaged in a number of activities to support our position in *Schwarzenegger v. EMA/ESA*:

- As a result of a national outreach effort to secure additional support for our position, more than 180 leading First Amendment experts, social scientists, researchers, national organizations and non-profits signed amicus curiae briefs filed with the Court on our behalf. These signatories also included attorneys general for Arkansas, Georgia, Nebraska, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, Utah and Washington state who praised the positive work our industry has done related to the Entertainment Software Rating Board (ESRB) rating system.
- The ESA issued a series of statements and news releases surrounding the case; reached out to more than 700 reporters to provide them with the latest updates; and conducted an aggressive 50-state editorial board and columnist outreach strategy, which put the ESA's position before 200 editorial boards and columnists at the top 50 publications and select nationally syndicated columnists. These efforts yielded a large amount of positive coverage in national and local outlets across the nation.
- The Video Game Voters Network (VGVN) provided unwavering support for our industry throughout the Court proceedings. This network of more than 285,000 voting-age game enthusiasts contacted their state attorneys general urging them to support our position. VGVN members also participated in a campaign to send California State Sen. Leland Yee, the sponsor of the California law, their broken video game controllers that bore a First Amendment message.

Despite this unique challenge, we achieved a number of important accomplishments and pursued key initiatives that helped strengthen our industry's foundation, and will provide for its continued success. Featured here are some of the key milestones demonstrating our progress:

- Lawmakers throughout the nation continued to recognize the industry's economic benefits. Bills creating new or improving existing tax incentives for computer and video game production were enacted into law in Florida, Maine, North Carolina and Virginia. A total of 22 states now provide incentives for game development.
- In an effort to highlight the industry's national and state-level presence, we released a report on the economic impact of the industry, nationally and in 26 key states, as well as a list of the 300 American colleges, universities, art and trade schools that offered game-related degrees during the 2010-11 academic year.

# A Message From Michael D. Gallagher

- Our intellectual property and anti-piracy teams continued to engage with federal agencies, law enforcement officials and international industry representatives to ensure adequate protections for computer and video game companies worldwide. The inclusion of strong anti-circumvention provisions in the Anti-Counterfeiting Trade Agreement was an important achievement for our industry, and signals the beginning of a new and productive era in protecting the interests of all parties involved.
- The ESRB continued to raise awareness and encourage the use of its rating system through the development of new resources and advertisements. New mobile rating search apps now enable parents to check rating summaries when shopping for games by simply taking a photo of the game box with their smartphone. The ESRB also launched two new PSA campaigns featuring well-known sports figures from the New Orleans Saints and Chicago Blackhawks, which are currently appearing on media outlets, in sports stadiums and on in-store video networks around the country. Such efforts are leading to real results—three out of four parents regularly check a game's rating before purchasing or renting a game.
- The ESA Foundation continued to provide valuable opportunities for America's youth and college students through its Computer and Video Game Scholarship Program for graduating high school seniors, awarding 30 scholarships to students from 20 different states and 19 different academic institutions. In addition, the annual Nite to Unite—for Kids event successfully raised \$1 million, enabling the Foundation to distribute grants to a number of worthy organizations. The Foundation also expanded its charitable giving this year through *Double Your Impact*, a campaign with DonorsChoose.org that helped bring more than 80 charitable projects to life, reaching nearly 8,000 students.

These achievements would not have been possible without the continued support and innovation of our member companies. Your dedication is crucial to maintaining the strength of our industry and to providing a path toward future growth and success. I would like to take a moment to express my appreciation to our Board members, ESA staff and the ESRB. We look forward to continuing our work together to highlight the ongoing evolution of our industry and the ways in which computer and video games are helping Americans lead healthier, happier and more productive lives.



Michael D. Gallagher  
President and CEO

**THE ESA FEDERAL GOVERNMENT AFFAIRS (FGA)** program advances the computer and video game industry's policy priorities with the U.S. Congress and the Executive Branch. The ESA harnesses the industry's economic success, technological prowess and world-leading self-regulatory practices to influence Congress' legislative agenda and the Administration's policy agenda. In 2010, a year in which the industry did not face the threat of content legislation, FGA sought to build support for the industry by educating policymakers and creating allies around the positive role that video games can play. The FGA staff works with influential organizations and individuals in Washington, D.C., to ensure successful legislative outcomes for the industry.

## CONGRESSIONAL ENTERTAINMENT TECHNOLOGY CAUCUS

- The ESA worked to establish a congressional caucus in the House of Representatives to identify champions for the industry and showcase the positive potential of video games in the area of jobs, education and fitness. Rep. Debbie Wasserman Schultz (D-Fla.) agreed to chair the caucus along with Rep. Kevin Brady (R-Texas). The caucus was announced at the start of the first session of the 112th Congress and to date the ESA has secured 56 members.

## INDUSTRY PROFILE

- Capitalizing on the success of our member companies' products, FGA hosted two game product launch receptions with our highest rates of attendance to date. More than 650 guests attended the Microsoft Kinect launch event (September 22) and the *Michael Jackson Experience* holiday party (December 8), including Reps. Marsha Blackburn (R-Tenn.) and Patrick Kennedy (D-R.I.), Sen. Mike Lee (R-Utah), Congressman-elect Cedric Richmond (D-La.), and Attorney General Patrick Lynch (D-R.I.).



The Microsoft Kinect launch event and the *Michael Jackson Experience* holiday party were highly successful, drawing record crowds.



# federal government affairs



Senior Vice President of Government Affairs Erik Huey, Rep. Patrick Kennedy (D-R.I.), and President and CEO Michael Gallagher at the ESA-hosted Microsoft Kinect launch event.

## WHITE HOUSE OUTREACH

- In 2010, the ESA teamed up with the White House on two health and education initiatives: 1) the Apps for Healthy Kids contest, which gives prizes for the top video games that teach kids about nutrition and 2) the National STEM Video Game Challenge in partnership with Advanced Micro Devices, E-Line, Microsoft Corporation and Sesame Workshop. Additionally, FGA partnered with the First Lady's office and the President's Council on Sports, Fitness and Nutrition to launch the PlayFit Challenge, establishing movement-based video games as an integral part of healthy lifestyles.

## ENERGY EFFICIENCY REGULATION

- FGA successfully worked with Senate Energy and Natural Resources Committee staff to improve legislative language from a mandate regulating the energy efficiency of video game consoles to a research study examining game consoles' current efficiency.

## CONSUMER PRIVACY

- FGA submitted comments to House Commerce, Trade and Consumer Protection Subcommittee Chairman Bobby Rush (D-Ill.) and House Communications, Technology and Internet Subcommittee Chairman Rick Boucher (D-Va.) outlining the ESA member companies' concerns regarding language in two separate consumer privacy bills. No legislation passed in 2010.

## CUSTOMS REAUTHORIZATION

- FGA worked with the Senate Finance and House Ways and Means Committees to ensure legislation to reprioritize trade functions within Customs and Border Protection (CBP) contained provisions that would help the ESA member companies identify the type and origin of copyright circumvention devices seized by CBP. This legislation will serve as the draft bill for the 112th Congress.

In 2010, FGA sought to build support for the industry by educating policymakers and creating allies around the positive role that video games can play.

## ADDITIONAL MATERIALS

- The ESA hosted a series of events at its headquarters featuring House Majority Leader Steny Hoyer (D-Md.), Senate Assistant Majority Leader Dick Durbin (D-Ill.), Senate Minority Leader Mitch McConnell (R-Ky.), and more than 19 Members of the House and Senate learning about our industry while enjoying several recent titles.



## STATE GOVERNMENT AFFAIRS (SGA)

The ESA's state and local government affairs program is responsible for stopping the introduction of bills seeking to regulate computer and video games, including the imposition of taxes based on game content and developing positive relationships with legislative leaders, governors and state attorneys general to enhance the opportunities and environments for growth, job expansion and innovation.

To accomplish these goals, the ESA established a network of legislative advocates and allies across the country to help monitor and respond to legislation affecting the interactive entertainment software industry.

In 2010, the ESA continued to face serious state legislative challenges, including attempts to regulate the sale and distribution of computer and video games. A total of 136 bills affecting computer and video games were introduced in 31 states or carried over from the 2009 legislative session.

- Thirty-seven tax incentive proposals were introduced in 16 states. At the same time, in response to increased budget pressures, 13 bills in six states were introduced to either reduce or eliminate incentives for game production. Two incentive bills in North Carolina and Virginia that

were positive for the industry passed in 2010; all of the bills proposing reduction or elimination of video game incentives were defeated.

- Finally, there were 10 bills in five states providing "right of publicity" protections for the commercial use of an individual's identity. In 2010, SGA successfully opposed bills that would have treated video games differently than other expressive works.

## SCHWARZENEGGER V. EMA/ESA

- SGA undertook a national outreach effort to maximize state attorneys general support for the ESA's position in the *Schwarzenegger v. EMA/ESA* case and to minimize support for California's petition to allow government regulation of video games. On July 19, Louisiana Attorney General Buddy Caldwell (D) filed an amicus brief in support of California, despite the ESA's efforts to dissuade him. As a result of the ESA's strategic outreach, the ESA was able to limit support for Louisiana's brief to 10 other states.
- Rhode Island Attorney General Patrick Lynch (D) filed a brief along with nine other attorneys general in support of the ESA's position before the Court. The brief focused on the negative impact on U.S. law enforcement of the Court supporting California's claim.

## STATE-BY-STATE REPORT

**CALIFORNIA:** On February 26, SGA testified at a hearing before the California State Assembly Joint Committee on the Arts in Culver City, Calif., to highlight the positive economic impact of the state's computer and video game industry.

On May 5, SGA held a state lobbying day in Sacramento, which included more than 15 meetings with key legislators and staff. Representatives from

Electronic Arts, Konami Digital Entertainment, Sony Computer Entertainment America and Take-Two Interactive Software, Inc., participated.

**COLORADO:** On January 11, the ESA and Colorado Attorney General John Suthers (R) launched the “Wired With Wisdom” Internet safety education program for Colorado parents at a press conference in Denver. The launch was made possible through a grant by the ESA Foundation. Rep. Nancy Todd (D), the sponsor of Internet safety legislation in previous legislative sessions, and Colorado PTA President Lynn Huizing also participated in the press conference.

SGA undertook a national outreach effort to maximize state attorneys general support for the ESA’s position in the Schwarzenegger v. EMA/ESA case and to minimize support for California’s petition to allow government regulation of video games.

**FLORIDA:** On May 28, Gov. Charlie Crist (I) signed SB 1752 into law, significantly improving the state’s existing incentives for digital media and film production. SGA worked with Rep. Stephen Precourt (R), Senate President Mike Haridopolos (R) and other key legislators in support of this proposal, which became a centerpiece of the legislature’s jobs package. SB 1752 increased the base incentive amount from 15 to 20 percent for film, TV and digital media productions, and substantially increased the annual cap on total credits.

**HAWAII:** HB 2867 was filed to eliminate the current motion picture, digital media and film production

income tax credit. SGA met with key legislators and submitted a letter in support of the current tax incentive program as part of a coalition effort that successfully protected the program.

**LOUISIANA:** SB 618 was introduced by Sen. Joe McPherson (D), requiring a 90-day notice, with the right to cancel, for contracts with an automatic renewal clause. SGA worked with the bill sponsor and members of the State Privacy and Security Coalition on a substitute bill, SB 802, which allowed greater flexibility and clarity in automatic subscription renewal requirements. SB 802 was signed into law by Gov. Bobby Jindal (R).

On September 28, the ESRB launched a TV and radio PSA campaign with New Orleans Saints players Devery Henderson and Marques Colston. House Commerce Committee Chairman Jeff Arnold (D) and Senate Judiciary Committee Chairman Danny Martiny (R) participated in the press conference.

**MAINE:** Gov. John Baldacci (D) signed into law legislation expanding the state’s current tax incentives for visual media productions, which include computer and video games. The legislation provides a rebate on wages for workers (10 to 12 percent) and a tax credit for visual media production expenses (5 percent).

The Maine Joint Standing Committee on the Judiciary recommended repeal of LD 1183, which was legally challenged on constitutional grounds in September 2009 for broadly restricting the collection, receipt or use of personal or health-related information from minors for marketing purposes. The ESA worked with Maine legislators and a coalition in support of the repeal. A repeal bill, LD 1677, was unanimously approved by the Maine Senate and House and signed into law by Gov. Baldacci.

**MICHIGAN:** SGA worked with House Speaker Pro Tempore Pam Byrnes (D) and stakeholders to create “right of publicity” legislation that included video games in the bill’s expressive works exemptions. SGA testified in support of the bill before the House Judiciary Committee on August 18, and was opposed by the Screen Actors Guild (SAG) and the major sports players associations. No vote was taken at the hearing and no further action occurred on the bill before the legislature adjourned on December 2.

On November 3, SB 1556 was introduced by Senate Judiciary Committee Chairman Wayne Kuipers (R). This legislation prohibited the name and likeness of a public figure from being used for commercial profit during his or her lifetime or for a period of 50 years after the date of death, without written consent. The bill was heard by the Senate Judiciary Committee on November 9, but failed to pass. No further action was taken on the bill before the legislature adjourned.

**NEW YORK:** New York A 2837 would prohibit the sale of “sexually explicit” and “violent” video games to minors and require that such games be stored in sealed or locked containers or in an area inaccessible by the general public. SGA was successful in stopping A 2837 when the New York Assembly Committee on Consumer Protection voted to hold the bill in committee for the remainder of the legislative session.

**NORTH CAROLINA:** On January 29, SGA participated in a press conference with North Carolina Superintendent of Schools Dr. June Atkinson, Cumberland County school officials, Rep. Rick Glazier (D) and local law enforcement to announce the ESA Foundation’s \$200,000, two-year grant to provide the PAX SPEAK UP program in Cumberland County schools.

On July 22, Gov. Bev Perdue (D) signed HB 1973 into law, which provides a 15 percent tax credit on wages and compensation for employees involved in digital media production, or the creation of a platform or engine to run such media. The ESA supported this legislation, working with key members of the House and Senate to ensure digital media’s inclusion in this economic development package. The ESA also arranged for the bill’s signing to be held at Epic Games, Inc., in Cary. Epic Games CEO Mike Capps participated in the event and provided a tour of the facility for Gov. Perdue and key staff.

**RHODE ISLAND:** Sen. Frank Ciccone (D) introduced SB 2156, which would make it a misdemeanor to sell or rent an M-rated video game to a person under the age of 17 or an AO-rated video game to a person under the age of 18. SB 2156 also made it a misdemeanor to knowingly or intentionally sell or rent video games that contain “violent” or “sexually explicit” content to anyone under 18 years of age. SGA enlisted the support of the Rhode Island attorney general and met with the bill sponsors and

key committee members to successfully prevent action on the proposed legislation.

The Rhode Island FY 2011 budget introduced by Gov. Donald Carcieri (R) eliminated several state tax incentive programs including the motion picture production tax credit, which encompasses video game production. SGA defended tax incentives targeted for removal from the state budget. At SGA’s urging, the language was removed and the budget became effective on June 12.

**TEXAS:** On April 8, the ESA testified before the House Culture, Recreation and Tourism Committee in support of video game production receiving equal incentives to those available for motion picture production. Throughout 2010, the ESA conducted meetings with key legislative leaders, as well as the State Comptroller and Lieutenant Governor’s office, in support of equal incentives for video game production.

**UTAH:** On July 17, SGA participated in the EA Salt Lake grand opening in Salt Lake City, Utah. Gov. Gary Herbert (R) provided opening remarks and participated in the ribbon cutting with Jon Dean, executive producer for EA Salt Lake. Senate President Michael Waddoups (R), Sens. Steve Urquhart (R), Ben McAdams (D) and Howard Stephenson (R), and Rep. Jen Seelig (D) attended the event.

**VIRGINIA:** SGA worked with Sen. Louise Lucas (D) to amend SB 257, which created tax credits for motion picture production, including tax credits for digital interactive media production. SB 257’s companion bill did not include the amendment. SGA and SouthPeak Interactive Corporation met with conferees charged with negotiating the differences between the two bills, as well as Gov. Bob McDonnell (R) and his staff. The conference committee agreed to include the digital interactive media amendment in the bill, which was signed into law by Gov. McDonnell.

**WASHINGTON:** On January 19, the ESA held a state lobbying day that included more than 10 meetings with key legislators and staff. Representatives from Microsoft Corporation and Nintendo of America, Inc., participated in legislative meetings and showcased games during the reception.

Mike Gallagher speaks to the press on the U.S. Supreme Court steps immediately after oral arguments before the Court. Coverage of the case came from virtually every major media outlet, including CNN, *The New York Times*, *The Washington Post* and NPR, among many others.



## ILLINOIS (*ESA V. CHICAGO TRANSIT AUTHORITY*)

On January 7, the ESA achieved an important First Amendment victory for our industry. The U.S. District Court for the Northern District of Illinois granted the ESA's motion for preliminary injunction against enforcement of a Chicago Transit Authority (CTA) ordinance that prohibits advertisements for video games rated M or AO. After a hearing on December 11, 2009, the Court found that the ESA is likely to succeed in establishing that the ordinance is unconstitutional.

The District Court determined that the CTA is a public forum and that its ordinance would fail the strict-scrutiny test. But the Court also held that, even under a lesser commercial-speech/intermediate-scrutiny standard, the ordinance would still fail. The Court noted that the CTA could offer no defensible distinction for singling out video games, while requiring no similar restrictions on advertisements for movies or television shows with adult ratings or content; adding that, even if it could, "the Seventh Circuit has shown resistance to recognizing any such proffered distinction in the past." The Court also found that the CTA had offered no evidence to demonstrate any connection between ads for M- and AO-rated games and violence among young CTA riders. The Court noted, "[a]s far as the Court is aware, the CTA possesses no new research or evidence that would contradict the prior findings of courts in this circuit that there is insufficient

evidence connecting real violence with violent games to justify restrictions on expressions."

On May 18, the Court entered final judgment in the ESA's favor and permanently enjoined the CTA from enforcing an ordinance banning advertisements of video games rated M or AO.

## MGE UPS SYSTEMS

On August 10, the ESA filed an amicus curiae brief in the U.S. First Circuit Court of Appeals supporting plaintiff/appellant MGE UPS Systems' petition for rehearing in a case concerning the Digital Millennium Copyright Act (DMCA). The Court's initial decision misconstrued Section 1201 of the DMCA to require that circumvention of an access-control measure also involve copyright infringement in order to violate the DMCA's ban on circumvention. The ESA, along with the Motion Picture Association of America, Recording Industry Association of America, Business Software Alliance and Software Information Industries Association, urged the Fifth Circuit to grant rehearing to correct its error. On September 29, the Fifth Circuit agreed with the ESA and the other amicus, issuing an amended opinion that removed the erroneous discussion of Section 1201.

## U.S. SUPREME COURT (*SCHWARZENEGGER V. EMA/ESA*)

On November 2, the ESA represented the video game industry before the U.S. Supreme Court for oral argument in the case of *Schwarzenegger v. EMA/ESA*. In this historic First Amendment case, the Court is reviewing the decision of the U.S. Court of Appeals for the Ninth Circuit to affirm a district court's permanent injunction against enforcement of California law AB 1179, which would have banned the sale of violent video games to minors.

On September 10, the ESA filed its brief on the merits of the case. The ESA also led a months-long effort to recruit and coordinate supporting briefs from amicus curiae, which resulted in the filing, on September 17, of more than 27 separate amicus briefs on behalf of more than 60 organizations representing a wide range of political, legal and business interests, along with 10 state attorneys general, 82 social scientists and media scholars, and a group of prominent First Amendment law professors. The Court's decision, which is expected sometime in the late spring or early summer of 2011, will likely have a dramatic impact well beyond the computer and video game industry.



## COMMUNICATIONS & INDUSTRY AFFAIRS (C&IA)

Through media outreach, events, digital communications and grassroots advocacy, C&IA educated influencers and opinion elites about the computer and video game industry's many positive contributions. The department highlighted the industry's growing economic impact as well as the important contributions games are making in fields such as education and health. C&IA also educated journalists about the ESA's position in *Schwarzenegger v. EMA/ESA* by mounting an aggressive communications campaign to garner coverage of the association's legal efforts and its key arguments against the California statute. Following are some highlights of C&IA's initiatives in 2010.

### INDUSTRY COMMUNICATIONS

- C&IA worked to highlight the industry's national- and state-level presence through the release of two reports. One detailed the economic impact of the industry, both nationally and in 26 key states, and the other listed the 300 American colleges, universities, art and trade schools that offered game-related degrees during the 2010-11 academic year. Both generated significant, positive coverage in major news outlets across the nation.
- The department continued to promote the important contributions games are making to health and education. C&IA publicized Michael Gallagher's appointment as a judge for the Apps for Healthy Kids Challenge, a game and application design competition sponsored by the U.S. Department of Agriculture as part of First Lady Michelle Obama's *Let's Move!* fitness and nutrition initiative. In addition, the department collaborated with partner

organizations, such as the Joan Ganz Cooney Center at Sesame Workshop, to launch the National STEM Video Game Challenge during a White House event celebrating President Obama's *Educate to Innovate* campaign.

- C&IA supported the ESA's legislative and legal efforts through several initiatives. The department distributed news releases and conducted media outreach to promote the enactment of economic incentives for digital interactive media productions in Florida, North Carolina and Virginia. C&IA issued a news release and conducted editorial board outreach around the January decision by the U. S. District Court for the Northern District of Illinois to grant the ESA preliminary injunction in its suit against the CTA regarding game advertising. The department also issued five statements and news releases around developments related to intellectual property protection in 2010.

### SCHWARZENEGGER V. EMA/ESA COMMUNICATIONS

- C&IA issued five statements and news releases around the case—upon granting of cert, California's filings, California's amicus briefs, the ESA's filings, the ESA's amicus briefs and an open letter from Michael Gallagher. The department also modified the ESA website to include a portal providing information about the case and issued a special edition of the ESA Newsletter in October focused specifically on *Schwarzenegger v. EMA/ESA*.
- The department reached out to more than 700 reporters, including members of the Supreme Court press pool, providing them with the latest news and fielding reporter requests. C&IA secured more than 10 interviews for ESA officials with a wide variety of outlets including the *Wall Street Journal*, *USA Today*, Bloomberg, NBC, CNN, *Los Angeles Times*, *ABA Journal*, NPR, San Francisco's ABC affiliate KGO-TV, and Annenberg TV.
- C&IA also conducted an aggressive, 50-state editorial board and columnist outreach strategy, which put the ESA's position before 200 editorial boards and columnists at the top 50 publications and select nationally syndicated

# communications & industry affairs

C&IA coordinated press coverage, encouraged media attendance and drafted remarks for ESA leadership and Jenner & Block, ESA's firm before the Court, for a press conference immediately following oral arguments.



columnists. The department also secured editorial board meetings with a number of outlets including: *Baton Rouge Advocate*, *Des Moines Register*, *Los Angeles Times*, *Sacramento Bee*, *Wall Street Journal* and *The Washington Post*.



## VIDEO GAME VOTERS NETWORK (VGVN)

The VGVN is the industry's grassroots organization committed to ensuring that video games are fully protected speech under the Constitution, and receive the same First Amendment protection as books, movies, music and cable TV programs. It opposes efforts to regulate the content of entertainment media, including proposals to criminalize the sale of certain games to minors or regulate video games differently from other forms of media.

- The VGVN was activated 23 times to support advocacy around the Supreme Court case, sending letters to state attorneys general either urging them to sign on with an amicus brief supporting the ESA's position or not to sign on to a brief opposing video games.
- The VGVN launched the Supreme Court Action Center. C&IA called on VGVN members to design

the official VGVN badge. The department secured a letter by Stan Lee in support of the VGVN, which drove tens of thousands of people to the website. C&IA organized an effort that enabled VGVN members to mail California State Senator Leland Yee (D) their broken video game controllers, each bearing a First Amendment message.



## E3 EXPO

Immediately following the 2010 E3 Expo, the ESA fielded a quantitative survey to determine attendees' and exhibitors' views of the event. Survey results found:

- Ninety percent of attendees believe that the E3 Expo fills a niche for the computer and video game industry;
- Eighty-nine percent were able to meet their business objectives at the E3 Expo; and
- Ninety-four percent plan to attend the 2011 Expo.



## INTELLECTUAL PROPERTY (IP) POLICY

The ESA IP policy program works to address issues in areas of IP, trade, technology and privacy policy in the U.S. and internationally. The staff serves as an analytical resource and advocacy team for the ESA and the industry in these and other critical focus areas. The program directs governments' attention to industry concerns through association and coalition advocacy, as well as through coordination of common policy positions with international game industry representatives and other industry sectors. Priority issues and accomplishments for 2010 included:

- The ESA undertook vigorous advocacy with U.S., foreign governments and other stakeholders, resulting in the inclusion of enforceable anti-circumvention obligations in the International Anti-Counterfeiting Agreement. Negotiation involved more than 30 nations and concluded in October.
- The ESA successfully integrated industry priorities into the Combating Online Infringement and Counterfeits Act, introduced by members of the Senate Judiciary Committee in late September.
- The ESA staked out emerging industry positions in a range of

administrative proceedings before the Federal Trade Commission (FTC), Federal Communications Commission (FCC), Consumer Product Safety Commission (CPSC) and the U.S. Department of the Treasury in addition to advancing established policy priorities with the U.S. Trade Representative (USTR), U.S. Copyright Office and U.S. Department of Commerce.

- Association staff engaged in continuous monitoring, reporting and coordinating with other representatives of copyright-based industries on policy and legal developments regarding online copyright infringement, including efforts by governments to develop effective enforcement mechanisms.
- The ESA, in coordination with ESA Canada (ESAC), led an appeal to the Supreme Court of Canada of proposed Tariff 22, which would expose publishers to additional royalties for music in games when distributed online.

### ADVISING ADMINISTRATION LEADERS ON IP AND ENFORCEMENT ISSUES

Throughout the year, the ESA remained in close contact with leading policymakers on key policy and enforcement issues. In January, at the Vice President's invitation, ESA President and CEO Michael Gallagher sent to U.S. Intellectual Property Enforcement Coordinator (IPEC) Victoria Espinel detailed recommendations for advancing industry IP enforcement interests with respect to online piracy, enforcement against circumvention devices, and

international legal and enforcement reforms. In March, the ESA submitted a public filing to the IPEC requesting U.S. government assistance in addressing industry legal reform and enforcement priorities, and contributed to filings submitted by the Copyright Alliance, the International Intellectual Property Alliance (IIPA), the U.S. Chamber of Commerce's Global IP Center and the Coalition for Online Accountability. The ESA maintained regular contact with the IPEC's office, including on critical customs issues, and provided year-round guidance to the Administration as they cleared advisors in the Industry Trade Advisory Committee program.

## EMERGING AREAS OF POLICY ENGAGEMENT

During 2010, the ESA staff worked with members to develop and advance policy positions on a variety of technology- and privacy-related issues that could affect industry products and services. In January, the ESA filed comments with the FCC urging that Internet Service Providers (ISP) be permitted to take reasonable steps to curb online infringement of IP rights. In November, the ESA filed several rounds of comments in an FCC proceeding related to implementation of the new federal accessibility law. In June, the ESA appeared at an FTC public workshop and later offered written comments to recommend changes to the Children's Online Privacy Protection Act (COPPA) that would make it easier for large companies to verify parental consent for the collection and use of data from children under 13 years old. The ESA filed comments in August in a U.S. Department of the Treasury proceeding urging exemptions to new rules targeting prepaid access programs.

## DEFENDING THE INDUSTRY'S TECHNOLOGY PRACTICES

In January, the ESA proposed to members an in-depth analysis of how state laws taxing digital content (such as downloads, subscriptions and cloud computing services) could impact the industry's products, and proposed an engagement plan that is currently being implemented. In August, it provided a memo to members summarizing the potential impact of the new DMCA exemptions granted by the Librarian of Congress in the triennial 1201 Rulemaking proceeding, including an exemption allowing circumvention of technological protection measures (TPMs) used in computer games for the purpose of studying security vulnerabilities.

## ADVOCACY ON INTERNET POLICY

The ESA is part of the Coalition for Online Accountability, which monitors Internet Corporation for Assigned Names and Numbers activity and presses for business-friendly policies on IP protection and enforcement matters, and has offered comments on rules governing applications for new generic top-level domains. In December, the ESA filed a series of comments with the U.S. Department of Commerce's Internet Policy Task Force. Comments on the "Global Free Flow of Information on the Internet" highlighted several privacy-related restrictions by foreign governments that impact e-commerce and IP enforcement. Comments on "Copyright Policy, Creativity and Innovation in the Internet Economy" emphasized the scope of piracy impacting the industry, emerging business models, limitations on the effectiveness of the notice-and-takedown systems, and the importance of ISP enforcement of terms of service agreements to meaningfully reduce online piracy.

## ADVANCING ENFORCEMENT PRIORITIES WITH THE U.S. GOVERNMENT

On February 18, the ESA and other members of the IIPA filed the 2010 Special 301 Report on International Copyright Protection and Enforcement. The ESA singled out Canada and Mexico for legislative and enforcement deficiencies, Spain for high online piracy and Brazil for failure to address circumvention of industry anti-piracy technologies. In March, the ESA and member representatives briefed officials from the USTR and the U.S. Departments of State and Commerce on industry concerns arising in Spain, Italy, Brazil, Canada, Mexico, Malaysia, Paraguay and China. On November 5, the ESA filed a response with USTR to its Federal Register Notice seeking comment on notorious pirate markets. The ESA filing identified 10 online markets (websites, indexing sites, BitTorrent tracers, etc.) and 17 physical locations in Canada, Mexico, Brazil, Paraguay, Singapore, Hong Kong and Malaysia that present recurring enforcement challenges.

## ENGAGEMENT ON IP ISSUES WITH CONGRESS

On May 19, ESA President and CEO Michael Gallagher participated in the Congressional International Anti-Piracy Caucus' Watch List announcement that highlighted legal and enforcement-related deficiencies in Canada, China, Mexico, Russia

and Spain. Beginning in July, the ESA met with Sen. Patrick Leahy's (D-Vt.) staff to identify "rogue sites" harmful to the industry. On September 27, Senate Judiciary Committee members introduced the Combating Online Infringement and Counterfeits Act, which would provide an expedited seizure remedy for the U.S. Department of Justice to seize the domain name of sites found by a court to be predominantly engaged in infringing activity and to disrupt delivery of intermediary (payment, advertising) services to some sites. Consistent with the ESA advocacy, the bill would also reach sites predominantly engaged in making circumvention devices available (mod chips, R4s, soft mods, etc.).

Association staff engage in continuous monitoring and reporting on policy and legal developments regarding online copyright infringement.

## ANALYSIS AND ADVOCACY ON INTERNATIONAL COPYRIGHT DEVELOPMENTS

During 2010, the ESA and coalitions of which it is a part worked to improve copyright and related laws introduced in numerous export markets. In May, the ESA and IIPA submitted letters to Malaysia's Attorney General, calling out deficiencies in amendments to its copyright law, which sought to promote ISP cooperation and prohibit circumvention of TPMs. On May 26, the ESA filed with Brazil's Justice Minister a letter identifying serious deficiencies in the draft Marco Civil Internet legislation. The ESA also subscribed to IIPA comments filed in May with the government of India on deficiencies in its Copyright Amendment Bill, and in June on New Zealand's Copyright Infringing File-Sharing Amendment Bill, which sought to create strong incentives for ISPs to cooperate with rights holders in dealing with online infringement.

## THE ANTI-COUNTERFEITING TRADE AGREEMENT (ACTA)

The ESA and the industry remained active throughout 2010 as the governments of Australia, Canada, the European Union, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States negotiated ACTA. The ESA staff

coordinated closely with colleagues from other game industry associations, including CESA (Japan), ESAC, iGEA (Australia) and ISFE (EU), to underscore the importance of maintaining strong obligations against the circumvention of TPMs and the manufacture, distribution and sale of circumvention devices. The ESA also kept USTR apprised of industry concerns, such as the need for ACTA to unambiguously protect against soft modding practices. The agreement culminated in October and features strong provisions against circumvention of TPMs, which should advance favorable legal reforms in Canada, Japan, Mexico and New Zealand, and strengthen international enforcement commitments generally.

## CANADA TARIFF 22

In May, hearings were held in the Tariff 22 matter before Canada's Federal Court of Appeal, which upheld the Tariff with regard to music in games distributed online and on game sites. On November 1, following consultation with members, the ESA/ESAC filed a motion for leave to appeal the case to the Supreme Court of Canada.

## ANALYSIS AND ADVOCACY ON TRADE ISSUES

On January 25, the ESA submitted to USTR a detailed filing in support of Trans-Pacific Partnership Free Trade Agreement (FTA) negotiations with Australia, Brunei, Chile, New Zealand, Peru, Singapore and Vietnam. The ESA's filing underscored dozens of provisions that benefit the industry from prior FTAs, including those that advance IP protection and enforcement, e-commerce and investment.

## MOBILIZATION ON FAST-BREAKING INTERNATIONAL ISSUES

In March and April, the ESA staff coordinated efforts with ABES, the Brazilian software association, to analyze and respond to threatened retaliation by Brazil against U.S. IP interests as authorized by the World Trade Organization in resolution of Brazil's challenge to U.S. cotton subsidies, including through objections filed with the Brazilian government and meetings with top U.S. trade officials. On October 22, the ESA was called to meet with USTR telecommunications negotiators to provide information about industry impediments to the administration of online games in China.

## ANTI-PIRACY

Under the supervision of the ESA General Counsel, the ESA's Anti-Piracy Department works with member company representatives on the Piracy Working Group (PWG) to implement and manage enforcement efforts in the United States and a select set of countries overseas. Its objective is to protect member sales from the negative impact of different forms of game piracy, ranging from downloads of illegal game files to the sale of pirated games and circumvention devices, such as mod chips and game copiers, both online and in retail venues. The ESA's primary efforts in 2010 included:

- Restructuring monitoring and notice-sending for online infringements, with notices covering more than 8.7 million infringing game files;
- Conducting 50 training sessions for an estimated 1,800 law enforcement officials in the United States, Canada and Mexico about detecting and identifying game piracy;
- Detection, investigation or referral of game piracy cases, with more than 40 ongoing criminal cases in the United States and Canada at year-end;

- Managing anti-piracy efforts on behalf of members in eight foreign countries; and
- Promoting education of younger age groups about the benefits of IP and the harms of piracy in order to preempt future infringing behavior, with new initiatives co-sponsored by the governments of Singapore and Mexico.

## ONLINE MONITORING AND ENFORCEMENT

- The ESA worked with the PWG throughout the year to revise and upgrade the online monitoring services provided by outside vendors so they more effectively track the infringing activity of greatest priority to the ESA and its members: 1) the pirated game files available for download from various host sites and 2) the pirated game files available on peer-to-peer networks using the BitTorrent and eDonkey file-sharing applications. The ESA also revamped its monitoring of infringements on Usenet services.
- The ESA is actively participating in the graduated response process in Korea, using a local monitoring company to identify posts of infringing game files on various websites and to notify the Korean Copyright Commission (KCC) about persistent infringers, with more than 900 such notices sent in 2010. These notices have produced some results this year, as the KCC has recommended that certain websites suspend the accounts of persistent infringers.
- With respect to downloadable files stored on websites, the ESA and PWG increased the frequency of monitoring infringements by the ESA's vendor. In 2010, the ESA undertook takedown efforts with respect to nine million infringing files, representing roughly 2.7 million complete game files. In roughly 98 percent of

cases, the infringing files were removed. The ESA is now working to reduce the response time for takedowns, use expedited takedown tools and press other sites for swifter responses to notices.

- The ESA enhanced its monitoring of online marketplaces through which pirated games, game circumvention devices and console-modding services are advertised for sale. The ESA's vendor has provided effective monitoring of eBay, Craigslist and Amazon, and this year the ESA expanded coverage to include other marketplaces, such as iOffer and Alibaba. Through the first nine months of the year, the ESA procured the takedown of 68,774 listings offering infringing items for sale.

## U.S. ENFORCEMENT

- On June 16, during the E3 Expo, the ESA organized a training event for law enforcement to highlight the problem of piracy and its impact on the entertainment software industry, and to brief agents on different aspects of online game piracy. The event, attended by 82 law enforcement agents, included speakers from the industry, including the ESA President and CEO Michael Gallagher, and federal and state law enforcement agencies. Following the event,

the ESA took participating agents on a tour of the E3 Expo show floor and exhibits.

- On July 15, Judge Howard Matz of the U.S. District Court, Central District of California sentenced Steven Perdomo to 10 months of home detention, followed by two years of probation, payment of an \$1,800 fine, required notification of his probation officer of any computer usage or access to a computer, and a prohibition from downloading or using any counterfeit software or copyright work. The ESA supported the FBI's investigation against the defendant, who sold console-modding services via Craigslist until his arrest in 2009.
- On November 17, Judge Kurt D. Engelhardt of the U.S. District Court, Eastern District of Louisiana sentenced a resident to four months of home detention, four years of probation and 50 hours of community service on one count of violating the DMCA. Daret was arrested in December 2009 in a raid by U.S. Immigration and Customs Enforcement (ICE) agents, for which the ESA staff provided onsite support, in connection with his Xbox 360 console-modding business. He ran listings on eBay and Craigslist, and serviced customers around the country.

## Major United States Enforcement Actions

Date	Target and Location	Enforcement Agency	Items Seized
1/6/10	A resident of San Marcos, Calif., online game piracy and console-modding operation	ICE	1,000 pirated games (Xbox 360 and Wii) and movies, nine modified consoles and 10 laptops containing pirated games
5/25/10	A resident of Covina, Calif., game piracy and sales of circumvention devices	Covina Police Department	100 DS game copiers, five Wii consoles, three laptops and three hard drives, each containing hundreds of pirated game files
5/27/10	A resident of La Mesa, Calif., online game piracy	La Mesa Police Department	50 pirated Xbox 360 and Wii games, and several computers and hard drives containing illegal copies of games
7/27/10	A resident of La Mirada, Calif., online game piracy and console-modding operation	Los Angeles County Sheriff's Department and ICE	Roughly 500 pirated game discs (Xbox 360 and Wii), several modified game consoles and computers
11/23/10	A resident of Jacksonville, Fla., online game piracy and console-modding operation	Homeland Security Investigations (formerly ICE)	12 modified consoles, 100 pirated game discs, two computers and two hard drives containing pirated games

INTERNATIONAL ENFORCEMENT

Canada

- On May 11, Justice Wright imposed a sentence on He Li, one of the defendants arrested during last October’s Royal Canadian Mounted Police (RCMP) enforcement actions against the operators of two outlets in the Pacific Mall outside of Toronto that had been identified by the ESA as selling pirated games. In exchange for his guilty plea, the Court placed the defendant on two years of probation and ordered him to pay C\$16,000 in restitution to the ESA (covering out-of-pocket expenditures on legal and investigative fees and costs) and a C\$14,000 fine to the Court.
- On November 3-5, the ESA anti-piracy staff participated in a three-city series of law enforcement training events, organized by the Canadian Anti-Counterfeiting Coalition, to provide federal and local law enforcement officials attending the sessions in Toronto, Saskatoon and Vancouver with the latest information on trends in game piracy, and guidance on detecting instances of pirate activity.

Mexico

- In September, the ESA joined with the Mexican Ministry of Education to launch the first IP education campaign in Mexico, an essay-writing contest for children in grades 3-6 aimed at promoting greater awareness of IP and piracy. Also involved in the campaign was Channel 11,

Mexico’s nonprofit cultural TV station, which prepared and ran brief clips on the harms caused by IP piracy. It arranged a tour of its studios for contest winners in December.

- On December 21, the Arochi firm obtained an enforcement action against 39 sellers of pirated games in the San Juan de Dios market in Guadalajara, resulting in the seizure of 90,856 games, including copies on all major game platforms, with Xbox 360 and Wii representing almost 50 percent of all copies.

In 2010, the ESA undertook take-down efforts with respect to nine million infringing files on hosting sites, representing roughly 2.7 million complete game files. The ESA is now working to reduce the response time for takedowns, use expedited takedown tools, and press other sites for swifter responses to notices.

Major Canada Enforcement Actions

Date	Target and Location	Enforcement Agency	Items Seized
3/31/10	A resident of Saguenay – Lac St. Jean, Quebec, online game piracy	RCMP	848 pirated Wii, DS and Xbox 360 games, three modified consoles
5/26/10	Games X of Vancouver, British Columbia, retail outlet offering pirate games	RCMP	536 pirated games, 76 game copiers, 120 mod chips, 185 memory sticks
7/21/10	A resident of Rouyn-Noranda, Quebec, online game piracy and console-modding operation	RCMP	200 pirated Wii and Xbox 360 games, three modified consoles and two computers
10/10/10	A resident of Saskatoon, Saskatchewan, online game piracy and console-modding	RCMP	Estimated 1,000+ pirated games
10/20/10	Projet Captivité of New Richmond, Quebec, online game piracy	RCMP	Estimated 1,000 PC games



## Major Mexico Enforcement Actions

Date	Target and Location	Enforcement Agency	Items Seized
4/29/10	Plaza Meave, Mexico City	PGR*	5,817 pirated games, 148 game consoles, nine game copiers, 390 video game accessories
4/29/10	Tepito, Mexico City	PGR	7,800 pirated games (Wii, PlayStation and GameCube), 423 burners, 160,000 jacket covers
5/20/10	Tepito, Mexico City	PGR	127,600 pirated games, 110 disc burners, 880,000 jacket covers, 26,000 video game accessories
8/6/10	Pericoapa, Mexico City	PGR	319 pirated games (Xbox 360, PlayStation 1, PlayStation 2, Game Cube, PSP) and 49 game accessories, and 11 computers
11/5/10	Tepito, Mexico City	PGR	18,900 pirated games (Xbox 360, Wii and PlayStation 2), 32 burners, 70,000 jacket covers, 600 blank discs

\* Procurador General de la Republica

## Brazil

- This was a transitional year for the ESA program in Brazil. The ESA has partnered with Associação Brasileira das Empresas de Software (ABES), the Brazilian Software Association, on anti-piracy efforts since the program's inception in 2002. Early in 2010, in the interest of economy and efficiency, ABES agreed to work with the Associação Anti Pirataria de Cinema e Musica (APCM), which oversees enforcement for the motion picture and music industries, to handle enforcement efforts on behalf of the ESA and ABES. ABES felt that APCM would be more effective in going after priority targets for all of the industries.
- Through the first 11 months of 2010, the program procured actions against street vendors in Sao Paulo and Rio de Janeiro, as well as 72 other targets—61 retail outlets, seven burning labs and four storage or warehouse facilities. These actions resulted in the seizure of 300,000 copies of pirated games on all major platforms and another 663,000 copies believed to be game product.
- The most significant of these actions was a June 2 retail sweep undertaken against four pirated game sellers in Shopping Xavantes in the city of Belo Horizonte, Minas Gerais, during which 130,000 discs were seized. Belo Horizonte proved to be an active target for the program with three other retail sweeps in September and October accounting for seizure of another 90,000 units. Most of the program's actions were focused on targets in Sao Paulo and Rio de Janeiro.

- In addition to the seizures by ABES and APCM, the program also received reports on seizures achieved by law enforcement authorities in the state of Parana, from which there is a steady flow of counterfeit products into Brazil. Through the first 10 months of 2010, Parana authorities seized nearly 670,000 pirated games—493,000 console games, 170,000 computer games and 7,000 game cartridges.
- The ESA's program in Brazil also became increasingly active over the course of the year in pursuing enforcement against online piracy. In the first 11 months of 2010, the program took down from the auction site, MercadoLivre.com, 10,320 listings that involved offers to sell pirated game software or circumvention devices. In addition, the program became active this year in monitoring various link and forum sites to identify links to infringing files and send a notice of removal from host sites. In 2010, the program removed roughly 3,400 infringing files.

## Singapore

- The ESA's anti-piracy program in Singapore, managed by the ESA's local counsel at the firm of ATMD Bird & Bird, was increasingly focused on enforcement of anti-circumvention provisions against individuals and entities offering game circumvention devices or console-modding services for sale. In 2010, in addition to the private criminal actions that the ESA's local counsel filed against such targets, the program also supported a major criminal

enforcement action by the Singapore Police against purveyors of circumvention devices.

- The ESA broke new ground this year through its co-sponsorship of an IP awareness and education campaign with the IP Office of Singapore in connection with its World IP Day celebration on April 26. The ESA contributed to the campaign through the design and preparation of a point of sale display for retailers, and a flyer that was distributed to students at schools throughout Singapore. In addition, the ESA contributed to the campaign's online presence in the weeks leading up to World IP Day, working with an online media firm to ensure visibility on Facebook and other online venues.
- There were three cases carried over from last year where the defendants refused to reach a settlement, compelling the ESA's local counsel to initiate private prosecution proceedings against them. In two cases, the defendants settled before the cases went to trial. However, one defendant decided to challenge the private prosecution in court, despite the original raid having found him with pirated games, counterfeit accessories and game copiers. After three days of testimony, the court found the defendant guilty on all charges, including copyright, trademark and circumvention offenses. On October 28, the court sentenced him to nine months in jail.
- On November 22, the Singapore Police executed search warrants against eight sellers of game circumvention devices in Sim Lim Square, the most well-known marketplace for electronic products in Singapore. These sellers were found with circumvention devices or counterfeit accessories for Nintendo or Sony Computer Entertainment products. The police arrested 12 individuals during this action.
- The ESA's local counsel undertook private criminal actions against 16 different targets engaged in the sale of console-modding services or game circumvention devices. Most of these were retail outlets, although one was an online seller. All of these cases have been or are being resolved, with the defendants paying a settlement fee and executing an undertaking not to engage in any further infringing activity connected with game software.

## Malaysia

- MFACT, the motion picture industry's anti-piracy operation with which the ESA partners in Malaysia, focused its enforcement efforts on significant game piracy targets. Global exports of pirated games replicated in Malaysia have become less of a problem over the past three years, because exporters have found it difficult to compete with pirated games online. Still, MFACT identified and pursued enforcement against a number of targets.
- On January 14, the Malaysian Royal Police raided a licensed factory, Jenama Evolusi Sdn Bhd, in the Puchong industrial area in Selangor. The raid followed the arrest of a suspicious truck driver who was transporting pirated DVDs. The factory consisted of five replication machines. Police found and seized a total of 900 PlayStation 2 games, 13,000 movies and 26 stampers.

The ESA broke new ground this year through its co-sponsorship of an IP awareness and education campaign with the IP Office of Singapore in connection with its World IP Day celebration on April 26.

- On June 30, enforcement officers from the Ministry of Domestic Trade, Co-operative and Consumerism (MDTCC) and its K-9 unit, accompanied by two MFACT investigators, raided warehouse premises in the Kuala Lumpur industrial area in Jalan Klang Lama, Puchong, Selangor. Acting on a lead from an informant, the enforcement team broke open the door to the warehouse and found an estimated 700,000 copies of pirated games. The discs were packed in spindles of 100 titles for PlayStation 2, Xbox 360 and Wii.

- On October 18, MDTCC officials raided warehouse premises in Johor Bahru in southern Malaysia and seized 100,000 copies of pirated games. Eighty percent of these copies were computer game titles, with the remaining 20 percent split evenly between PlayStation 2 and Xbox 360.

## Paraguay

- With the enactment of anti-circumvention provisions in 2009, the ESA's enforcement program in Paraguay has prioritized identifying and obtaining enforcement against a number of operations in Ciudad del Este involved in large-scale modification of game consoles destined for export to the Brazilian market. In 2010, McCabe & Associates, the local investigative group overseeing the ESA's local enforcement efforts, succeeded in doing so against multiple targets.
- On January 7, McCabe provided support to the Unidad Tecnica Especializada in executing raids against Olympic Games, a major exporter of game consoles in Ciudad del Este, along with four related storage venues. These actions resulted in the seizure of 507 modified game consoles, 6,700 mod chips, 1,375 game copiers, 4,500 game-copier devices and 2,400 packages for game copiers.
- On August 17, McCabe procured an enforcement action by the local prosecutor and officers of the Economic Offenses Unit against a modification lab, apparently also controlled by Olympic Games. Unfortunately, due to an apparent leak about the raid, many of the mod chips and modified consoles were moved in advance of the enforcement authorities' entry into the premises and, consequently, the seizure was smaller than anticipated. Seized in this action were 1,057 mod chips, 1,076 pirated games and four modified consoles.
- On December 1, McCabe obtained a raid by the local prosecutor and the Economic Offenses Unit against Raio Lazer, a retail outlet long known to be a source of mod chips and game circumvention devices, and related facilities where the outlet's stock of chips was believed to be stored. The action proved to be very successful, resulting in the seizure of 18,441 pirated video games (all major platforms), 1,110 modchips and 21 modified consoles (Xbox 360 and PlayStation 2).

- On December 16, the Uruguayan authorities announced the indictment of two individuals implicated in a case that McCabe had initiated on behalf of the ESA two years ago, when it followed Paraguayan leads to identify a console-modding operation and burning lab in Uruguay.

## Hong Kong

- Broadband penetration and high-speed Internet access noticeably reduced the volume of pirated products sold in hard good form in shops and on the street. As a result, the ESA's local enforcement program concentrated on supporting Hong Kong Customs' efforts to control illegal sales of circumvention devices and console-modding services. In 2010, the ESA examined Wii consoles in support of 24 Customs cases.
- The ESA's local counsel was actively involved in tracking developments leading up to the anticipated introduction of copyright amendment legislation, now scheduled for 2011. The new legislation addresses the problem of online piracy and will reportedly afford the content industries solutions to online piracy, although some of the proposals do not offer lasting improvements. Much of the work on this is being done through the Hong Kong Copyright Alliance, of which the ESA is a member, with the ESA's local counsel attending Alliance meetings on behalf of the association.

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**entertainment  
software**

association of canada

## ENTERTAINMENT SOFTWARE ASSOCIATION OF CANADA (ESAC)

The ESAC is dedicated exclusively to serving the business and public affairs needs of companies in Canada that publish and distribute computer and video games for video game consoles, handheld devices, personal computers and the Internet. The ESAC offers a range of services, including business and consumer research, government relations and a global anti-piracy program. Association members include the nation's leading interactive entertainment software publishers and distributors, which collectively accounted for more than 90 percent of the \$2 billion in entertainment software and hardware sales in Canada in 2009. The entertainment software industry currently accounts for 247 firms, 14,000 direct jobs and thousands more in related fields across Canada.

### ESAC MEMBERSHIP

In September, the ESAC welcomed Warner Brothers Interactive Entertainment as its newest member. Warner Brothers recently announced the opening of its first video game development studio in Canada, WB Games Montreal. The studio will focus on the development of interactive games and will house a 3D animation studio, with plans to employ more than 300 people in Montreal over the next five years.

## FEDERAL AND PROVINCIAL GOVERNMENT AFFAIRS

- **Digital Economy Strategy:** In April, the ESAC submitted to government a proposal for positioning Canada to compete in the digital economy. Its 10 recommendations spanned digital literacy, labor mobility, research and development policy, access to venture capital, infrastructure and IP protection. The report, titled *Game On, Canada: Playing to Win in the Digital Economy*, was well-received by senior government officials and industry stakeholders. This exercise helped to cement the ESAC's reputation as a prominent policy advocate in Canada.
- **Ottawa Lobby Day:** On April 27, the ESAC hosted its annual Ottawa Lobby Day. This event provides the ESAC members the opportunity to engage directly with Members of Parliament (MPs) and deliver a unified message from the Canadian video game industry. This year, the ESAC organized meetings with key MPs, including a brief meeting and photo opportunity with Prime Minister Stephen Harper. A tour of parliament was also offered to the ESAC members, as well as a chance to listen to the daily Question Period in the House of Commons. Again this year, the ESAC members showcased some of their hottest games to parliamentarians and their staff at a well-attended reception. The event recorded the largest attendance to date, with more than 200 guests, including 16 MPs, two cabinet ministers and three senators.
- **Tariff 22:** The ESAC continued to provide Canadian legal analysis and support to the ESA on Tariff 22 litigation, appearing with the ESA at federal court hearings held in May. The Tariff would impose additional costs on game sites and services by subjecting game downloads to a tariff on music "communicated to the public by telecommunications."
- **Bill C-32 – The Copyright Modernization Act:** On June 2, the government introduced long-awaited copyright reform legislation (Bill C-32). The ESAC arranged the press conference introducing the bill with the Ministers of Industry and Canadian Heritage. The event, held at EA Montreal, highlighted the importance of the video game industry to the digital economy. The ESAC issued a news

release welcoming strong action on copyright reform and Executive Director Danielle Parr gave numerous national media interviews on the subject (print, web, radio and TV). The ESAC also published two op-eds in national newspapers on the topic of copyright reform. On several occasions, the Ministers of Industry and Canadian Heritage tweeted their support of ESAC.

On November 5, Bill C-32 passed second reading in the House of Commons and was referred to a special legislative committee for review. On December 8, Danielle Parr and Director of Policy and Legal Affairs Jason Kee appeared before the committee studying Bill C-32, expressing their strong support for the bill with certain technical amendments. A formal written submission outlined in more detail the ESAC's requested amendments. The ESAC continues to work with all political parties to ensure the bill passes, a difficult task given the government's minority situation in the House and at committee.

- **Labour Mobility:** The ESAC was successful in partially re-instating the Temporary Foreign Workers Program for IT workers in British Columbia after the federal government suddenly and inexplicably terminated the program in September. The ESAC is continuing to address this issue by meeting with officials at several government departments, as well as senior political staff.
- **British Columbia Environmental Regulations:** The government of British Columbia introduced regulations on electronic waste that require companies to implement disposal programs for any "media" they distribute. In response, the ESAC fielded research demonstrating that, due to usage patterns and secondary markets for video games, only a small percentage are discarded into municipal waste. The ESAC had a very positive meeting with the Minister of the Environment in December to pursue a favorable solution to this issue.
- **Le comité L'Allier:** The ESAC made submissions to *Le comité L'Allier*, which was tasked with reviewing the status of artist legislation in the province of Quebec. The committee reviewed current labor practices

and debated whether the province should extend artists' collective agreements to the multimedia sector, including full-time employees at game studios. The ESAC was successful in ensuring the committee did not recommend changes to internationally standardized hiring practices in the video game industry.

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## PUBLIC RELATIONS

- **Canadian Video Game Awards:** On May 5, the first-ever Canadian Video Game Awards were held in Vancouver, British Columbia. The ESAC endorsed the awards and sponsored a table at the event. Although video game awards have been presented in Canada before, these were truly national in scope. The awards ceremony was broadcast across Canada in celebration of its video game production. The ESAC is part of the steering committee for the 2011 event.
- **E3 Expo Events:** The ESAC hosted a reception with video game reporters in Toronto prior to the E3 Expo. The event was designed to ensure that Canadian video games and the Canadian industry were highlighted in press coverage of E3 Expo. The ESAC's strategy was successful, attracting a few dozen video game reporters and bloggers to the event and generating positive mentions of the Canadian industry in specialty and mainstream media. During the



show, the ESAC issued a news release listing Canadian-made video games and highlighting the Canadian presence at E3 Expo.

- **Canada Featured at gamescom:** Danielle Parr and the ESAC Board President Craig Hagen of Electronic Arts attended gamescom in Cologne, Germany, in August. The Canadian video game industry was prominently featured as the first-ever official partner country. Canada had its own pavilion where it hosted networking receptions, panel discussions and tours of Canadian gaming companies. Danielle Parr participated in the opening press conference, conducted media interviews and met with international industry representatives. A significant number of domestic and foreign news stories resulted from the week's activities, highlighting the Canadian video game industry.
- **Parenting Media Event:** On September 28, the ESAC hosted an event in Toronto to further develop its relationships with reporters and bloggers that write on family, parenting and video game issues. The ESAC presented exclusive research results that provide a snapshot of how kids play video games and how parents are using ESRB ratings to make informed decisions. As part of the event, the ESAC gave attendees the opportunity to try some of the newest game technologies before their official release.
- **Essential Facts:** On October 29, the ESAC launched its *2010 Essential Facts* with a news release focused on the social aspects of gaming. The release was among the top 10 on Canada NewsWire that day, read by journalists more than 400 times. Throughout the day, the ESAC tweeted facts from the research in both French and English. Hard copies of *Essential Facts* with a letter about the importance of the video game industry to Canada were distributed to MPs and senators during a debate on copyright. It continues to be a credible resource for journalists, researchers and government officials.
- **Get in the Game! Canadian Industry Video:** To increase awareness of the dynamic and growing Canadian video game industry, the ESAC produced a promotional video. The ESAC distributed the video to websites, video

game blogs, game review sites, discussion boards and forums.

- **Girls & Games:** On November 5, the ESAC partnered with Women in Games Vancouver to host a panel discussion with female industry leaders and 80 students from Argyle Secondary School. Hosted by the well-known co-host of *Electric Playground*, Briana McIvor, the event was part of Media Awareness Network's National Media Literacy Week. Its goal was to encourage girls to consider a career in video game production and to discuss the important contribution that women make in the industry. The ESAC live-tweeted the event and captured footage to be showcased online.

## ANTI-PIRACY

- **Fakes and Forgeries:** On March 25, the ESAC spearheaded a reception at the Royal Ontario Museum (ROM) for the Canadian Anti-Counterfeiting Network (CACN). The reception, which coincided with the ROM's new exhibit on fake artifacts and consumer goods, "Fakes and Forgeries," provided an opportunity for CACN to state the importance of fighting counterfeiting and piracy. Minister of Canadian Heritage James Moore and U.S. Ambassador to Canada David Jacobson were guests of honor. Both expressed their support for IP crimes enforcement in Canada.
- **Reality Tour:** In November, the ESAC partnered with the CACN to conduct anti-counterfeiting training sessions for law enforcement officials nationwide. The ESAC organized a press conference to launch the "Reality Tour" that generated stories in most major Toronto dailies and other outlets across the country, raising awareness of counterfeiting and piracy ahead of the holiday shopping season. "Reality Tour" sessions held in Toronto, Saskatoon and Vancouver were well-attended by members of the RCMP, Canada Border Services Agency, Health Canada, investigation firms and local police forces. Many rights holders and associations, including the ESA, participated in the tour to provide practical examples and solutions to help law enforcement officials better deal with IP crimes in Canada.





## ENTERTAINMENT SOFTWARE RATING BOARD (ESRB)

The ESRB assigns age and content ratings, enforces industry-adopted advertising and marketing guidelines, and ensures responsible online privacy practices for the entertainment software industry. Aggressive public education efforts, including award-winning PSAs, help inform parents and consumers about the rating system and encourage them to use it when buying games. As a result, ESRB ratings enjoy high levels of awareness and use among parents, who regularly rely on them when making game purchase decisions for their children.

The ESRB enforcement system holds publishers accountable for full disclosure of pertinent content during the rating process, as well as compliance with Advertising Review Council (ARC) advertising and marketing requirements. In addition, the ESRB's Privacy Online staff members help companies within the video game industry implement responsible practices through its certification program, which is sanctioned by the FTC as an authorized Safe Harbor under COPPA.

## ESRB RATINGS AND RATING SUMMARIES

- The ESRB assigned close to 1,650 ratings in 2010.
- Use of rating summaries more than doubled from 2009 to 2010. Rating summaries are searchable by game title on ESRB.org and are accessible in-store using the ESRB's mobile tools, including free mobile apps for iPhone and Android, and a mobile website at m.esrb.org. New versions of the mobile apps utilizing photo recognition technology to search for rating summaries were released during the 2010 holiday season.
- In April 2011, a new rating process was initiated for games that are exclusively available via download on a console or handheld device manufactured by Microsoft Corporation, Nintendo of America, Inc. or Sony Computer Entertainment America.

## ADVERTISING REVIEW COUNCIL (ARC)

- In October, the ESRB established the ESRB Website Council (EWC), an innovative partnership through which many of the top game enthusiast websites agree to a common set of standards regarding the display of ESRB rating information and use of age-gates on video content intended for older viewers. The EWC's focus is to work with member websites in facilitating improved compliance with agreed-upon standards, broadening the video game industry's unrivaled commitment to responsible marketing practices and enhancing compliance.
- With the help and support of the ESA member companies, the ESRB revised its Internet marketing guidelines to facilitate more consistent industry compliance and effective enforcement of its requirements to restrict children's access to trailers and videos for M-rated games. The new guidelines were implemented in March 2011.



Chicago Blackhawks players Patrick Sharp (left) and Brian Campbell (right) are interviewed by Elliott Harris of the *Chicago Sun-Times* during the ESRB PSA filming on October 28, 2010.

## CONSUMER RESEARCH

- In March, the ESRB commissioned Peter D. Hart Research Associates to conduct an online survey of 508 parents with children between the ages of three and 17 who play video games. The results included:
  - Eighty-six percent of parents are aware of the ESRB rating system;
  - Seventy-five percent of parents regularly check a game's rating before purchasing;
  - Seventy-two percent of parents are aware of content descriptors;
  - Fifty-seven percent of parents regularly read content descriptors before purchasing a game;
  - Ninety-eight percent of parents say the ratings are "helpful" in choosing which games are appropriate for their children; and
  - Ninety-eight percent of parents say they are confident that the ratings accurately describe a game's content.

## MARKETING, COMMUNICATIONS & PUBLIC EDUCATION

- Working closely with SGA, the ESRB launched two PSA campaigns supporting ratings education and rating summaries. The first, featuring Marques Colston and Devery Henderson of the Super Bowl Champion New Orleans Saints, was launched on September 28. The second, including Patrick Sharp and Brian Campbell of the Stanley Cup Champion Chicago Blackhawks, launched on December 8. A total of six, 30-second TV and radio PSAs were produced, which are expected to generate up to 100 million consumer impressions through June 2011. Airings for these campaigns include TV and radio stations throughout their respective regions as well as on their in-arena display boards. The Saints PSA is also running on national and regional cable networks, and in-store networks in GameStop, Toys "R" Us and Blockbuster stores nationwide. The Blackhawks PSA was posted on the team's official website and YouTube Channel, and was supplemented with a "making-of" video showing the two players behind the scenes during the PSA filming.

- The ESRB's holiday outreach efforts continued to aggressively promote the ESRB rating system, rating summaries and mobile tools. The 2010 campaign included a combination satellite/radio/Internet media tour conducted with GameStop on November 16, which secured 24 interviews in major markets across the country and generated more than 42 million impressions through broadcast and online media. Other efforts included online video distribution, b-roll video assets offered to TV stations, a national radio news release, Facebook and Twitter outreach and events, Facebook ads and a media roundtable at which reporters were able to preview the new app before it was released to the public.
- On December 14, the ESRB released an upgraded version of its iPhone rating search app along with a new version for Android devices. The apps improve user experience by incorporating image recognition technology, whereby users can initiate a rating search and access rating summaries by simply taking a photo of a game package. Both apps also feature improved "share" functionality, enabling users to share rating summaries with family and friends via e-mail, Facebook and Twitter.



- In 2010, more than nine million visitors came to the ESRB's website, 2.8 million rating searches were conducted and more than one million rating summary pages were viewed.

## ESRB AND RETAILERS

- In February, the ESRB launched the ESRB Retail Council (ERC) Website Committee, which includes members from all ERC member companies and Amazon. The focus of the committee is to 1) provide complete and accurate rating information on members' video game product web pages 2) restrict access to trailers of games rated M and 3) request that users certify they are at least 17 years old prior to purchasing M-rated games. Each committee

member agrees to participate in two annual audits conducted by the ESRB, the results of which are used to improve member compliance with those three goals.

A total of six, 30-second TV and radio PSAs were produced, which are expected to generate up to 100 million consumer impressions through June 2011.

- The ERC includes six national retailers in the United States: Blockbuster, Best Buy, GameStop, Sears, Target and Walmart. On behalf of ERC member companies, the ESRB continues to implement two mystery shopper audits annually, measuring compliance with store policy enforcement and signage. The most recent audit was conducted in November and found, weighted by market share, that store policy was enforced 90 percent of the time and 87 percent of ERC store locations displayed the correct rating signage.

## PRIVACY ONLINE PROGRAM

- The ESRB, along with representatives from the three other COPPA Safe Harbor programs, participated in a meeting convened by the FTC on February 16 to discuss the efficacy of COPPA Safe Harbor programs and their future, particularly in light of the FTC's formal review of the COPPA Rule. The FTC has followed up directly with the ESRB to solicit its feedback on subsequent occasions.
- The ESRB participated in a panel at the FTC's roundtable event on June 2 to discuss this year's COPPA Rule review. The panel addressed current exceptions to COPPA's parental consent requirement, and how effective or ineffective those exceptions had proven to be. Approximately 150 people attended the day-long event.





■ **The ESA FOUNDATION (ESAF)** was established by the entertainment software industry to support the development and distribution of technologies, especially computer and video games, which educate America's youth. Every year, the ESAF awards grants to organizations that contribute to a more digitally advanced generation. The ESAF Scholarship Program aims to increase the diversity of the computer and video game industry by supporting the education of women and minority students. The ESAF is fully supported by proceeds from its limited edition charity game packs' sales and its annual fundraiser, Nite to Unite—for Kids (NTU).

## ORGANIZATIONAL ASSESSMENT

The ESAF engaged Graham-Pelton, a consulting firm, to conduct an organizational assessment of the foundation on its 10th anniversary. Graham-Pelton assessed the ESAF in the areas of governance, fundraising and programming, and made recommendations in several other areas. The ESAF implemented many of these recommendations in 2010 and will continue to do so in 2011 to further strengthen its programming.

## FUNDRAISING

- The ESAF launched a point of sale campaign at the E3 Expo in June to increase awareness of the ESAF and its scholarship fund within the industry. Through a partnership with the official merchandise store, shoppers were able to donate \$5, \$10 or \$25 to benefit the ESAF scholarship fund at checkout.
- The 13th annual NTU event was held at the Westin St. Francis in San Francisco, Calif., on October 20. The industry honored Robbie Bach, president of Microsoft Corporation's Entertainment and Devices Division with the ESA Champion Award. The event raised \$1 million. Co-Chairs included Reggie Fils-Aime, president and CEO of Nintendo of America, Inc.; John Riccitiello, CEO of Electronic Arts; and Jack Tretton, president and CEO of Sony Computer Entertainment America.



Robbie Bach, president of Microsoft Corporation's Entertainment and Devices Division, being presented with the 2010 Champion Award by Electronic Arts CEO John Riccitiello (Left) and ESA President and CEO Michael Gallagher (Right).

- The ESAF PlayStation 3 charity game pack went on sale on November 23. It included Sony Computer Entertainment America's *Uncharted: Drake's Fortune*, Eidos Interactive's *Tomb Raider Underworld* and Electronic Arts' *Mercenaries 2*.

## ESAF GRANT INFORMATION

In January, the ESAF revised its grant proposal guidelines to require the inclusion of computer or video games. It received 170 proposals by the April 15 deadline. Of those proposals, the ESAF selected nine organizations as grantees for 2011. Three of those organizations had received multi-year commitments from the ESAF in 2009.

philanthropists, is encouraging student and teacher innovation by supporting classroom projects that use video or computer games to improve math, literacy and social skills. In January, DonorsChoose.org launched a *Double Your Impact* campaign that helped bring to life 89 projects affecting nearly 8,000 students. The projects brought \$50,000 worth of resources to classrooms across the country.

- **The Federation of American Scientists (FAS)** is a 64-year-old science policy organization that addresses a broad spectrum of policy issues in carrying out its mission to promote humanitarian uses of science and technology. FAS created *Immune Attack*, an

With the ESAF's support, HopeLab distributed more than 7,000 free copies of their groundbreaking video game *Re-Mission* to young people with cancer at camps and in hospitals—and to clinicians and other care providers in 2010. *Re-Mission* is the first game shown to induce positive behaviors that enhance the effectiveness of medical treatment.

Descriptions of the 2010 grant recipients are as follows:

- **The Association on American Indian Affairs (AAIA)** promotes the welfare of American Indians and Alaska Natives by supporting efforts to sustain and perpetuate their cultures and languages; protect their constitutional, legal and human rights, and natural resources; and improve their health, education, and economic and community development. AAIA is creating interactive, Internet-based learning materials for Native American children to use in learning their native languages.
- **DonorsChoose.org** is dedicated to addressing the inequitable distribution of learning materials and experiences in public schools. The ESAF grant, which was matched by 316 citizen

educational video game that introduces basic concepts of human immunology to middle school, high school and entry-level college students. More than 3,280 individuals downloaded *Immune Attack* in 2010, allowing FAS to test the knowledge and confidence gained by *Immune Attack* players.

- **HopeLab** combines rigorous research with innovative solutions to improve the health and quality of life of young people with chronic illnesses. They are committed to the scientific study of their work through formative research and evaluation that ensure their products are effective. HopeLab created *Re-Mission*, a groundbreaking video game for teens and young adults with cancer. It is the first game shown to induce positive behaviors that enhance the effectiveness of medical treatment. With the ESAF's support, HopeLab distributed more than 7,000 free copies of *Re-Mission* to

young people with cancer—at camps and in hospitals—and to clinicians and other care providers in 2010.

- **One Economy Corporation** is a global nonprofit organization that uses innovative approaches to deliver technology and information to low-income families, giving them valuable tools for building better lives. The ESAF supported the growth and improvement of the Digital Connectors program in Chicago, New York, Oakland, San Francisco and San Jose in 2010. The program engages low-income teens and young adults, ages 14 to 21, in leadership development, digital education, life skills management and community service.

The ESAF grant, which was matched by 316 citizen philanthropists, is encouraging student and teacher innovation by supporting classroom projects that use video or computer games to improve math, literacy and social skills.

- **PAX** is a nonpolitical, nonprofit organization working to end gun violence against children and families. PAX's two innovative programs—*SPEAK UP* and *ASK* (Asking Saves Kids)—offer practical solutions for protecting children from gun violence. The ESAF provided a two-year grant to PAX to launch *SPEAK UP* in Cumberland County, North Carolina.
- **The Purdue Center for Serious Games and Learning in Virtual Environments** provides support for implementing, designing and developing serious games and virtual

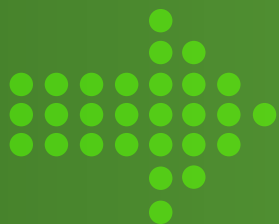
environments for K-12 learning. The ESAF awarded a grant to Purdue to develop *National Pastime*, an educational video game designed to teach middle and high school students about the internment of Japanese-Americans during WWII.

- **ThanksUSA** is a non-partisan, charitable effort to mobilize Americans of all ages to “thank” the men and women of the U. S. Armed Forces. They provide postsecondary scholarships for the children and spouses of military personnel. Since 2006, ThanksUSA has provided more than \$5 million in scholarships. The ESAF awarded a three-year grant to ThanksUSA in 2009 to sponsor its annual game, *Treasure Hunt*, a trivia and puzzle book about American history, culture and values that generates donations for scholarships. The grant also supports the ESAF/ThanksUSA Scholarship for Military Youth. In 2010, 25 scholarships worth \$3,000 each were awarded under this grant.
- **Web Wise Kids (WWK)** is a national nonprofit organization dedicated to preventing online child victimization by providing innovative tools to empower today's youth to make wise choices online. WWK implements interactive Internet safety programs in conjunction with school systems, law enforcement, teachers, community-based organizations and others. With support from the ESAF in 2010, WWK updated and translated the *Wired With Wisdom* program into Spanish to assist Latino parents in their understanding of and ability to protect their children from online dangers. The Spanish version will be launched in select states in early 2011.

## SCHOLARSHIP PROGRAM

- The ESAF received more than 3,100 applications for its Computer and Video Game Scholarship Program, announced in September. Awards were given to 15 freshmen, six sophomores, four juniors and five seniors. Of the 30 winners, 22 were women and 16 were minorities. They represent 20 states, 19 colleges and a variety of majors including 3D modeling and animation; computer science; game art and design; real-time interactive simulation; and web design and interactive media.





# ESA member listing

As of January 12, 2011

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345 Games

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505 Games

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Capcom USA, Inc.

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Crave Entertainment

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Deep Silver

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Disney Interactive Studios, Inc.

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Eidos Interactive

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Electronic Arts

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Epic Games

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Her Interactive, Inc.

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Ignition Entertainment

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Konami Digital Entertainment

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Microsoft Corporation

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Namco Bandai Games America Inc.

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Natsume Inc.

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Nexon America, Inc.

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Nintendo of America Inc.

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NVIDIA

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O-Games, Inc.

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Perfect World Entertainment

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SEGA of America, Inc.

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Sony Computer Entertainment America

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Sony Online Entertainment, Inc.

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Square Enix, Inc.

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Take-Two Interactive Software, Inc.

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Tecmo Koei America Corporation

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THQ, Inc.

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Trion Worlds, Inc.

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Ubisoft Entertainment, Inc.

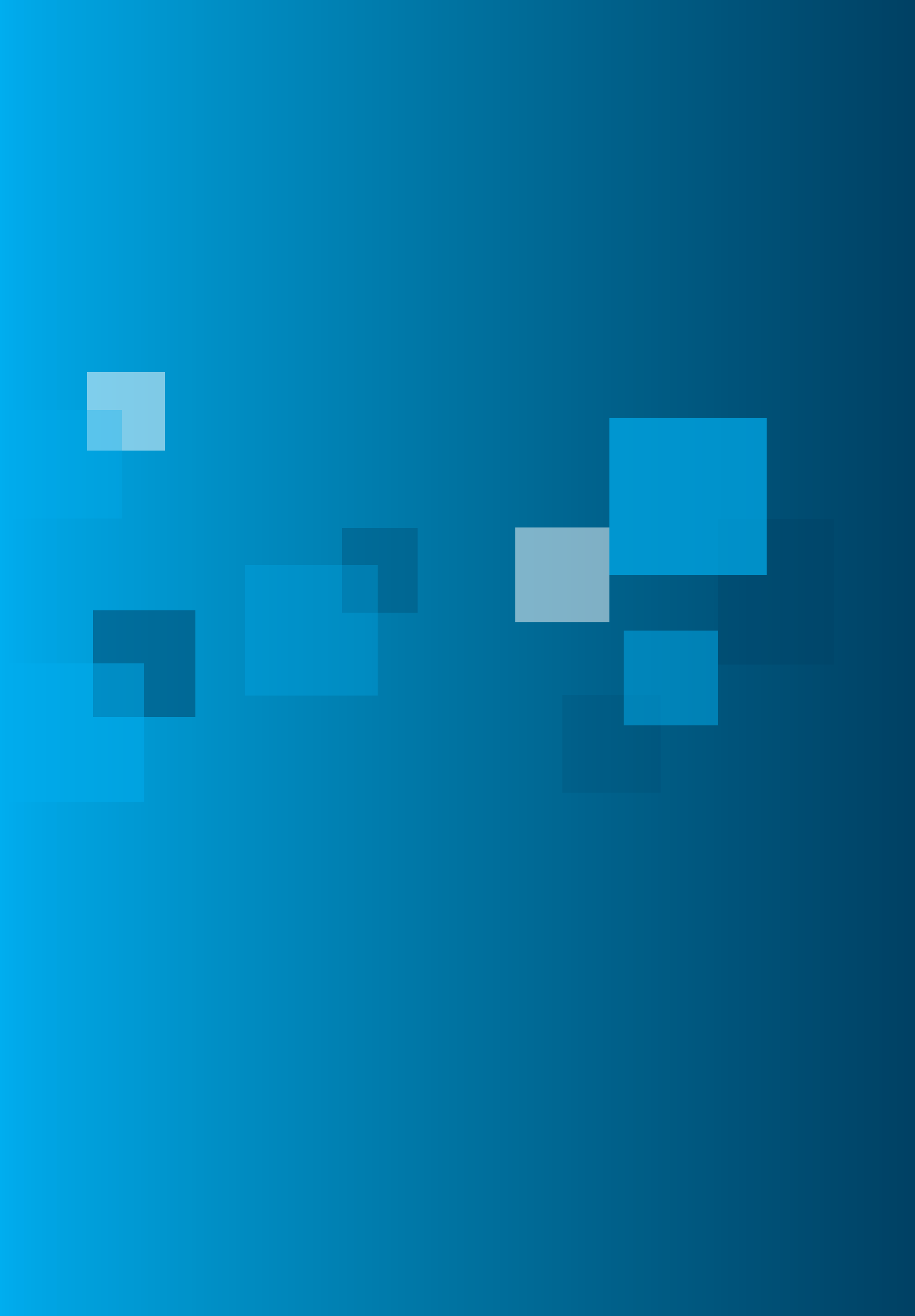
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Warner Bros. Interactive Entertainment Inc.

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XSEED Games

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entertainment  
software  
association

