Entertainment software receives recognition as the Smithsonian Institution’s American Art Museum adds video games to its collection
Dear Friends:

It is my pleasure to present the Entertainment Software Association’s (ESA) 2012 Annual Report, highlighting last year’s key initiatives to bolster our industry’s foundation and provide for its continued success.

2012 involved many important industry innovations, milestones, and accomplishments that advanced video games and drew ever more attention to their growing social impact. Educators, business leaders, academics, and government agencies increasingly leverage games and game technologies to improve how we live, learn, and work—a clear demonstration of our industry’s tremendous evolution. ESA encouraged this momentum through a variety of valuable partnerships and initiatives.

We joined Electronic Arts, the Institute of Play, the MacArthur Foundation, and the Bill & Melinda Gates Foundation, for example, to launch the Games, Learning and Assessment Lab (GlassLab). Studies and countless real-world examples show that video games can transform education and assessment, and GlassLab is uniquely positioned to help drive that change through research and game development. ESA also continued its sponsorship of the second annual National STEM Video Game Challenge, a national game design competition that motivates student interest in science, technology, engineering, and math through video games, and creates engaging opportunities for students to learn and hone critical 21st century skills.

In addition, ESA forged a new collaboration with the President’s Council on Fitness, Sports & Nutrition to launch the Active Play Presidential Active Lifestyle Award Challenge, an initiative that enables Americans to earn their Presidential Active Lifestyle Award, or PALA+, by playing active video games. This unique partnership affirms the role video games can play to motivate student interest in science, technology, engineering, and math through video games, and in kindle critical 21st century skills.

Video games also made history in 2012. The Smithsonian American Art Museum in Washington, DC unveiled “The Art of Video Games” exhibition, which the ESA Foundation (ESAF) proudly supported. The exhibition generated widespread press coverage and positive reviews for its exploration of the 40-year history of the medium as an art form. It attracted thousands of visitors to the Smithsonian, making it one of the most-visited exhibitions in the museum’s history. In fact, the first Saturday of the exhibition was among the top five highest visitation days for the museum since its 2006 reopening. “The Art of Video Games” is now on a 10-city tour across the U.S., and we continue to collaborate with its host museums to promote the exhibition and video games’ artistic value.

Through its grant and college scholarship programs, ESAF continued to influence the education of America’s youth and to shape the future of game design and development.

I have featured just a few of our many accomplishments in 2012. The ESA team worked diligently, in close coordination with our members, to educate lawmakers and public officials at the state and federal levels about our industry’s economic and societal contributions, manage anti-piracy programs and law enforcement trainings across the globe, and collaborate with federal officials to strengthen copyright and intellectual property protections.

These shared achievements and the many others described in the following pages underscore positive trends—long-term industry growth, a broad consumer base, and expanding social benefits of games—that bolster confidence in the future of video games and demonstrate our industry’s vitality. None of them would have been possible without the steadfast support of our member companies and Board members, ESA staff, and ESRB. I am especially grateful for their dedication and counsel, which is crucial to maintaining our industry’s strength and ensuring that we at ESA can effectively serve the industry’s interests.

I look forward to our continued collaboration, as we work to sustain our industry’s growth, enhance appreciation for and understanding of video games’ positive impacts, and forge a path toward an even brighter future.

Sincerely,

Michael D. Gallagher
President and CEO
Entertainment Software Association

ESAF also announced a new partnership with Children’s Miracle Network Hospitals to collaborate on Extra Life, an annual 24-hour video game marathon that raises money for nonprofit children’s hospitals across North America. The October 2012 event generated a record of more than $2 million in contributions, demonstrating the generosity of the gamer community, as well as their friends and families.

Last year, our industry remained committed to developing and continually enhancing tools that provide parents with the information needed to make educated decisions about their families’ game play. In an effort to evolve along with the dynamic nature of game play, the Entertainment Software Rating Board (ESRB) launched a new Digital Rating Service to extend its highly regarded ratings system to digitally delivered games and apps, and introduced a new rating component to inform parents about games’ interactive elements. ESRB also marked key milestones in the deployment of the CTIA Mobile Application Rating System, established in partnership with CTIA-The Wireless Association, across several mobile marketplaces.

ESAF again celebrated our industry’s latest innovations and technological achievements at E3 2012, drawing thousands of attendees, including a significant international audience, to downtown Los Angeles for the premier global computer and video game event. The event captured consumers and media alike, and proved to be an effective launching pad for the year’s major video game news.

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The new active play initiative expands upon PCFSN's existing PALA+ Challenge, which calls for adults to be active for 30 minutes a day and for children and teens to be active for one hour a day – for at least five days a week, for six out of eight weeks. The program is the result of nearly two years of discussions among ESA, the Obama Administration, representatives of the First Lady’s Let’s Move! program, and PCFSN.

Now, kids can meet the PALA+ requirements by playing active and fitness video games such as Microsoft’s Kinect Sports: Season 2, Nintendo’s Wii Fit Plus, and Ubisoft’s Just Dance 3. Several of ESA’s member companies have incorporated promotional features into some of their most popular active video games – Sony’s MLB 12: The Show and Konami’s Dance Dance Revolution, for example – to educate players on how they can use technology to get physically active and earn their PALA+.

Seeking to drive excitement for and engage kids in the program, ESA and PCFSN announced the challenge in April 2012 at the Walker-Jones Education Campus in Washington, DC, giving a group of elementary and middle school students the chance to try out several video games. But, the students were not the only ones playing. Secretary of Health and Human Services Kathleen Sebelius, Olympic gymnast and PCFSN Co-Chair Dominique Dawes, Olympic gymnast and PCFSN Co-Chair Dominique Dawes, and PCFSN members including Olympic figure skater Michelle Kwan and tennis legend Billie Jean King, joined ESA President and CEO Mike Gallagher to run, jump, swing, and play toward better health.

For the adults, ESA and PCFSN hosted an evening reception with more opportunities for guests to play at the Smithsonian American Art Museum’s “The Art of Video Games” exhibition. New Orleans Saints’ Pro Bowl quarterback and PCFSN member Drew Brees attended the event along with Secretary Sebelius and his PCFSN colleagues, and took the opportunity to work on his golf swing for the off-season on EA Sports’ Tiger Woods PGA Tour 13.

“It can have you sweating in five minutes,” Brees told Huffington Post – one of several noteworthy news outlets, including The Washington Post, Washingtonian, and National Journal, that attended and covered the events.

Active video games are a great tool to help kids improve their health while having fun. ESA and PCFSN will continue to collaborate on the challenge in 2013 and beyond to motivate the nation’s youth to get fit and stay active.

“Many of our schools don’t have adequate play grounds, but these games are exercise routines that can be brought into any classroom or small space.”

– Kathleen Sebelius,
 Secretary of Health and Human Services

“Through the Active Play PALA+ Challenge, we are motivating kids and families to adopt a healthy lifestyle by using active video games to achieve PALA+.”

– Drew Brees, PCFSN co-chair and quarterback of the New Orleans Saints

ESA and the President’s Council on Fitness, Sports & Nutrition (PCFSN) collaborated to launch the Active Play Presidential Active Lifestyle Award (PALA+) Challenge, a new initiative that enables the public to earn a PALA+ by playing active video games.

Olympic gymnast and PCFSN Co-Chair Dominique Dawes with Secretary of Health and Human Services Kathleen Sebelius and others including Olympic figure skater Michelle Kwan, tennis legend Billie Jean King, and ESA President and CEO Mike Gallagher.
PAC-MAN MOVES IN WITH POLLOCK

In a historic milestone for entertainment software, the Smithsonian Institution’s American Art Museum added video games to its impressive collection in 2012. The museum’s decision to highlight games among highly regarded paintings, sculptures, crafts, and folk art provided further affirmation of video games’ artistic value and recognition for industry designers.

The museum unveiled “The Art of Video Games,” a traveling exhibition that explores the 40-year history of the medium, in March. Featuring works by some of the video game industry’s iconic developers and artists, the first-of-its-kind exhibition focuses on the visual effects within games; the creative use of new technologies; and how those elements tell a story.

“I believe it’s society’s duty and responsibility to protect and nurture this medium because it will be the next great medium for expression, thought, poetry and art for generations to come,” said exhibition curator Chris Melissinos. “That’s incredibly exciting, and this is just one small step toward that goal.”

He added, “Video games today stand as this extraordinary art form that is an amalgam of all traditional art from sketching, painting, sculpture, music and narrative. It gives the opportunity to anyone to have an expressive voice.”

Sponsored in part by the ESA Foundation (ESAF), “The Art of Video Games” exhibition showcased images and videos from 80 different games selected by a global public vote. Museum visitors also had an opportunity to play five of the games on display—Pac-Man by Namco Bandai and Midway; Super Mario Bros. by Nintendo; The Secret of Monkey Island by LucasArts; Myst by Brøderbund; and Flower by Sony Computer Entertainment America (SCEA).”

Games enthusiasts traveled from far and wide to celebrate the exhibition’s opening at GameFest!, a three-day festival featuring insightful panels, live-action game play, and video game-inspired musical performances and film screenings. “The Washington Post” reported more than 18,000 visitors attended GameFest!, the First Saturday of the exhibition one of the five highest visitation days for the museum since its 2006 reopening, according to museum officials.

Traffic to the exhibition remained high throughout its six-month run in DC, as visitors from across the globe took advantage of myriad events, including a Video Games Live concert that featured scores from popular video games, as well as frequent discussions led by prominent video game artists and designers on the confluence of art, technology, and games.

More than 668,000 people visited “The Art of Video Games,” making it one of the most widely attended displays in the museum’s history.

The exhibition was also well-received by the art community and the media, earning appreciation and acknowledgement of the exhibition’s significance. “Last year the Supreme Court conferred video games full First Amendment recognition as a protected form of human expression,” wrote Seth Schiesel of The New York Times. “Now the Smithsonian, the nation’s official education and research institute, has decreed our little bleeps and bloops worthy of its hallowed granite and marble, quite literally down the hall from paintings and sculptures that define the country’s cultural heritage.”

The exhibition will appear at museums in 10 American cities, including Seattle, WA; Phoenix, AZ; and Syracuse, NY, through 2016.
Video games have changed the way Drew McCarron, and thousands of other students, learn and think about education. “It makes somebody who’s playing [these games] actually want to play, and still learn,” McCarron said.

He and his sixth-grade classmates Justin Bicehouse, Campbell Kreiss, and Connor Schexnaildre from the Seneca Valley School District in Pennsylvania were among 28 youth winners of the 2012 National STEM Video Game Challenge, a video game design competition seeking to spur youth interest in science, technology, engineering, and math (STEM) topics. Through the Challenge, middle and high school students, educators, and college students create original educational video games focused on teaching STEM principles; those who develop the most innovative and compelling games win prizes totaling $130,000.

McCarron and his classmates created Archers vs. Aliens, a fast-paced, arcade-style game that tests elementary-level math skills. As an archer defending a castle against aliens, the game player must stock up on arrows to keep the aliens at bay by correctly answering math questions. With 10 levels of increasing difficulty, the game gives students a fun and exciting way to learn basic arithmetic. It also motivated the student game designers to pursue their passions. “It certainly helped Drew explore what his interests are and what he might see himself doing professionally someday,” said his mother, Kelly McCarron. “He has expressed a desire to explore the engineering and design fields.”

Inspired by the White House’s “Educate to Innovate” campaign, ESA first launched the Challenge in 2009 in partnership with The Joan Ganz Cooney Center at Sesame Workshop, AMD, and E-Line Media. In its second year, the Challenge launched in concert with the Department of Education’s “Digital Promise” initiative – a program designed to unlock the power of technology to transform teaching and learning. The goal of the Challenge is to harness students’ enthusiasm for video games in a way that inspires them to pursue an education and career in STEM fields – areas seen by business leaders and policymakers as key drivers of economic growth in the 21st century.

The 2012 Challenge added a number of new partners, including the American Library Association and the Boys & Girls Clubs of America, and expanded its award categories to include high school students and professional educators. Challenge partners credit these changes with prompting a marked increase in youth category submissions. They received 3,700 entries in 2012, compared to 500 entries in 2011.

The growth of the National STEM Video Game Challenge is a testament to the increasing acknowledgment that video games can be powerful educational tools. “Video games play an increasing role in the way we live, learn, work and play, especially in our classrooms, where educational video games engage and excite students, preparing them to become the technological leaders and innovators of tomorrow,” says ESA President and CEO Mike Gallagher.

ESA will proudly continue sponsoring the Challenge in 2013.
Video game characters walking the street. High-energy celebrity performances and music from Video Games Live. Floor-to-ceiling monitors and screenshots displaying vibrant video game art. Miles of Ethernet and fiber optic cabling. Roughly 350,000 square feet of the latest innovations from the video game industry. This was the scene at the Los Angeles Convention Center (LACC) in downtown LA for E3 2012.

Drawing nearly 46,000 industry professionals, investor analysts, journalists and retailers from 103 countries attended E3 2012.

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With an explosion of new wireless devices and expanded availability of Wi-Fi and broadband connections, accessing the Internet – and the wealth of entertainment content it contains – has never been easier. For parents looking to monitor their child’s game play, this convenience can also pose a challenge – countless game titles can be downloaded from anywhere and played on-the-go, and their number and diversity continues to grow.

Advancing along with the evolution of game play, the Entertainment Software Rating Board (ESRB) has introduced two new, easily accessible, and informative tools to empower parents with knowledge about the content of mobile and digital games. ESRB partnered with CTIA–The Wireless Association to launch the CTIA Mobile Application Rating System, which assigns ESRB ratings to mobile apps from six digital storefronts – AT&T, Microsoft, Sprint, T-Mobile USA, U.S. Cellular and Verizon Wireless. The rating system achieved wide success throughout 2012 in assigning ESRB’s well-known ratings to mobile apps through a simplified rating process. In August, Verizon announced that it would become the first mobile marketplace to fully integrate ESRB ratings; and by December, ESRB had assigned more than 8,000 ratings for apps available through the Verizon, T-Mobile, and Windows Phone marketplaces using the new service.

Complementing the CTIA Mobile Application Rating System, ESRB launched a new Digital Rating Service in October 2012. Like CTIA’s system, this new service also gives developers a streamlined, no-cost service for assigning ratings to digitally-delivered games and apps. Importantly, the Digital Rating Service introduced a new component to ESRB’s traditional rating information, “Interactive Elements,” which alerts parents to whether a game shares a player’s information or allows them to interact with other players.

The Digital Rating Service is currently in use for a number of platforms, including Xbox LIVE Arcade; PlayStation Network, Vita and Certified Devices; Nintendo eShop and Wii Shop Channel; and Windows 8. In 2013, ESRB plans to expand its dynamic services to provide ratings information on more digital content aggregators, online game networks, and streaming and download services to help parents learn more about what their kids are downloading.

How It Works: ESRB Digital Rating Service
1. Developers complete an online questionnaire that assesses the content of their game or app as well as whether it contains “Interactive Elements,” such as the sharing of user-provided personal information with a third party, broadcasting a user’s location to other users, or exposing players to user interactions and other user-generated content. The questionnaire is quick and easy to use, and available for free for any game that will solely be made available digitally. A similar ESRB-administered system is used for CTIA-member wireless storefronts such as T-Mobile, Verizon and Windows Phone.
2. Once submitted, developers immediately receive an ESRB rating certificate and a unique identifying code that can be submitted along with their app to any participating digital storefront. Developers can appeal a rating to ESRB if they feel it has been mis-assigned.
3. To ensure the ratings assigned via this system are appropriate, ESRB routinely tests games and apps and monitors consumer complaints. If a rating change is warranted ESRB promptly notifies the developer and storefront(s) to ensure consumers have reliable information.

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Research conducted by Peter D. Hart Research Associates in May and June of 2012.

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The ESA Foundation (ESAF) in 2000 to formalize the video game industry's philanthropic activities by creating an organization dedicated to improving the lives of America's youth. ESAF initially concentrated on two signature programs aligned with this mission – providing scholarship opportunities to aspiring industry professionals and grants to organizations that leverage technology, including video games, to advance education. That focus is making a difference; in the last three years alone, ESAF awarded more than 100 college scholarships and 70 grants to students and organizations across the United States.

In 2012, building on its positive social impact, ESAF announced two new initiatives to support teachers and children's hospitals. In February, ESAF launched the Education Challenge Grant in partnership with The Joan Ganz Cooney Center at Sesame Workshop, the Federation of American Scientists, the Association for Middle Level Education, and The California Endowment. The program seeks to encourage a more unified movement around the educational value of computer and video games, and provides funding to educators who develop curricula that incorporate this technology. Three schools – Centennial High School of Corona, CA, the Diocese of Saint Petersburg of Saint Petersburg, FL, and the Milwaukee Montessori School in Milwaukee, WI – received funding to implement their varied lesson plans, which included teaching algebraic skills through Minecraft and history and language arts with The Peace Game.

In the fall, ESAF announced a new partnership with Children's Miracle Network Hospitals (CMN Hospitals) to raise money for nonprofit children's hospitals across North America. ESAF and CMN Hospitals are collaborating on an annual nationwide fundraiser called Extra Life, a 24-hour video game marathon. Participating teams and individuals ask sponsors to contribute funds that will support a Children's Miracle Network Hospital of their choice. On October 20, Extra Life 2012 brought more than 15,000 gamers together and raised a record of more than $2 million to support medical treatment and research, and to improve awareness of children's health issues.

"We are absolutely thrilled, but not surprised, with 2012's amazing team effort to help kids at hospitals across North America and beyond," said Jeremy "Doc" Adams, founder of Extra Life and the program's director at CMN Hospitals. "Gamers of all kinds and ages came through and showed their ability to impact their communities through gaming."

At the same time, ESAF continued to offer its scholarship and grant programs. More than 180 women and minority students pursuing studies in game design and development applied for scholarships for the 2012-2013 academic year. Of those, ESAF awarded scholarships to 15 freshmen, four sophomores, nine juniors, and two seniors currently enrolled in full-time undergraduate study at an accredited college. Drexel University sophomore Anna Nguyen acknowledged the importance of receiving ESAF's support to advancing her academic and career goals.

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ESAF's 2012 grantees continued work on their proposed projects throughout the year as well. From creating games to help youth with cancer with their treatments, to raising awareness around cyber-bullying, these 15 organizations leveraged the power of technology to improve the lives of youth. Additionally, ESAF received more than 90 grant proposals for its 2013 grant program, from which it selected seven organizations as 2013 grantees and four organizations as multi-year recipients.

All of these programs are supported by the industry, primarily through proceeds raised by ESAF's annual black-tie gala, "Nite to Unite – for Kids" (NTU). ESAF's 15th annual NTU held in October raised more than $800,000 to support its grant-making activities and scholarship program. ESAF also honored Gabe Newell, co-founder and managing director of Valve Corporation, at NTU as the 2012 ESA Champion Honoree for his contributions to the industry and commitment to education.
Games for Change (G4C) used its 2012 grant to advocate for making and supporting digital games for social impact. Harnessing its power, G4C brought together a coalition of experts and advocates called Playforce. For 2012, the program to new locations, further develop its curriculum and software used in the advanced Bootstrapped 2 program, and create in-school curriculum materials. Colonial Williamsburg Foundation works to engage, inform, and inspire an off-site visitors to the colonial capital, and to preserve and restore 18th-century Williamsburg. ESAF awarded a grant to support Kids Zone, a child-friendly website that introduces young people to Colonial Williamsburg, by enhancing the overall site and developing new games and activities for mobile devices. Federation of American Scientists (FAS) is a science policy organization that promotes humanitarian uses of science and technology. ESAF awarded FAS a three-year grant to distribute and evaluate the educational use of its Immune Attack 2 game for teaching biology concepts and enhancing high school science instruction. Games for Change (G4C) is the leading global advocate of making and supporting digital games for social impact. Harnessing its power to engage the public in the most pressing issues of today, G4C used its 2012 grant to expand the impact of its Games for Change Festival and Awards.

2012 Grantees

Ball State University Department of History provides training materials and develops media projects for elementary school teachers and students. ESAF awarded a grant to the department to support its creation of a digital game simulation of the Underground Railroad. The Underground Railroad in the Ohio River Valley.

Brown University – Bootstrap is a national after-school program using game programming to teach urban middle school students algebra and geometry. ESAF utilized its ESF grant to expand the program to new locations, further develop the curriculum and software used in the advanced Bootstrap 2 program, and create in-school curriculum materials.

Colonial Williamsburg Foundation works to engage, inform, and inspire an off-site visitors to the colonial capital, and to preserve and restore 18th-century Williamsburg. ESAF awarded a grant to support Kids Zone, a child-friendly website that introduces young people to Colonial Williamsburg, by enhancing the overall site and developing new games and activities for mobile devices.

FEDERAL GOVERNMENT AFFAIRS

ESAF’s Federal Government Affairs (FGA) program advances the computer and video game industry’s policy priorities with Congress and the Executive Branch. ESA leverages the industry’s economic success, technological prowess, strong presence, and self-regulatory practices to positively influence the Congressional legislative agenda and raise ESA member company and industry visibility. In 2012, FGA continued building support for the industry by educating policymakers and establishing key third-party and government partnerships that underscore the positive role video game play in education, fitness, innovation, and economic development. These partnerships included supporting the National STEM Video Game Challenge and the Active Play PALA Challenge, as well as those described below.

Mandarin Chinese.

Smithsonian American Art Museum tells the story of 300 years of American art, culture, and history from the colonial period to present day. The Smithsonian American Art Museum received a two-year grant to support “The Art of Video Games”, exhibition, which explores the 40-year evolution of video games as an art form, medium, and the development of related resources for educational purposes.

ThankUSA mobilizes Americans of all ages to “thank” the man and women of the U.S. armed forces by providing scholarships to their families. Since 2009, ESAF has funded ThankUSA’s Treasure Hunt, an online trivia and puzzle game about American history and culture. Treasure Hunt generates donations to ThankUSA’s scholarship fund. The grant also supports the ESAF’s ThankUSA Scholarship for military youth. In 2012, 25 youth received 93,000 scholarships.

Tiger Woods Learning Center delivers unique experiences and educational opportunities for youth worldwide. ESAF awarded the center a grant to support its computer and engineering programs.

Web Wise Kids (WWK) is a national nonprofit organization dedicated to preventing online child exploitation by providing innovative tools that empower today’s youth to make safe, smart choices online. In 2012, ESAF’s grant enabled WWK to develop a new game concept based on current Internet safety issues, including cyberbullying, social media, and protecting personal information.

World Wide Workshop Foundation is committed to using computers and the Internet to enhance technological fluency among youth in economically disadvantaged and technologically underserved communities worldwide. Its Globaloria program prepares youth for jobs in entertainment software and other STEM-related industries. ESAF awarded the organization a grant to expand the Globaloria Leadership Innovation Program in West Virginia and replicate it in states across the country.

ESA President and CEO Mike Gallagher, Microsoft Interactive Entertainment Business Director of Curriculum Dr. Alex Games, American Association of University Women Director of Research Catherine Hill, Institute of Play Learning Design Strategist Eliza Spong, and BioWare Mythic Vice President Eugene Evans were all featured panelists on Capitol Hill. More than 150 staff attended the briefing entitled “STEM in the Next Economy: The Linkage to 21st Century Jobs.”

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In 2012, ESA partnered with Electronic Arts (EA) and the Institute of Play to secure $910 million in grants from the Bill and Melinda Gates Foundation to establish GlassLab, a nonprofit learning and assessment game design studio. GlassLab’s mission is to design, develop, disseminate, and advocate for new models of assessment with digital games at their core by creating video games that are developed to commercial standards.

GlassLab officially launched at the Aspen Ideas Festival in June 2012 as a direct result of ESA member companies’ outreach to third-party partners and foundations to highlight the positive potential of video game technology in education. The partners devised and developed GlassLab as part of ESA’s annual Games in Learning Summit at E3 2010 and E3 2011. The Institute of Play runs GlassLab, which will create “game-based assessments” tied to the Common Core middle school curriculum and 21st century skills. It is housed at EA’s Redwood City facility, and encourages collaboration among all ESA members.

GlassLab has seven full-time employees who are developing original intellectual property (IP) for “mini-games” operating on iOS, and are exploring existing IP options for educational games based on popular titles. In 2013, FGA will identify opportunities to participate in upcoming forums, panels, and meetings to promote the initiative.

**ESA POLITICAL ACTION COMMITTEE (PAC)**

As a part of its PAC outreach efforts, FGA hosted two receptions at ESA headquarters; one for Rep. Jim McGovern (D-MA), and another for Sen. Joe Manchin (D-WV). These events showcased the ESA PAC contribution of $3,000 to collectively raise in video game industry’s technology and innovation while leveraging another for Sen. Joe Manchin (D-WV). These events showcased the initiative.

**CONGRESSIONAL CAUCUS ON COMPETITIVENESS IN ENTERTAINMENT TECHNOLOGY (E-TECH CAUCUS)**

On June 16, the E-TECH Caucus circulated a “Dear Colleague” letter inviting congressional staff to a private briefing on Capitol Hill titled, “Encouraging 21st Century ‘Next Economy’ Workers and Jobs.” Briefing participants included BioWare Mythic Vice President Eugene Evans, Microsoft Interactive Entertainment Business Director of Curriculum Design Eliza Spang. To date, there are approximately 60 Members of Congress in the Caucus.

**ESAs State Government Affairs (SGA)**

SGA’s State Government Affairs (SGA) program was vigilant throughout 2012 in developing positive relationships with legislators, governors, and state attorneys general to cultivate opportunities and enhance environments to support industry growth, job expansion, and innovation.
On June 27, SGA toured the Louisiana Immersive Technologies Center and the Academy of Interactive Entertainment facilities in Lafayette to support industry growth, as well as to cultivate opportunities and enhance relationships with legislators, governors, and state attorneys general to underscore the fact that the study committee was created for the purpose of examining the relationship of video game violence to obesity and bullying.

On September 27, ESA sponsored a reception and dinner at the Smithsonian American Art Museum’s “The Art of Video Games” exhibition for the Democratic Attorneys General Association (DAGA) during their Fall Policy Forum in Washington, DC. Thirteen attorneys general attended the event.

On May 15, ESA Director of State Government Affairs Robb Bohannon delivered keynote remarks highlighting the video game industry’s economic impact in Texas at the “Power On For Texas Film, Interactive & Tourism” event at Texas A&M-Corpus Christi. Texas House Calendar Chair Todd Hunter (R) convened the event, which highlighted the current impact and potential of Texas’ video game, and tourism industries.

On March 29, SGA hosted a video game booth in the American Legislative Exchange Council’s Annual Meeting Exhibition Hall with Xbox 360, PlayStation Vita, and Nintendo 3DS equipment to demonstrate family-friendly games and parental controls.

On August 14, SGA attended a meeting with Pennsylvania Gov. Tom Corbett (R) at EA’s Redwood Shores campus during his tour of Silicon Valley companies. SGA continues to work with members of the Pennsylvania Legislature to enact a digital media tax incentive program in the state.

On August 21, SGA organized a tour of EA’s Salt Lake campus for then-Utah Chief Deputy Attorney General John Swallow (R), who was elected attorney general in November. SGA met with key subcommittee members asking them to oppose the creation of this committee. The same day, the House Revenue and Taxation Subcommittee voted HB 2696 down as a result of ESA’s efforts to underscore the fact that the study committee was unnecessary and that research has shown no causal link between video game violence and real-world violence.

On May 16, ESA sponsored a video game booth at the American Legislative Exchange Council’s Annual Meeting Exhibition Hall to demonstrate family-friendly games and parental controls.

On March 28, Florida Gov. Rick Scott (R) signed HB 7087 into law. This legislation improves Florida’s existing digital media tax incentive by providing a definition of, and priority for, high-impact digital media projects. It also provides $42 million per fiscal year in program funding and extends the program through 2015-2016. ESA worked with key stakeholders and the Florida Film Commission on this improved language and increased funding.

On April 24, SGA testified on a panel before the Texas House Culture, Recreation and Tourism Committee with Texas Film Commission Director Evan Fitzmaurice and Texas Motion Picture Alliance President Susan Fowler in Austin, TX. The panel highlighted the positive economic impact of the Moving Image Industry Incentive Program and encouraged the legislature to continue funding the program at a competitive level.

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On February 2, legislators filed SB 376 before the Kansas Senate to create a number of new taxes, including a tax on access to or use of computer software. ESA submitted testimony in opposition to SB 376 for a March 15 hearing in the Senate Committee on Assessment and Taxation. The bill failed to receive a vote in committee, and received no action before the Kansas Legislator’s adjournment.

On February 29 and March 1, SGA testified and submitted written testimony before the Maryland Senate’s Budget and Taxation and House Ways and Means Committees in opposition to Gov. Martin O’Malley’s (D) budget proposals (HB 87 and SB 152), that included taxing downloads of video games, among other things. Ultimately, the legislature omitted the digital downloads tax in the final budget package.

On January 18, Oklahoma Rep. Will Fourkeller (D) filed HB 2696, which sought to place a one percent excise tax on “violent” video games, defined by the bill as those rated T, M, or AO by ESRB. SGA met with House Revenue and Taxation Subcommittee members to dissuade them from moving forward on the bill. As a result of SGA’s efforts, Subcommittee Chair David Drain (R) withdrew the bill from the committee agenda on February 13 and requested that the sponsor submit alternate language to commission a study committee to examine causes of and solutions to obesity and bullying.

On February 20, Rep. Fourkeller’s study committee released alternate language, creating the Oklahoma Task Force on Video Games Relationship to Obesity and Aggression. SGA once again met with key subcommittee members asking them to oppose the creation of this committee. The same day, the House Revenue and Taxation Subcommittee voted HB 2696 down as a result of ESA’s efforts to underscore the fact that the study committee was unnecessary and that research has shown no causal link between video game violence and real-world violence.

On June 12, after more than 18 months of debate and at the urging of ESA and others, New Hampshire Gov. John Lynch (D) vetoed the New Hampshire General Court’s significantly revised version of its proposed right of publicity legislation. The amended version extended the state’s common law right of publicity statute to descendants, but without providing an exemption for any expressive works. The Senate upheld the Governor’s veto in a vote on June 27.

ESA’s SGA program was vigilant throughout 2012 in developing positive relationships with legislators, governors, and state attorneys general to cultivate opportunities and enhance environments to support industry growth, job expansion, and innovation.

TAX INCENTIVES

On March 28, Florida’s Motion Picture Competitiveness Program “The bill includes a 30 percent tax incentive for interactive media and caps the program at $3.5 million for the calendar year. SGA met with key legislators, including the bill sponsor, several times in 2012 to provide feedback on the legislation.

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RIGHT OF PUBLICITY

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ESAs Legal, Policy & Regulatory Affairs program supports the industry’s collective legal interests by managing litigation to enjoin direct attempts to regulate the industry; tracking cases that significantly impact the industry and filing amicus briefs that communicate industry interests; providing reporting and analysis on IP, technology, privacy, security, trade and market access, and a broad array of e-commerce issues affecting the industry domestically and globally; and advancing industry interests on those issues through regulatory filings and advocacy before agencies, courts, and policymakers.

LEGAL, POLICY & REGULATORY AFFAIRS

DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA) RULEMAKING

- Throughout 2012, ESA engaged in the triennial DMCA rulemaking process, which reviews whether exemptions to the DMCA’s anti-circumvention prohibitions for certain defined activities should be granted. On February 10, ESA filed extensive comments opposing the Electronic Frontier Foundation’s (EFF) request for an exemption that would permit users to circumvent technological protection measures (TPMs) on video game consoles and enable them to use “lawfully acquired applications” like homebrew software or alternate operating systems. ESA filed opposition to the proposed exemption, arguing that EFF failed to meet its burden of proof and that the exemption would cause great harm to the video game industry’s copyright protections.

- Christian Genetski testified before the U.S. Copyright Office in opposition to the proposed exemption, arguing that EFF failed to meet its burden of proof and that the exemption would cause great harm to the video game industry’s copyright protections.

- On October 25, the Librarian of Congress issued its Final Rule, concurring with ESA’s arguments. The rule rejected EFF’s proposed exemption and concluded that video game consoles’ TPMs play a critical role in the development and dissemination of innovative copyrighted works by discouraging piracy and protecting creators’ investment in new titles.

FEDERAL COMMUNICATIONS COMMISSION (FCC) ACCESSIBILITY PROCEEDING

- In 2012, ESA represented industry interests before the FCC in its “advanced communications services” (ACS) proceeding, one of several proceedings related to implementation of the 21st Century Communications and Video Accessibility Act (CVAA). On March 16, ESA petitioned the FCC for an industry waiver from the ACS mandates, arguing that these waivers permit waivers for products and services that have a primary purpose other than communication and that the primary purpose of game products is game play.

- On October 15, the FCC granted ESA’s waiver petition for all three proposed classes (game consoles, online game services, and games) as defined in ESA’s request. The waivers relieve game publishers, operators of online game services, and console makers from ACS accessibility mandates, recordkeeping obligations, and achievability assessments for products and services that enter the marketplace before October 2015.

U.S. SUPREME COURT (BROWN V. EMA/ESA)

- On January 26, ESA and the state of California jointly filed a stipulation with the U.S. Court of Appeals for the Ninth Circuit regarding appeals for the U.S. Supreme Court proceedings, pursuant to which California would pay ESA $950,000 by June 30, 2012. On April 19, the Ninth Circuit granted the joint stipulation, and on May 10, ESA received full payment from California. ESA donated $150,000 of the payment to

COMMUNICATIONS & INDUSTRY AFFAIRS

Through a program of media outreach, events, digital communications, and grassroots advocacy, Communications & Industry Affairs (C&IA) educated policymakers, members of the media, other opinion elites, and the general public about the continued evolution of the video game industry beyond entertainment. The department highlighted the important contributions games are making to the U.S. economy and in fields such as education, health, and social issues, and underscored the diversity of the gamer audience. C&IA publicized ESA’s major partnerships and initiatives – including the National STEM Video Game Challenge and Active Play PALA+ Challenge, as well as those described below – and continued to support ESA’s legislative and legal efforts.

INDUSTRY COMMUNICATIONS

- In June 2012, C&IA collaborated with the Institute of Play to promote the launch of GlassLab, a nonprofit learning and assessment game design studio, at the Aspen Ideas Festival. The announcement generated significant press attention and led to articles in publications such as The Wall Street Journal and USA Today, as well as across game press outlets.

- The department developed and released the 2012 Essential Facts About the Computer and Video Game Industry, highlighting the growing diversification of the gamer audience and increasing popularity of game content delivered in digital formats. In addition to providing updated sales and usage data, the research indicated that the average game player is 30 years old, 68 percent of gamers are adults, and 47 percent of gamers are women.

- C&IA secured several speaking opportunities for ESA representatives at high-profile events, including the Game:Business:Law Conference, D.I.C.E. Summit, the Silicon Flatirons Center’s Digital Broadband Migration Conference, South by Southwest ScreenBurn Conference, the American Bar Association, The Atlantic’s second Technologies in Education Forum, the Games for Change Festival, and Law Seminars International’s Law of Digital Games Conference. The department also arranged media interviews with notable outlets including CEO Update, Politico, BBC World Service, Reuters, and Mashable.

VIDEO GAME VOTERS NETWORK (VGVN)

VGVN is ESA’s online community focused on promoting the positive impact that video games have in our society. Through legislative outreach, active online forums, and interaction with both new and mainstream media, VGVN’s more than 500,000 members actively promote the rights of video game creators and consumers.

- In March 2012, the VGVN Ambassadors, a program empowering college-age VGVN members to be leaders on their campuses, launched the VGVN Power Up Campus Tournament to encourage Ambassadors to recruit new members. Over the course of five weeks, VGVN awarded a series of prizes to universities that successfully increased membership. The university that recruited the most new Ambassadors to its campus program received a grand prize award.

- VGVN partnered with Epic Games and 2K Play to promote two new election-themed games that featured VGVN and encouraged players to exercise their civic duty. Epic Games, Inc. and CHAIR Entertainment featured VGVN on VOTE!! The Game’s voter resource page, which included in-game voter registration tools, along with information about the candidates and the key issues in the 2012 election. For Comedy Central and 2K Play’s IndeadSea, VGVN members received a special code allowing them to dress their avatar in VGVN apparel as they played.

VGA: Business: Law Conference, D.I.C.E. Summit, the Silicon Flatirons Center’s Digital Broadband Migration Conference, South by Southwest ScreenBurn Conference, the American Bar Association, The Atlantic’s second Technologies in Education Forum, the Games for Change Festival, and Law Seminars International’s Law of Digital Games Conference. The department also arranged media interviews with notable outlets including CEO Update, Politico, BBC World Service, Reuters, and Mashable.
charitable organizations in California to develop after-school educational programs for underserved communities, a donation which The California Endowment agreed to match. The state paid ESA $91,327,000, which included reimbursements already paid from two California lower court rulings, bringing the total amount of funds ESA has received from states attempting to unconstitutionally regulate video games to $91.1 million.

FEDERAL TRADE COMMISSION (FTC) CHILDREN’S ONLINE PRIVACY PROTECTION ACT (COPPA) RULEMAKING

Throughout 2012, ESA continued to engage the FTC on its proposed COPPA Rule modifications. On May 31, ESA met with officials from the Division of Advertising Practices to highlight the industry’s key concerns around the proposed modifications. On August 1, the FTC published further proposed changes to the Rule, consistent with the earlier “best practices” for screen names that partially addressed ESA’s concerns, and requested public comment. On September 24, ESA filed comments urging the FTC to further refine its approach to “screen names” and raising concerns about other proposed changes that would significantly expand the COPPA Rule’s scope.

INTERNATIONAL TRADE COMMISSION (ITC) PUBLIC COMMENTS

On June 8, ESA filed comments with the ITC in response to ITC’s request for public input on its proposed order to exclude importation of Xbox 360 consoles into the U.S. market in the matter of Certain Gaming and Entertainment Consoles, Related Software, and Components. The order was entered in a “Standard Essential Patents” dispute between Microsoft and Motorola. ESA’s comments asserted that such an order was not in the public interest, citing the harm to consumers, publishers, and the console ecosystem that would result from depriving U.S. consumers of one of the major game console platforms.

MOBILE PRIVACY

Mobile privacy emerged as one of the most pressing technology policy issues for state and federal regulators in 2012. In California, Attorney General Kamala Harris (D) reached an agreement with the largest mobile app providers to make app privacy disclosures. ESA continues to work with members to identify key areas where the game industry’s unique perspective could help regulators achieve a more reasonable outcome, and is advocating those interests in each forum.

ENERGY EFFICIENCY

In 2012, the U.S. Environmental Protection Agency (EPA) considered an energy efficiency program for video game consoles, modeled on ENERGY STAR, a series of approaches to “screen names” that partially addressed ESA’s concerns, and requested public comment. On September 24, ESA filed comments urging the FTC to further refine its approach to “screen names” and raising concerns about other proposed changes that would significantly expand the COPPA Rule’s scope.

Throughout 2012, the California Energy Commission (CEC) continued its inquiry into potential energy efficiency standards for a variety of consumer electronics, including game consoles. On February 7, ESA, joined by representatives from all three console makers, provided CEC officials with an overview of the unique aspects of game console design and the industry’s strong progress in improving energy efficiency. On March 8, CEC released a scoring order identifying game consoles as a possible area for development of energy efficiency regulations. Then, on October 16, ESA discussed the industry’s new, voluntary proposal on energy efficiency with newly appointed CEC Commissioner Andrew McAllister.

On March 26, ESA filed comments with the U.S. Department of Energy in response to the agency’s “Request for Information” about the energy efficiency of game consoles, among other products.

MEMBER OUTREACH AND SPEAKING ENGAGEMENTS

On June 6, ESA Legal Department hosted a seminar for members at E3 2012. More than 35 member company representatives attended, and presentation topics included right of publicity and IP issues in social and casual games, as well as a review of key ESA legal initiatives.

On October 17, ESA Legal Department and Jenner & Block hosted an ESA member-exclusive Continuing Legal Education seminar in San Francisco. More than 60 member company representatives attended and 13 speakers presented on topics including taxation, digital entitlements, online gaming privacy and data security, and content protection.

ESA Senior Vice President and General Counsel Christian Genetski represented ESA at a number of key conferences and seminars with government regulators and industry practitioners, including:

- The Consumer Electronics Show, on a panel entitled “Guarding Your Online Data. Do You Know Who Is Responsible?” with Wolverine Companies Inc. and representatives from a privacy-focused think tank.
- The Northern Michigan University’s Conference on the Law and Business of Video Games, in a keynote presentation on the Console Wars: ESA/ESA case and its impact, as well as next-generation legal challenges.
- International Quality & Productivity Center Anti-Piracy and Cybersecurity conference, on a panel entitled “Overcoming IP and Enforcement Challenges in Casual/Online and Online Gaming” with a member company general counsel.

PROMOTING INTERNATIONAL INDUSTRY HARMONIZATION

ESA led efforts to coordinate with fellow game industry associations on issues of international significance in 2012. In April, ESA convened a policy coordination meeting with representatives from ESA, the Entertainment Software Association of Canada (ESAC), the Interactive Software Federation of Europe, and member companies to discuss shared legal and product protection challenges, as well as regulatory challenges stemming from piracy, e-commerce, and consumer protection. The meeting included leaders and staff members of seven international game industry associations met at E3 2012 to discuss strategic approaches to addressing common policy concerns.

MAINTAINING STRONG COPYRIGHT PROTECTIONS

On January 26, 2012, ESA, the Motion Picture Association of America, Recording Industry Association of America, and the Business Software Alliance (BSA) conducted a Piracy Technology briefing for senior officials from the U.S. Departments of State and Commerce, U.S. Patent and Trademark Office, U.S. Customs and Border Protection (CBP), FBI, and the U.S. Copyright Office. ESA described industry harms stemming from BitTorrent and peer-to-peer (P2P) usage, as well as concerns surrounding circumvention sites, pirate sites, sites that provide access to pirated content, and unauthorized digital entitlements.

In February, ESA and other members of the International Intellectual Property Alliance (IPIA) filed the IPIA 2012 Special 301 Enforcement and Policy Coordination Request to the U.S. government. The report documents legal and enforcement difficulties across 41 high-priority countries, and is used by the U.S. government to inform resources allocation for international engagement. ESA underscored, in the report and in follow-up briefings, the extraordinarily high levels of piracy Brazil, Italy, Mexico, and Spain.

Throughout 2012, ESA met with European and international industry representatives with quarterly Internet Service Providers (ISP) Responsibility Reports detailing key legal, legislative, and negotiated measures being taken to address online piracy in approximately 20 key international markets.

On September 14, ESA filed nominations in connection with the U.S. Trade Representative’s (USTR) annual “Notorious Markets” review. ESA identified illegal device distribution sites, BitTorrent index and tracker sites, unauthorized private servers, and other online resources regarding members and ESA enforcement staff as the most damaging to the video game industry. The filing also identified physical marketplaces in Mexico and Brazil that remain problematic.

ESA provided recommendations to the U.S. Intellectual Property Enforcement Coordinator (IPEC) for its Joint Strategic Plan on IP enforcement, which must be updated triennially. On August 10, following member consultation, ESA recommended, among other measures, that the U.S. government:

- Assist in brokering voluntary agreements with intermediaries to address online infringement;
- Expand USTR’s annual review of notorious pirate markets;
- Eliminate barriers inhibiting customs agencies from sharing information about circumvention device seizures;
- Add U.S. Department of Justice iChips prosecutors to lead IP enforcement efforts in critical foreign regions;
- Consider imposing new criminal IP and fraud threats to online games, including sites engaged in the unauthorized resale of virtual assets (i.e., “real money trading”) and operation of rogue private servers.

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- Consider imposing new criminal IP and fraud threats to online games, including sites engaged in the unauthorized resale of virtual assets (i.e., “real money trading”) and operation of rogue private servers.
On March 21, ESA hosted a reception for visiting dignitaries participating in a copyright symposium sponsored by the World Intellectual Property Organization (WIPO) and the U.S. Copyright Office, during which ESA presented industry legal reform and enforcement priorities to senior delegates from countries including Brazil, China, India, Mexico, Philippines, Russia, and Vietnam.

MAINTAINING STRONG ANTI-CIRCUMVENTION PROTECTIONS

Throughout 2012, ESA worked with U.S. trade negotiators to ensure that game industry interests are preserved in international treaties under consideration by WIPO. In particular, ESA focused attention on ensuring that proposed treaty language would not weaken the international framework for protecting TPMs.

FOCUS ON INTERNATIONAL REGULATORY IMPEDIMENTS

In close consultation with members, ESA opposed a draft decree issued by Vietnam that contained highly restrictive regulations on online game publishers and operators. Proposed restrictions included joint venture requirements with foreign ownership capped at 49 percent, a 2-hour per day cap on online game play, and server location mandates. ESA contributed significantly to USTR comments objecting to the decree, and, on May 15, sent its own member-approved comments to Vietnam’s Minister of Information and Communications. ESA’s filing highlighted the regulations’ likely impact on game publishers’ willingness to invest and compete in the market.

IMPROVING MARKET ACCESS

ESA continued urging the U.S. government to press for product expansion of the World Trade Organization’s Information Technology Agreement (ITA) to eliminate tariffs and border charges applied to game consoles, console software, accessories, peripheral devices, and point of sale activation and other stored value cards. ESA also coordinated with international game industry associations to ensure they pursue similar efforts with value cards. ESA also signed a supportive filing with members of the High Tech Trade Association (ITI).

ONLINE MONITORING AND ENFORCEMENT

The Anti-Piracy group also conducted training sessions on identifying game piracy for international law enforcement officials, and held 32 such sessions in 2012 for an estimated 1,150 officials.

ESAs Anti-Piracy group collaborates with the member representatives of the Piracy Working Group (PWG) to design and implement anti-piracy strategies to protect members’ businesses from various piracy threats in the U.S. and six foreign countries. This includes downloads of illegal game files, sales of pirated games, or offerings of console circumvention technology and services, both online and via retail outlets. The Anti-Piracy group also conducts training sessions on identifying game piracy for international law enforcement officials, and held 32 such sessions in 2012 for an estimated 1,150 officials.

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ONLINE MONITORING AND ENFORCEMENT

Through November 2012, ESA undertook takedown efforts with respect to 5.4 million infringing files on host sites. More than 96 percent of the infringing files were removed, with roughly 55 percent taken down within 24 hours of notification—a 10 percent decrease from 2011 that is largely attributable to changes in the host site environment.

ESA sent approximately 3.4 million takedown notices during the first 11 months of the year to ISPs in the U.S. and three key countries to address P2P networks’ infringing activity.

Through November 2012, ESA procured Google’s takedown of more than 99,500 search engine results containing links to infringing game files.

U.S.

On July 23, U.S. District Court Judge James V. Selna of the U.S. District Court for the Central District of California in Santa Ana, CA, sentenced two members of OC Game Squad, an Orange County, CA, game piracy group, to two years of probation. The FBI arrested the individuals in 2012, following an ESA investigation and referral. On August 20, Judge Selna also sentenced the third member of the group to two years of probation.

MAJOR U.S. ENFORCEMENT ACTIONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Target and Location</th>
<th>Enforcement Agency</th>
<th>Items Seized</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/11/12</td>
<td>Several games, Darien, IL</td>
<td>Darien, IL Police Department</td>
<td>100 pirated games and six computers with disc-burners</td>
</tr>
<tr>
<td>2/23/12</td>
<td>Fusion Games (two retail locations), Huntington Park, CA</td>
<td>FBI</td>
<td>750 pirated Wii and Xbox 360 games, 15-20 hard drives containing more than 1,000 pirated games, several computers, and more than 50 modified game consoles</td>
</tr>
<tr>
<td>4/18/12</td>
<td>Craigslist seller of pirated games and console-modding services, Queens, NY</td>
<td>New York Police Department</td>
<td>Several modified game consoles and game copies, 195 pirated Xbox 360 games, and a number of computers and hard drives containing almost 800 copies of pirated Wii and Xbox 360 games</td>
</tr>
<tr>
<td>5/10/12</td>
<td>Craigslist seller of Xbox 360 pirated games, Lakewood, CA</td>
<td>Los Angeles County Sheriff’s Department</td>
<td>One computer, two hard drives, 20 pirated Xbox 360 games, and nine modded game consoles</td>
</tr>
<tr>
<td>10/26/12</td>
<td>Craigslist seller of Wii pirated games and console-modding services, San Antonio, TX</td>
<td>San Antonio Police Department</td>
<td>Roughly 20 computers, hard drives, and other memory devices</td>
</tr>
</tbody>
</table>
On April 10, with support from ESA, the Barrie Police Department of Ontario executed a search warrant on the residence of a target involved in selling pirated games on kijiji.com. Police officers seized two computers, four external hard drives, four DVD burners, and a small quantity of counterfeit games.

On January 6-7, law enforcement agents of the Procuraduria General de la República (PGR) undertook a large-scale enforcement action against sellers of counterfeit goods in the San Juan de Dios marketplace in Guadalajara, including 70 outposts identified through prior investigations. The authorities confiscated 194,000 pirated video games, 195,400 blank discs, empty video game packaging and accessories (including circumvention devices), and 1.92 million jacket inserts.

On November 1, ESA launched its 2012 IP education campaign, which involves a public contest for Mexican children to create and submit a short video about why they should choose to acquire and play original game instead of a pirated copy. The launch coincided with the annual Electronic Game Show (EGS), held November 2-4 in Mexico City. ESA organized and hosted an anti-piracy booth at EGS to promote awareness of the harm caused by local game piracy and ESA’s industry enforcement program. An estimated 1,500-2,000 people visited the booth during the show.

On August 9, ABES obtained an enforcement action by the local specialized IP police unit in Rio de Janeiro against three pirate sellers in the Camelodromo de Caxias marketplace. Police agents seized 18,054 pirated game copies.

On November 21, ABES provided support to the Rio de Janeiro police in executing raids on several sellers in the Camelodromo de Uruguaiana, a large downtown market known as a venue for the sale of counterfeit products. Officers confiscated 32,320 pirated games.

In 2012, ESA’s local counsel, A TMD Two Birds, undertook private criminal actions against six retail targets that were selling pirated games and/or console-modding services or game circumvention devices. All of these cases have been, or soon will be, resolved, with the defendants paying a settlement fee and agreeing not to engage in any further infringing activity connected with game software.

On May 12, the Singapore Police executed a raid against Star Media Life, an electronic products distributor, after receiving information on their products at their booth at Singapore EXPO, a major exhibition and convention center. Police seized 11 modified PlayStation Portables, 18 tablets containing infringing copies of game software, three Wii consoles, 82 R4 game copiers, one laptop and two hard disks containing infringing games. ATMD Two Birds provided support to the Singapore Police throughout this action and subsequent prosecution.

On April 24, ESA’s local counsel and investigative firm provided support to Hong Kong Customs officers in executing enforcement actions against six different retail locations throughout Hong Kong, seizing 99 game copiers and arresting seven individuals for criminal violations of the anti-circumvention provisions of the Copyright Ordinance.

Late in 2012, ESA restructured its Korea enforcement program by switching online monitoring vendors to work with the Copyright Protection Center (CPC), a group known for its online monitoring and investigative work. CPC’s automated monitoring of Korean websites to identify infringing game copies or links and to transmit takedown notices to the site operators allowed ESA to significantly broaden the scope of its program.

On December 6, pursuant to the graduated response process in Korea, sending notifications to the Korean Copyright Commission that identified 1,000 instances of repeat and persistent infringers during the year. Following the May 2012 implementation of tighter government regulations for sites engaged in infringing activity, such notices have an even greater impact in deterring posts of infringing game copies.

On May 31, an enforcement action was taken against a target that was selling pirated games and console-modding services operating websites engaged in infringing activity. ESA also continued to work with one of the law firms and anti-piracy partner Associação Brasileira das Empresas de Software (ABES), the Brazilian software association, to support law enforcement actions against hard goods piracy.

In 2012, ESA’s Korea enforcement program continued its increased enforcement against the sale of counterfeit hard goods in 2012, leading ESA and the PWG to restructure and refocus the local enforcement program on the rapidly growing incidence of online game piracy. ESA engaged two law firms to investigate and refer local targets operating websites engaged in infringing activity. ESA also continued to work with one of the law firms and anti-piracy partner Associação Brasileira das Empresas de Software (ABES), the Brazilian software association, to support law enforcement actions against hard goods piracy.
ENTERTAINMENT SOFTWARE RATING BOARD

The Entertainment Software Rating Board (ESRB) is the nonprofit self-regulatory body for the video game industry. ESRB administers a world-class content rating system that applies to video games and apps and continues to be among the most comprehensive, trusted, and utilized rating systems available today.

ESRB RATINGS

- In 2012, ESRB assigned 496 ratings to boxed games, a 53 percent drop from 2011. However, ESRB assigned 8,985 ratings for mobile apps and other digitally delivered games. Altogether, ESRB assigned 9,481 ratings in 2012, a 465 percent increase over its previous peak output of 1,677 in 2008.
- By December 2012, ESRB assigned more than 8,000 ratings for apps in the Verizon, T-Mobile, and Windows Phone marketplaces using the CTIA – The Wireless Association Mobile App Rating System, developed and managed in partnership with ESRB. Verizon announced in August 2012 that it was the first mobile storefront to fully integrate ESRB ratings by requiring one for all new apps as well as retroactively rating all of the existing apps in its Verizon Apps marketplace.
- ESRB added Interactive Elements as the newest component of its rating system in 2012. In addition to a Rating Category and Content Descriptors, all digitally-delivered games and apps may now receive Interactive Elements notices that inform consumers if a game shares user-provided personal information with a third party (“Shares Info”), broadcasts a user’s location to other users (“Shares Location”), or exposes players to user interactions and other user-generated content (“Shares Interact”).

ADVERTISING REVIEW COUNCIL (ARC)

- Through ARC, ESRB enforces industry-adopted advertising and marketing guidelines, and holds game publishers accountable for full disclosure of pertinent content during the rating process.
- In 2012, ARC significantly expanded its monitoring activities to account for the growing number of digital games and apps, regularly checking storefronts for accurate rating information disclosures and working to correct inaccuracies when discovered.

COMPLIANCE AND ENFORCEMENT

- The volume of both ratings and ARC violations in 2012 declined by approximately 44 percent and 80 percent, respectively, compared to 2011. As of November 29, 2012, ESRB imposed $90,000 in fines on non-compliant companies, a reduction of approximately 22 percent from fines issued during that same period the prior year. The decline in violations likely results both from the overall decrease in submission volume and some submissions shifting from the traditional rating process to the Digital Rating Service process. The IARC system employs a similar online ratings initiative to rate digital games and apps via an automated process. The IARC system employs a similar online ratings process. The IARC system employs a similar online ratings process.

CONSUMER RESEARCH

- In May and June 2012, ESRB commissioned Peter D. Hart Research Associates to conduct an online survey of 509 parents with children between the ages of three and 17 that play video games. The results include:
  - 85 percent of parents are aware of the ESRB rating system;
  - 70 percent regularly check a game’s Rating Category before purchasing a game;
  - 67 percent are aware of Content Descriptors; of these, 75 percent regularly read them before purchasing.
- In February 2012, ESRB distributed its latest print and online PSA campaign featuring artwork by the popular webcomic Penny Arcade, which created caricatures of three real-life parent gamers to promote ESRB ratings, Rating Summaries, and the ESRB mobile app. The campaign received dozens of placements in game enthusiast and parenting publications and websites, generating more than 53 million impressions through November 2012.

MARKETING, COMMUNICATIONS AND PUBLIC EDUCATION

- ESRB continued to develop and secure support for the International App Rating Council (IARC), an ESRB-led global initiative to rate digital games and apps via an automated process. The IARC system employs a similar online ratings questionnaire as ESRB’s Digital Rating Service, which developers complete and which generates distinct ratings for the various participating territories, thereby enabling each to preserve its individual rating system standards and leverage its established icons.
- In 2012, ESRB integrated both PEGI (Europe) and DEJUS (Brazil) ratings into the IARC form, began adding USK (Germany), and continued to solicit the participation of other ratings authorities. ESRB expects to deploy the IARC system in 2013.
- 88 percent said the ratings are “helpful” in choosing which games are appropriate for their children; and
- 80 percent said ESRB does an “excellent” or “good” job informing about sexual content (compared to 55 percent in the FTC’s 2007 survey); 79 percent said this about adult language (58 percent in 2007) and 80 percent said this about violent content (60 percent in 2007).

San Francisco Giants Buster Posey and Ryan Vogelsong join ESA President Patric Vance, CTIA President and CEO J. Rocky Turner, and Ubisoft Executive Director for North America Laurent Derat as AT&T Park in San Francisco to launch ESRB’s latest PSA campaign.

One of three PSAs produced by Penny Arcade for ESRB in 2012. The ads depict real-life gamer parents using ESRB resources – such as ratings, Rating Summaries, and the free mobile app – to choose games.

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In April 2012, ESRB distributed its latest state-level PSA campaign starring World Series champion San Francisco Giants catcher and 2012 National League MVP Buster Posey and pitcher Ryan Vogelsong. The ads, developed with the support of ESA, generated more than 370 million impressions on TV and radio stations across the San Francisco Bay Area and through regular airings at AT&T Park, the team’s home stadium. ESRB and ESA held a launch event at the ballpark in May, which included ESRB President Patricia Vance, ESA President and CEO Mike Gallagher, SCEA President and CEO Jack Tretton, and Ubisoft Executive Director for North America Laurent Detoc. The event generated more than 4 million earned media impressions.

ESRB aggressively promoted its rating system, Rating Summaries, and mobile tools during the 2012 holiday season. ESRB secured media interviews with print and online publications as well as radio broadcasts like the John Tesh Radio Network, publication of print articles in newspapers nationwide, radio news release airings, social media events, including multiple Twitter parties with parents and a Holiday Shopping tips campaign; and ESRB President Patricia Vance’s participation in Activision’s Family Game Summit.

More than 12 million users visited ESRB’s website in 2012 and conducted more than two million rating searches. In June, ESRB launched an improved version of its popular website rating search that included a more prominent platform filtering option and incorporated app ratings, Interactive Elements, and Online Rating Notices into search results.

The ESRB rating search mobile app continues to be an effective consumer tool with nearly 18,000 app downloads in 2012 across the iOS, Android, and Windows Phone versions. App users conducted more than 300,000 rating searches.

ESRB administers a world-class content rating system that applies to video games and apps and continues to be among the most comprehensive, trusted, and utilized rating systems available today.

ESRB AND RETAILERS
The ESRB Retail Council (ERC) includes nine national retailers in the United States: Amazon, Best Buy, GameStop, Knarf, Redbox, Sears, Target, Toys ‘R’ Us, and Walmart. ESRB implements two mystery shopper audits of ERC members annually to measure compliance with store policy enforcement and signage. ESRB also reviews ERC member websites biannually to monitor their display of rating information.

In November 2012, an audit of Best Buy, GameStop, Target, Toys ‘R’ Us, and Walmart found (weighted by market share) that retailers enforced store policy 87 percent of the time while 83 percent of locations displayed the correct rating signage.

In October 2012, an audit of all ERC member websites and Blockbuster’s website found that 97 percent of Web pages presented accurate rating information. This is the highest compliance rate found since these audits began in 2007.

ESRB PRIVACY CERTIFIED PROGRAM
ESRB’s Privacy Certified program helps companies implement responsible online privacy practices through its seal certification program, which is sanctioned by the FTC as an authorized “Safe Harbor” under the COPPA Rule.

In 2012, the ESRB Privacy Certified program added Virtual Piggy as a new member. Virtual Piggy is an innovative retail portal site that enables parents to create “virtual piggy banks” for their children, allowing them to shop at parent-selected online stores. The Privacy Certified program now serves 23 members and continues to monitor thousands of Web pages on their behalf.

ESRB established a strategic partnership with Veratad Technologies, a leading online age and identity verification provider. ESRB Privacy Certified members are able to secure discounted pricing for Veratad’s services, which are particularly useful to companies seeking to obtain parental consent in compliance with COPPA as well as to help combat fraud.

The Entertainment Software Association of Canada (ESAC) is the voice of the Canadian computer and video game industry. ESAC works on behalf of its members to ensure the country’s legal and regulatory environment is favorable for the long-term development of Canada’s video game industry. Association members include the nation’s leading interactive software developers and publishers, such as Electronic Arts, Ubisoft, Activision Blizzard, Microsoft Canada, Nintendo of Canada, Sony Computer Entertainment, Disney Interactive Studios, THQ, Take-Two Interactive and Warner Bros. Interactive Entertainment, as well as distributors Solutions to Go and Team One Marketing.
APPOINTMENT OF NEW ESAC PRESIDENT AND CEO

In September 2012, the ESAC Board appointed Jayson Hilchie as the association's new president and CEO. Hilchie came to ESAC with a strong understanding of the video game industry, having worked to promote Nova Scotia as a jurisdiction for technology and interactive media investment. Prior to joining ESAC, Hilchie was the director of IT and Interactive Media - Foreign Direct Investment at Nova Scotia Business Incorporated, where he led initiatives to grow the video game industry in Nova Scotia.

COPYRIGHT REFORM AND IP

In June 2012, Bill C-11, the Copyright Modernization Act, finally received Royal Ascent, having passed through the Canadian Parliament, and came into force in November. ESAC advocated actively for the bill – as it did on previous iterations of this legislation – throughout the legislative process, and testified before the Senate Committee on Transportation and Communications to re-emphasize the importance of effective prohibitions on circumventing technical protection measures. The government maintained the bill's strong anti-circumvention measures, including civil and criminal penalties for trafficking in circumvention devices or services, and implemented technical changes to fix flaws in the new “enabling” provisions. While most of Bill C-11 is now in force, the “notice and notice” provisions [requiring ISPs to forward notices to alleged infringers] will not come into force until the government develops regulations prescribing specifics for the notices, including whether ISPs will be permitted to charge rights holders for forwarding notices. ESAC has been co-operating closely with ESAC’s IP Enforcement staff on this issue, and is working with other rights holder groups to advocate against notice fees.

In October 2012, ESAC appeared before the Standing Committee on Industry, Science and Technology during its study of Canada’s IP regime. ESAC underscored the importance of anti-circumvention measures, but, in light of Bill C-11’s passage, is working with other rights holder groups to advocate against notice fees.

In April 2012, ESAC appeared before the Standing Committee on Human Resources, Social Development and the Status of Persons with Disabilities during its study of labor issues in high demand jobs. ESAC emphasized the need to expedite access to qualified foreign workers to supplement its growing industry, and offered concrete recommendations that would assist in reducing processing times for work permits. ESAC also worked with the Department of Foreign Affairs and International Trade (DFait) and Industry Canada on a government study of labor market shortages in the information technology and digital media sectors.

Following these efforts, the federal government introduced an Accelerated Labor Market Opinion program that facilitates expedited processing for companies with established track records, while Quebec introduced its own simplified processing procedure and Ontario introduced new exemptions on advertising positions. These represent significant improvements, but they have had limited effect and work permit processing times remain lengthy. ESAC remains actively engaged with both federal and provincial governments.

TRADE AGREEMENTS

In February 2012, ESAC submitted comments to DFAIT on its potential participation in Free Trade Agreement negotiations with the TPP. Working with the Policy Working Group, ESAC prepared wide-ranging observations and considerations relevant to the video game industry on topics including market access for goods; e-commerce; trade in services and other trade issues for the digital economy; IP rights; labor mobility; and government support. Now that Canada is part of the TPP, ESAC will continue to engage with DFAIT on these issues on its own and via a multi-stakeholder coalition. ESAC continued to engage with DFAIT on the Canada-EU Comprehensive Economic and Trade Agreement, primarily on IP e-commerce, and labor mobility. In July 2012, ESAC submitted comments to DFAIT on the expansion of the World Trade Organization’s ITA. ESAC worked closely with ESA and members to recommend the inclusion of new categories of game hardware and software, including payment cards and digitally delivered content. ESAC continues to engage with DFAIT, which has been highly receptive to recommendations.

TARIFF 22

In July 2012, the Supreme Court of Canada (SCC) issued its decision in ESA and ESAC’s appeal of the Society of Composers, Authors and Music Publishers of Canada’s (SOCAN) attempt to obtain a mandatory royalty on music in games transmitted over the Internet. The Court ruled that a download did not constitute a communication to the public by telecommunication and therefore SOCAN had no legal basis for the tariff. However, Bill C-11 introduced changes to the “communication” right, and it is likely that SOCAN will assert that these changes override the SCC’s decision.

ESAC’s ongoing efforts to educate key parliamentarians about the industry and its facilitation of studio tours, members of the House of Commons Standing Committee on Canadian Heritage announced their intention to study the Canadian video game sector. ESAC assisted committee members in identifying witnesses who could testify about the pressures and opportunities facing the industry, prepared a full brief with a variety of policy recommendations, and testified before the committee.

OTTAWA LOBBY DAY

In October, ESAC hosted its annual Ottawa Lobby Day to educate Members of Parliament (MPs) and senators about the industry. This year’s central focus was labor mobility. ESAC staff and members met with the Prime Minister’s Office, the chair of the Standing Committee on Industry; and the offices of the Minister of Canadian Heritage, the Minister of Citizenship and Immigration, the Minister of Industry, and the Minister of Human Resources and Skills Development. ESAC also hosted a reception and video game showcase for 400 guests, including 43 MPs, several senators, two ministers, senior bureaucrats, and the chair of the Canadian Radio-Television Commission.

In 2012, ESA sought measures to reduce processing time for work permits for temporary foreign workers. In January, ESA met with Ontario Minister of Economic Development and Innovation Brad Duguid, a senior advisor in the Ontario Premier’s Office, and Minister of Citizenship and Immigration Charles Sousa to discuss member reports of difficulty bringing intermediate, senior, and expert talent into Canada, and to encourage a coordinated solution between the various departments and levels of government. ESAC also met with senior officials from the Quebec Ministry of Labor to encourage a swift implementation of a provincial IT workers program and a resolution to administrative delays.

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AS OF APRIL 2013

345 Games
505 Games
Capcom USA, Inc.
Deep Silver
DeNA
Disney Interactive Studios, Inc.
Electronic Arts
Epic Games, Inc.
glo%p International Inc.
GREE International, Inc.
Konami Digital Entertainment
LEVEL-5 Inc.
Little Orbit
Mad Catz Interactive, Inc.
Microsoft Corporation
Namco Bandai Games America Inc.
Natsume Inc.
NetDragon Websoft Inc.
Nexon America, Inc.
Nintendo of America Inc.
NVIDIA
Perfect World Entertainment
Rubicon Organization
SEGA of America, Inc.
Slang
Sony Computer Entertainment America
Sony Online Entertainment, Inc.
Square Enix, Inc.
Take-Two Interactive Software, Inc.
Tecmo Koei America Corporation
Trion Worlds, Inc.
Ubisoft Entertainment, Inc.
Wargaming
Warner Bros. Interactive Entertainment Inc.
XSEED Games

Inside back cover photo: eager crowds line up to enter E3. Nearly 46,000 industry professionals, investor analysts, journalists, and retailers from 103 countries attended E3 2012.

Back cover photo: visitors enjoy the interactive exhibits at “The Art of Video Games” exhibition at the Smithsonian Institution’s American Art Museum. Photo courtesy of the Smithsonian Institution’s American Art Museum.