

RECORDING INDUSTRY MARKETING PRACTICES: A CHECK-UP

HEARING BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTH CONGRESS

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RECORDING INDUSTRY MARKETING PRACTICES: A CHECK-UP

TUESDAY, OCTOBER 1, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:14 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Shimkus, Tauzin (ex officio), Gordon, and Harman.

Also present: Representative Towns.

Staff present: Linda Bloss-Baum, majority counsel; Will Nordwind, majority counsel; Hollyn Kidd, legislative clerk; Jon Tripp, deputy communications director; and Brendan Kelsay, minority professional staff member.

Mr. UPTON. Good morning, everyone.

I am going to start off by asking unanimous consent that other members of the full committee may participate in this subcommittee hearing and would note that we are probably a little shorter on members than is certainly the norm. The reason, we were supposed to have votes yesterday, and they postponed those votes until today. So many members, as we all traveled home to our districts and States over the weekend—a number of folks now know they don't have to be back until 6:30 tonight instead of 6:30 yesterday. But since we had already noticed the hearing and we had people, logistics that we needed to follow through, we decided to go ahead with the hearing this morning.

Today's hearing is entitled Recording Industry Marketing Practices: A Check-Up. As I round the corner toward 50—my New Year's resolution was to move that to 40, I would note—I would recognize that, when it comes to your health, it pays to have annual checkups. And while such annual doctors' visits can be uncomfortable, they help chart your progress toward whatever health goals your doctor has set, whether it is to be losing weight, drinking less coffee, exercising more, whatever. It has been a little over a year since our last visit with the recording industry, so we thought it would be a good time to have an annual checkup.

As the parent of two young kids, an 11-year-old and a 14-year-old, I believe that there is no replacement for parental supervision when it comes from protecting kids from inappropriate content. However, parents do need the proper tools to make decisions about

what might or might not be appropriate for their kids; and that is the very essence of what Mr. Markey, Mr. Shimkus, and I have been doing through our dot.kids bill, creating new domain for the Internet which would provide parents with a place where they can send their kids and know that they will be safe, much like the children's section of the library.

I would note that that legislation passed in the House overwhelmingly earlier this year, and we are waiting for Senate action in the next, hopefully, couple days.

But looking back at the medical charts from our last hearing, I recall closely examining the tools which the recording industry provides parents to help them protect their kids from inappropriate material; and one deficiency which I noted was the lack of any specific descriptive information on the parental advisory label, unlike the parental advisory labels of the motion picture and video games, which provide more specific information to parents on why something is rated the way that it is.

At the last year's hearing I asked the RIAA whether it planned on improving its label by making similar information available to parents, and the answer that I think all of us received was no. Like a good doctor, I prescribed precisely that course of action that I thought ought to be appropriate to the RIAA.

Since that time, one of the RIAA's biggest member companies, BMG, has begun including more specific information in its parental advisory label; and I look at this CD here with exactly that label. It talks about strong language, violent content, sexual content; and I applaud them for their corporate responsibility and leadership in that regard.

Today, I, along with Chairman Tauzin and Congressman Shimkus and other members of this subcommittee, are calling on the RIAA and its other major member companies—Warner, Universal, EMI, Sony—to hopefully get on the same song sheet as BMG.

So I look forward to talking about this issue today, and I thank the RIAA in advance for testifying and hopefully for assisting the subcommittee in its efforts to learn whether or not these other companies are going to get in tune with BMG, and if not, why not? In fact, we hopefully will have a letter that we will be sharing with you that you might want to send to the other members' CEOs to respond to the inquiry that we will put into the record.

Finally, I want to thank the FTC for its continued diligence in providing this committee with its follow-up reports. They are very helpful diagnostic tools used in our checkups. The most recent report suggests that the recording industry practices reveal a mixed picture; and while that is a better diagnosis than the previous year, I would note that the recording industry is not yet out of the woods.

As for myself, I believe that the First Amendment does make it inappropriate to legislate in these matters. However, just because you have the right to do something doesn't make it the right thing to do. Therefore, we expect and would hope that the recording industry continue working with Congress and this subcommittee to do the right thing for all of America's parents and their kids.

Now, I would yield to my friend from Tennessee, Mr. Gordon, for an opening statement.

Mr. GORDON. Thank you, Mr. Chairman. Just to note, I have recently passed that 50 corner that you had mentioned, and I survived; and I think you will live to tell about it. Also.

Let me add my welcome to everyone here today. I think Chairman Upton has done a good job in outlining the scope of our hearing today. Unfortunately, our resident expert in lyrics, Ed Markey, couldn't be here, and so let me add just a quick bit of real-world thoughts to this issue.

Let me first say that my grandfather used to tell me that the most important road in the county was the one in front of your house. I have an 18-year-old baby girl at home, so I am viewing the world a little differently than I used to. I guess her two favorite things, one is the walk we take every morning looking for dogs in the neighborhood and the other thing is dancing to her music video. She loves to dance to that video. Now, she is not talking yet, but I think she is—or she is starting to talk a little bit, and I think she understands a lot more. So in our walks every morning I have explained to her the evils of dating, and I think I am breaking through on that one, I hope.

Mr. UPTON. Now, did you say 18 months or 18 years?

Mr. GORDON. She is 18 months.

You have got to get started on that one. And repetition doesn't seem to bother her, but I am just about to gag on the hokey-pokey, and it is time for us to go get another video. And when we go get that video, I am really interested in knowing what tools am I going to have in trying to find out what would be a good video for her. I want to be sure that, you know, we get the bunny hop and not Bunny—or the best of Bunny's lap dances. So what tools am I going to have, and does the panel think those tools are going to be adequate? And, if not, what would you suggest would be adequate in helping me?

So, thank you, Mr. Chairman.

Mr. UPTON. Thank you, Mr. Gordon.

Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, for calling this hearing and for your and Chairman Tauzin's work on following up on what is a very important area of our committee's jurisdiction. This is a very important hearing, and I would like to thank all the witnesses for coming this morning to share your expertise on this industry. We have an excellent, well-rounded panel.

I would like to especially thank Hilary Rosen for being here. I understand you took the Red Eye. This can't be your favorite topic, but—even after a little night's rest, but I am grateful.

The origins of this hearing go back to September, 2000, when the FTC issued a report which found that three entertainment industries—movies, music, and video games—were engaged in widespread marketing of explicit content to children that was inconsistent with the warning messages on their own label. So that is the start of why we are here today, is the inconsistency of the label with what was actually in the content. Further, the FTC found that advertisement for such products frequently failed to contain rating information.

The following year, the movie and video game industry got better marks for cleaning up their act, but the recording industry earned another unsatisfactory grade. While the music industry has taken a few positive steps since last year's hearing, a lot more needs to be done.

I also praise BMG for the implementation of a new rating system that is designed to give parents and consumers more information about the music they buy. I hope the rest of the record labels will do the same, because I believe more information for parents is essential.

I would also like to take this opportunity to highlight the continued progress the video game industry has made. According to the FTC report, they have responded to our concerns proactively by adopting numerous voluntary standards that discourage the targeting of children for mature rated products and require the disclosure of rating information in most forms of advertising.

In addition, the industry has in place an extensive system to enforce those standards and bring about continued improvement in industry practices, and I think most of us would like to see the industries do similar. Rather they do it than we do it through legislation.

Although I sympathize that music is a much more complex entertainment product to deal with than video games, I think the video industry can be used as a role model for marketing practices.

I would like to end by expressing a gentle reminder to the record labels today: Your representatives come to my office on a regular basis asking for assistance in fighting Internet piracy and on other matters important to your industry's bottom line. And don't get me wrong, I agree with your argument: Stealing is wrong. It is immoral. But so is marketing explicit content to our youth. Parents have a hard enough job in our environment today without being undermined by music labels pushing the sale of smut at the expense of our children's moral health.

We are bringing you all up here again because we are looking for improvement in your corporate citizenship. I don't think I speak for only myself when I say if we don't see some genuine effort to improve labeling and marketing practices, we will start questioning the sincerity of other efforts.

A lot of us will say as grandparents, or I am a father of three small boys—9, 7, and one will be 3 next week—this is a different environment. We no longer live in the Ozzie and Harriett days. So all we are asking for is help. And if we can get help, we will be very grateful. If we don't get help, then we will have to try to move on the legislative agenda.

With that, I thank you, Mr. Chairman. I yield back my time.

Mr. UPTON. Thank you.

I recognize the gentleman from New York, Mr. Towns. Welcome.

Mr. TOWNS. Thank you very much, Mr. Chairman, for allowing me to participate in today's hearing on an issue that is increasingly important to me and to a large number of my constituents.

In addition to the other witnesses in attendance today—I am pleased to welcome all of the witnesses, but I would especially like to welcome Russell Simmons from New York to the committee hearing.

I appreciate the work that members of the committee and the FTC have done on the market of entertainment content and products. Entertainment plays a vital role in our society and providing consumers the information they need through labeling to make an informed decision before purchasing a product that contains explicit content is crucial. Parents today have a tougher job keeping up with their children in a world where kids seem to grow up more quickly than ever. I am heartened by the industry's efforts at self-regulation to assist parents by labeling content that could be considered offensive.

Due to the downturn in CD sales over the past few years, I truly believe we should be questioning the illegal music swapping services where teenagers download the vast majority of music today. I am also deeply troubled at the attitude of some who are saying that self-regulation is not working. I believe it is up to the consumers and parents to decide what is appropriate and inappropriate for different age groups.

The fact of the matter is that music reveals many truths about the social and political realities facing our Nation and our world today, particularly the African American community; and it is simply wrong for anyone to suggest that music and the messages contained are not suitable for America's teens because, in some cases, it contains explicit lyrics.

Make no mistake about it, the debate is fueled largely by those who are uncomfortable with the way African Americans express their culture through music. When artists use explicit language, there is a label that clearly informs consumers of that fact. But, again, explicit language does not alone make a recording inappropriate for teens. I do believe it is important to consider the social value and messages contained within these recordings. Some of the most popular songs in the civil rights movement and the Vietnam war actually commented on our society. I mean, we have to think about that that is where those songs came from, out of those experiences.

If people are upset about the content flowing from the artists' pen, then maybe what we really need to do is use our energies to change the society that the artists are living in and describing. Because they are describing their conditions, they are describing what they are going through, they are describing what they are experiencing and seeing every day of their life.

I look forward to the testimony today from the witnesses. And on that note, Mr. Chairman, again I thank you for allowing me to participate, and I yield back the balance of my time.

Mr. UPTON. Thank you.

I would recognize the gentlelady from California, Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman.

Sitting here, I was thinking that it is *deja vu* all over again. I am looking at my notes of July 20, 2001, when we were all sitting here facing a similar panel. Jack Valenti is not there, but I trust he will receive my best wishes. But, otherwise, we are having the same conversation.

I did want to say to you and Mr. Gordon that you may be getting older, but I am not. And, you know, I can't imagine being as old as 50. I just want you to know that.

Looking at my notes from last year, I still feel the same way I did last year. A lot of the content out there is violent and degrading, and I don't want to listen to it, and I don't want my four children to listen to it. However, I continue to feel that it is parents who need to make judgments about their children's level of maturity, not us, and not any Federal agency.

I want to commend BMG which has acted in the last year to set a very good example for the industry. That is useful, because that gives parents better tools to make judgments about our own children.

One other thing that has changed since last year is that my youngest daughter, whom I described last year and I described our arguments about whether she should go to Eminem concerts, has been to another Eminem concert and survived it. She has also graduated high school, and she is now a—from my observation—quite a responsible freshman in a good college. So, kids do grow up and parents, even very busy and distracted parents like me, try our hardest to help them grow up and help to supervise what it is that they hear and do.

I just think, as you said yourself, Mr. Chairman, that the First Amendment is a cornerstone of our democracy. It requires us to permit free speech, but it also requires us to be vigilant and responsible as we help our children understand what speech they should hear and what speech they should not hear.

I would just close by observing that I am sure that most of our witnesses are parents. I know that Hilary Rosen is a parent of two children, and I am absolutely certain that when her children are old enough—I don't think they are yet—to listen to recorded music, that she will exercise her responsibilities as a parent, just as we do.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you very much.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Mr. Chairman, thank you for holding this important hearing today. I want to commend you and the Subcommittee for its ongoing leadership on this important issue regarding how explicit content is labeled and marketed to our nation's youth.

Fourteen months ago in this very room, we brought together representatives of the motion picture, video games and recording industry to discuss a recent FTC Report about the marketing of violent material to minors. At that memorable hearing, we discovered that two of the industries had made significant progress on rating and labeling systems to provide consumers with information about the content of the entertainment they bought. However, that hearing alerted us that the recording industry had a ways to go in order to catch up to their industry counterparts' rating systems. Members of the Committee asked serious poignant questions of the industry about how it labels and markets its material and some of us urged the industry to seek input from parents and third parties. Today—a little over a year later... it is time for a check up.

At that hearing last July, I urged the recording industry to simply give parents a little more information about how violent or how explicit the content of the music is. I asked them to listen to the voices of American parents and give their rating and labeling system a second look. Some parents in America fear that some of this music is killing their values systems and their kids' innocence and they would like to know more about the content of their entertainment before they go out and buy it. As Members of Congress we have the privilege to help influence many policies that affect our constituents' lives. But one thing we can not do is directly control the music that America's kids listen to. But we can help, and want to help, parents

be the best parents they can be... and we hope that is a goal that we share with the recording industry.

The FTC has done an extraordinary job of reporting to Congress about the ongoing progress these industries have made. I want to thank you and I commend you, Mr. Peeler for the Commission's ongoing work in this area. Your report suggests that, while the recording industry has made some progress in disclosing its explicit warning labels in advertising, that advertising still appears on television shows and in print magazines that are popular with teens. If these marketing practices are to continue—and I understand the business reality to do so—then it becomes even more necessary to provide as much information, in the clearest possible fashion, for consumers who must make the choice about buying it. In my non-medical opinion—it appears as though the recording industry still has a ways to go to catch up to other industries on the objective growth charts.

I remain concerned about one particular issue that was raised last year, and appears to be equally as prevalent today. The labeling system on CDs will not work if consumers are not able to see it. I have here two identical CDs purchased from the same bin, right next to one another, at the same music retail outlet. One has the explicit warning label completely blocked by the pricing sticker while the other has about $\frac{2}{3}$ of the label covered up. According to the FTC Report, the RIAA itself found no instances where price stickers obscured the label, but clearly this is a problem with the current system. I look forward to hearing more about the placement of price stickers and warning labels from Mr. Marmaduke, with the National Association of Recording Merchandisers and the other witnesses this morning.

We have done our best to turn up the volume for the recording industry on this important issue. Some have heard us. BMG has announced its new detailed system of parental warnings that includes specific information about why the content is explicit. I am proud to join Chairman Upton, Mr. Shimkus and what I hope will be many other Members of the Subcommittee today in calling on the other major record labels to add their voice to the choir and provide similar information to consumers on their parental advisory systems.

Once again, thank you, Mr. Chairman, for holding this important hearing, and I look forward to hearing from our witnesses and asking them some questions.

Mr. UPTON. Well, we are fortunate to have the panel that we have today. They are a led by Mr. C. Lee Peeler—happy birthday, sir, today, as we talk about birthdays—Deputy Director of the Bureau of Consumer Protection for the FTC. We have Dr. Michael Rich from Children's Hospital Boston/Harvard Medical School, on behalf of the American Academy of Pediatrics; Ms. Hilary Rosen, Chairman and CEO of the Recording Industry Association of America; Mr. Russell Simmons, Chairman of the Hip Hop Summit Action Network from New York; Mr. John Marmaduke, President and CEO, Hastings Entertainment, on behalf of the National Association of Recording Merchandisers; and Mr. Gary Severson, Senior VP and General Merchandise Manager for Wal-Mart here in Washington.

We appreciated receiving most of your testimonies in advance. Last night, we were able to review those. We would like to limit your remarks initially to 5 minutes, if we can, and then we will do questions and answers.

I know Chairman Tauzin is in a very important hearing upstairs, and he intends to be down at some point this morning as well.

Mr. Peeler, we will begin with you. Thank you.

STATEMENTS OF C. LEE PEELER, DEPUTY DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; MICHAEL RICH, CHILDREN'S HOSPITAL BOSTON/HARVARD MEDICAL SCHOOL, ON BEHALF OF AMERICAN ACADEMY OF PEDIATRICS; HILARY ROSEN, CHAIRMAN AND CEO, RECORDING INDUSTRY ASSOCIATION OF AMERICA; RUSSELL SIMMONS, CHAIRMAN, HIP HOP SUMMIT ACTION NETWORK; JOHN MARMADUKE, PRESIDENT AND CEO, HASTINGS ENTERTAINMENT, INC., ON BEHALF OF NATIONAL ASSOCIATION OF RECORDING MERCHANTISERS; AND GARY SEVERSON, SENIOR VICE PRESIDENT AND GENERAL MERCHANDISE MANAGER, WAL-MART STORES, INC.

Mr. PEELER. Thank you, Mr. Chairman. Thank you for the opportunity to discuss the findings of the Commission's recent reports on the marketing of violent entertainment products to children by the motion picture, music recording, and electronic game industries. Each of these industries has put in place a self-regulatory system that rates or labels products and can help parents seeking to limit their children's exposure to violent entertainment materials.

My written testimony today represents the views of the Commission, while my responses to questions represent my own views; and I would ask that my written testimony be included in full in the record.

In September 2000, in response to requests by the President and the Congress, the Commission issued a report on the marketing practices of the entertainment industry for violent, R-rated movies, mature-rated games, and explicit-content labeled music recordings. That report found that the movie, video game, and music industry had engaged in widespread marketing of violent movies, video games, and music to children.

Since September 2000, the Commission has issued three follow-up reports. The reports examine the degree of compliance with industry guidelines for the disclosures of rating information and advertising and the labeling of these products. The reports also review the placement of advertising for rated or explicit content-labeled products. The reports document instances where some industry members have engaged in marketing practices that the Commission believes may undermine existing self-regulatory systems as well as instances where individual members have done more than their industry self-regulatory codes require.

To follow up on the Chairman's analogy, we view our job here very much as providing the Congress with factual information about what is taking place. I guess we would serve the roll of a radiologist: We will give you the information, and you can make your decisions on it.

The Commission's most recent report was issued in June of this year. With respect to movies and games, the report found progress in a number of areas, including substantial compliance with voluntary self-regulatory standards requiring the disclosure of rating, the labeling information and advertising and on product packaging. The Commission also found encouraging the widespread compliance by the movie and game industries with existing self-regulatory guidelines, limiting advertising placements for violent R-

rated and M-rated entertainment products in media with a large percentage of teens in the audience.

With regard to music, the Commission did find some progress in placing the parental advisory label in advertising and on labeling and was told by industry representatives that steps were being taken to further improve compliance even as our report was being prepared.

With respect to explicit content, music advertising placements, however, the report found no change in industry practices since the September, 2000, report. The report notes that the music industry views its parental advisory labeling system as not being an age-based system but rather as an indication to parents that there is explicit content on a certain album. Thus, the industry's self-regulatory code does not include restrictions on ad placement.

In addition, the music industry's labeling program does not require advertisers to indicate why the recording contains a parental advisory. Nonetheless, as Chairman Upton just indicated, in June of this year one industry member, BMG Entertainment, announced that it would begin to specify on labels and in advertising whether violent content, sexual content, or strong language led to the decision to apply the parental advisory label, and that they would include that same information in advertising. It is not known whether other industry members will adopt that step.

In sum, the Commission reports have documented progress by the entertainment industry in complying with and improving their own self-regulatory policies, more in the movie and games industries and less in the music industry. Because of First Amendment and other issues, the Commission continues to support private sector initiatives by industry and individual companies to address these issues. To encourage continued voluntary compliance and to document any changes in self-regulatory efforts, the Commission will continue to monitor the entertainment industries' marketing and practices throughout the next year and will issue a follow-up report to Congress.

That concludes my prepared remarks, and I would be pleased to answer any questions you have.

[The prepared statement of C. Lee Peeler follows:]

PREPARED STATEMENT OF LEE PEELER, DEPUTY DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

I. INTRODUCTION

Mr. Chairman, I am Lee Peeler, Deputy Director of the Bureau of Consumer Protection at the Federal Trade Commission. I thank you for this opportunity to discuss the Commission's recent Reports on the marketing of violent entertainment products to children by the motion picture, music recording, and electronic game industries.¹ Each of these industries has in place a self-regulatory system that rates or labels products and that can help parents seeking to limit their children's exposure to violent materials.

The Commission has issued four Reports on the marketing practices of these three industries. In particular, the Reports have examined voluntary guidelines and industry codes that govern the placement of advertising for violent Restricted (R)-rated movies, Mature (M)-rated games, and Explicit-Content Labeled recordings in media popular with teens and require the disclosure of rating and labeling information in advertising and on product packaging. The Reports document instances where some industry members have engaged in marketing practices that undermined the self-regulatory systems that the industries themselves put into place, as

well as instances where other individual members did more than their industry required.

The Commission's most recent Report, issued in June of this year, found progress in a number of areas. The Commission found substantial compliance by movies and games marketers, and, to a far lesser extent, by marketers of music, with voluntary, self-regulatory standards requiring the disclosure of rating and labeling information in advertising and product packaging. The Commission also found encouraging widespread compliance by the movie and game industries with existing guidelines limiting ad placements for violent R-and M-rated entertainment products in media with a large percentage of teens in the audience.

Nonetheless, there are continued areas of concern. Existing voluntary guidelines for the movie and game industries still permit ad placements in media which are very popular with large numbers of teens. All three industries continue to place ads for rated or labeled products on television programs that are, according to Nielsen rankings, among the most popular shows watched by teens. And with respect to retail sales of violent entertainment products, although the motion picture industry has done the best job, all products remain easily available for purchase by young teens.

Finally, despite a few initiatives during the period covered by the Commission's last Report, special issues remain in the music industry, particularly in its ad placement practices. Although the self-regulatory codes of the movie and game industries place limits on the marketing of rated products to young people, the guidelines of the music industry do not. In the music industry's view, unlike the rating systems of movies and games, its "Parental Advisory" Labeling Program is not age-based and is not intended to indicate whether labeled music may be inappropriate for any specific consumer age.

II. BACKGROUND

The Federal Trade Commission is the federal government's principal consumer protection agency. Congress has directed the Commission, under the FTC Act, to take action against "unfair or deceptive acts or practices" in almost all sectors of the economy and to promote vigorous competition in the marketplace.² With the exception of certain industries and activities, the FTC Act provides the Commission with broad investigative and enforcement authority over entities engaged in, or whose business affects, commerce.³ The FTC Act also authorizes the Commission to conduct studies and collect information, and, in the public interest, to publish Reports on the information it obtains.⁴

Revelations that the teen-aged shooters at the 1999 Columbine High School shooting had been infatuated with extremely violent movies, music and video games led to Congressional and Presidential requests that the Commission investigate and report back on the practices of the movie, electronic game, and recording industries with respect to the marketing of violent entertainment to children.

III. THE COMMISSION'S STUDIES

A. *Scope of the Studies*

In response to these requests, the Commission has, to date, issued four Reports on the self-regulatory and marketing practices concerning violent entertainment by the movie, music and video game industries.⁵ In the course of preparing these Reports, the Commission staff requested information from the principal industry trade associations, as well as from major motion picture studios, music recording companies, and electronic game companies.⁶ In addition, the Commission staff contacted interested government agencies, medical associations, academics, and parent and consumer advocacy groups.⁷ The Commission collected information from consumers through surveys and polls and also designed and conducted its own surveys. In addition, the Commission conducted two mystery-shopper surveys of retail stores and movie theaters in an attempt to see if unaccompanied children could purchase or gain access to products labeled as inappropriate or warranting parental guidance. Lastly, the Commission staff reviewed Internet sites to study how they are used to market and provide direct access to rated or labeled products.

B. *Findings of the Commission's First Report*

In September 2000, the Federal Trade Commission issued its first Report entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*.⁸ That Report found that the three entertainment industries had engaged in widespread marketing of violent movies, music, and electronic games to children that was inconsistent with the cautionary messages of their own parental advisories

and that undermined parents' attempts to make informed decisions about their children's exposure to violent content. In addition, the Commission found that advertisements for such products frequently failed to contain rating information. Finally, the Commission reported on the results of an undercover "mystery" shop by unaccompanied teens, aged 13-16, of retailers and movie theaters. The young shoppers were able to buy M-rated electronic games and parental advisory-labeled music recordings 85% of the time and purchase tickets for an R-rated movie almost half (46%) of the time.⁹

C. Findings of the Commission's Follow-Up Reports in 2001

In response to Congressional requests, the FTC released two follow-up Reports in 2001. Both Reports examined the entertainment industry's practices with regard to marketing violent entertainment products to children. The April 2001 Report¹⁰ concentrated primarily on advertising practices by the three industries on television, in print media and on the Internet. For the December 2001 Report,¹¹ the Commission staff contacted several companies within each of the three industries and requested marketing documents concerning violent movies, music and electronic games. In addition, the Commission conducted a second mystery shopper survey, like the one from the September 2000 Report. Finally, the Commission staff continued to monitor television, print and Internet advertising for placement and disclosure of rating and labeling information.

These Reports noted progress by the movie and video game industries in providing clear and conspicuous disclosure of rating information in advertising as well as new efforts by both industries to limit advertising for R-rated movies and M-rated games in popular teen media venues. The music industry demonstrated mixed progress. On the plus side, members of the music industry had begun to comply with new industry guidelines encouraging the use of the Parental Advisory Label in advertising. But as for ad placement practices, the music industry continued to place advertisements for explicit-content recordings labeled with parental advisories in popular teen media.¹²

The results of the Commission's second undercover shopper survey were included in the December 2001 Report. Although electronic game retailers showed modest improvement from the results in the Commission's earlier undercover survey, there was no change in sales practices in the movie theater and music retailer industries.

D. Findings of the Commission's June 2002 Report

In June of this year,¹³ the Commission issued its latest Report which looked at industry advertising placements and disclosure of rating and labeling information in television and print media. In addition, the Commission reviewed product packaging to check whether rating information was being disclosed clearly and conspicuously. This Report documented further progress by the movie and games industries in ad placement practices for R-rated movies and M-rated games, and showed continued improvement by all three industries in disclosing rating and labeling information in advertising and product packaging.¹⁴

Movies: In the case of movies, the most recent Report noted significant progress in complying with industry's commitment, issued in response to the Commission's first Report in September 2000, to not "inappropriately, specifically target children" in films rated R for violence.¹⁵ The June 2002 Report found virtually no ads for violent R-rated movies in popular teen magazines. In addition, the movie studios widely complied with industry policies set by several studios not to advertise R-rated movies in venues with a thirty-five percent or more youth audience share. However, even while complying with these policies, studios frequently advertised R-rated movies in television shows that are very popular with teens.¹⁶ Finally, the Report showed further progress by studios in disclosing a movie's rating and rating reasons in advertising, although some studios' rating disclosures were still difficult to read.

Games: The Commission found widespread compliance with video game industry self-regulatory standards limiting the advertising of M-rated games in media where children constitute a certain percentage of the audience (35% for television and 45% for print media). Nonetheless, the Commission did find that some industry members did place advertisements for M-rated games on television shows popular with teens, and in youth-oriented game-enthusiast magazines. As the Commission noted in its December 2001 Report, the industry's anti-targeting standards diminish—but do not eliminate—placements in programs mainly popular with teens. In addition, the electronic game industry continued to prominently place rating information in most forms of game advertising. Although some areas still could be improved (e.g., adding content descriptors in television advertising), there is much in the game industry's rating disclosure requirements that merits duplication by others.

Music: With regard to music, the Commission did find some progress in placing the Parental Advisory Label in industry advertising. The Commission's review of explicit-content music ad placements, however, showed virtually no change in industry practices since the September 2000 Report. Advertisements continued to be placed on television shows and in print magazines popular with teens. The industry views its Parental Advisory Labeling System as not being an age-based system, but rather an indication to parents that there is explicit content on a certain album. Thus, the industry's self-regulatory code does not include restrictions on ad placement.

In addition, the music industry's labeling program does not require that advertisers indicate why the recording contains a parental advisory. Nonetheless, in June of this year, one industry member, BMG Entertainment, announced that it will begin to specify on the label whether violent content, sexual content or strong language led to the decision to apply the Parental Advisory Label, and include that same information in its advertising.¹⁷ It is not known whether other industry members will also adopt this positive step. In the Commission staff's ongoing monitoring of advertising, they have not yet seen ads by BMG artists that include this new label.

IV. CONCLUSION

The Commission's follow-up Reports have documented progress by the movie and electronic game industries in complying with and improving their own self-regulatory policies restricting ad placements and requiring rating information in advertising.

Because of First Amendment and other issues, the Commission continues to support private sector initiatives by industry and individual companies to implement these suggestions. To encourage continued voluntary compliance and to document any changes in self-regulatory efforts, the Commission will monitor the entertainment industry's marketing practices through the next year, and will then issue a follow-up report.

This concludes my prepared remarks. I would be pleased to answer any questions you may have.

Endnotes

¹The views expressed in this written statement represent the views of the Commission. My oral statement and responses to questions you may have are my own and are not necessarily those of the Commission or any individual Commissioner.

²15 U.S.C. § 45(a).

³The Commission also has responsibility under 46 additional statutes governing specific industries and practices. These include, for example, the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., which mandates disclosures of credit terms, and the Fair Credit Billing Act, 15 U.S.C. §§ 1666 et seq., which provides for the correction of billing errors on credit accounts. The Commission also enforces over 30 rules governing specific industries and practices, e.g., the Used Car Rule, 16 C.F.R. Part 455, which requires used car dealers to disclose warranty terms via a window sticker; the Franchise Rule, 16 C.F.R. Part 436, which requires the provision of information to prospective franchisees; the Telemarketing Sales Rule, 16 C.F.R. Part 310, which defines and prohibits deceptive telemarketing practices and other abusive telemarketing practices; and the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312.

The Commission does not, however, have criminal law enforcement authority. Further, under the FTCA, certain entities, such as banks, savings and loan associations, and common carriers, as well as the business of insurance, are wholly or partially exempt from Commission jurisdiction. See Section 5(a)(2) and (6)a of the FTC Act, 15 U.S.C. § 45(a)(2) and 46(a). See also The McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

⁴15 U.S.C. §§ 46(b) and (f). Section 46(f) of the FTC Act provides that "the Commission shall also have the power... to make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to Congress..."

⁵The Department of Justice provided the FTC with substantial funding and technical assistance to enable the FTC to collect and analyze public and non-public information about the industries' advertising and marketing policies and procedures, and to prepare the Commission's written Reports. The analysis and conclusions contained in these Reports are those of the FTC.

⁶The Commission received information from numerous individual companies, as well as the Motion Picture Association of America (MPAA), the National Association of Theatre Owners (NATO), the Recording Industry Association of America (RIAA), the National Association of Recording Merchandisers (NARM), the Entertainment Software Rating Board (ESRB), the Video Software Dealers Association (VSDA), the Interactive Digital Software Association (IDSA), the Interactive Entertainment Merchants Association (IEMA), and the American Amusement Machine Association (AAMA).

⁷In addition to industry sources, the Commission received information from a wide range of consumer, medical, and advocacy organizations. The American Academy of Pediatrics, American Psychological Association, Center on Media Education, Center on Media and Public Affairs, Children Now, Commercial Alert, The Lion & Lamb Project, Mediascope, National Institute on Media and the Family, National PTA, and Parents' Music Resource Center were among the organizations that provided information to the Commission.

⁸The Commission's September 2000 Report is available online at: <http://www.ftc.gov/opa/2000/09/youthviol.htm>.

⁹See Appendix F (Mystery Shopper Survey and Parent-Child Survey) of the Commission's September 2000 Report.

¹⁰The Commission's April 2001 Report is available online at: <http://www.ftc.gov/opa/2001/04/youthviol.htm>.

¹¹The Commission's December 2001 Report is available online at: <http://www.ftc.gov/opa/2001/12/violence.htm>.

¹²Music industry members continued to place ads on shows that are highly popular with teens, such as *Total Request Live* on MTV and *106th & Park* on BET.

¹³The Commission's June 2002 Report is available online at: <http://www.ftc.gov/opa/2002/06/mvec0602rev.htm>.

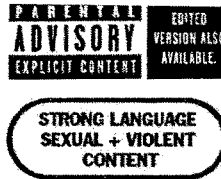
¹⁴Commissioner Swindle, in his concurring statement to the Commission's June 2002 Report, noted that "the music industry continues to target young people explicitly in its advertising and, for the most part, refuses to provide content-based information that could help consumers. The motion picture and electronic game industries have acted far more responsibly in improving their self-regulatory programs, yet continue to allow advertising of R-rated movies and M-rated games in venues that attract large numbers of teens."

¹⁵Motion Picture Association of America, *Initiatives of MPAA Member Companies*, Sept. 26, 2000.

¹⁶Movie industry members continue to place ads on shows that are highly popular with teens, such as *Grounded For Life* on Fox, *Gilmore Girls* on WB, *WWF Smackdown* on UPN, and MTV's *The Real World*.

¹⁷See BMG News Release, *BMG Announces Steps to Build On Industry's Parental Advisory Program*, June 3, 2002, available at <http://www.bmg.com/news/archive—general/general—frameset.html> (visited September 17, 2002).

The revised sticker appears as follows:



Mr. UPTON. Thank you, Mr. Peeler.
Dr. Rich.

STATEMENT OF MICHAEL RICH

Mr. RICH. Good morning, Mr. Chairman and members of the committee. Good morning again. Thank you for the opportunity to testify before you today.

My name is Dr. Michael Rich, and I am testifying on behalf of the American Academy of Pediatrics and its 57,000 members across the U.S. .

As a pediatrician who specializes in adolescent medicine, I am keenly aware of how crucial music is to a teen's identity and how it helps them to find important social and interpersonal behaviors. In fact, one study showed that 24 percent of high school students ranked popular music as one of their top three sources for guidance on social interactions.

We often use music to define our beliefs and convictions. We are attracted to music that will confirm and support these beliefs and convictions. Music can truly affirm and confirm struggles, joys, sorrows, fears, and fantasies.

During the past four decades, rock music lyrics have become increasingly explicit, particularly with reference to drugs, sex, violence, and sexual violence. Heavy metal and rap lyrics have elicited the greatest concern for experts as they compound the environment

in which some adolescents increasingly are confronted with risktaking, substance abuse, pregnancy, homicide, and suicide.

To date, no scientific studies have proved a cause-and-effect relationship between violent or sexually explicit lyrics and adverse behavioral effects. Causality is exceedingly difficult to prove, as we have all witnessed in the debate about whether tobacco smoking causes lung cancer, heart disease, and stroke. However, all of us must pay attention to the strong associations that have been observed between music content and health outcomes. There is some music that communicates potentially harmful health messages, especially when it reaches a vulnerable and impressionable audience.

The words and images evoked by popular music are powerful influences on how teenagers—excuse me—are socialized. Youth who feel rejected and alienated are especially responsive to lyrics that glorify hostility and violence. Numerous studies indicate that a teenager's preference for heavy metal music may be a significant marker for alienation, substance abuse, psychiatric disorders, and suicide risk, among others.

The world can be a threatening and scary place, especially for young people who feel powerless, disenfranchised, disrespected due to economics, race, or beliefs. Artists should have the right to reflect that reality and to address any issue in any way that they choose. However, we must recognize that the content that we choose to listen to inevitably affects us, and we must choose accordingly.

Changes in young people's attitudes and behavior toward each other hurt all young people, regardless of their race, gender, religious, or ethnic backgrounds. It is in the child's best interest to listen to lyrics or to watch videos that are not violent, sexist, drug-oriented or antisocial.

Music lyrics should be made easily available to parents so that they can read them before deciding whether to purchase the recording. To date, this has not occurred. Many recordings are broadcast in sanitized radio versions which are difficult if not impossible to buy retail. The current system of parental advisory labels provides inadequate information for parents to make appropriate choices for their children. To disclose the content of their product is not a violation of their rights but truth in advertising.

From the perspective of a doctor who cares for and cares about children, this is simply about having the information necessary for parents to make a compassionate and safe choice for their children.

The Academy has a number of recommendations to consider if we are to help families use the media in a positive way. Time limits me to the following:

The music industry should develop and apply a system of specific content labeling of music regarding violence, sex, drugs, or offensive lyrics. We, too, applaud BMG for their leadership in this direction.

Music lyrics should be made easily available to parents so that they can read them before deciding whether to purchase the recording.

Research should be developed concerning the impact music lyrics have on the behavior of teenagers and children.

Parents should take an active role in monitoring music that their children are exposed to and which they can purchase, as well as the videos they watch. In order to do so, they need the information to make that decision; and pediatricians should encourage parents to do this.

Parents should also be reminded that if we as consumers do not buy or use entertainment media that are harmful to our children, these media would no longer be produced. Media are not the only cause of violence, sexism, racism, or health-risk behaviors, but they are a powerful influence on our young people over which we have some control. If we can make our lives and our future safer by paying attention to these issues and intervening where necessary, then we owe it to our children, ourselves, and our society to do so.

Thank you.

[The prepared statement of Michael Rich follows:]

PREPARED STATEMENT OF MICHAEL RICH, AMERICAN ACADEMY OF PEDIATRICS,
COMMITTEE ON PUBLIC EDUCATION

Good morning, Mr. Chairman, members of the Committee. I want to thank you for the opportunity to testify before you today as a pediatrician, as a child health researcher, as a filmmaker, and as a parent. My name is Michael Rich, and I am testifying on behalf of the American Academy of Pediatrics (AAP) and its 57,000 pediatrician members. I am a member of the Academy's Committee on Public Education. I practice pediatrics and adolescent medicine at Children's Hospital Boston, and teach at Harvard Medical School and Harvard School of Public Health. In my research, I study the effects of various entertainment media on the physical and mental health of children and adolescents. I actually began my professional career as a filmmaker. I love audiovisual media and continue to work in video and radio production, developing pro-child and health-positive media as tools for child health research, education, and advocacy. Finally, and most importantly, I am the father of a 16-year-old daughter and a 14-year-old son.

IMPACT OF MEDIA ON HEALTH AND BEHAVIOR OF CHILDREN

Starting from when we are very young, we get the majority of our information from media, which includes television, movies, music, magazines, the Internet, video games, books, videos and all forms of advertising. While media offers us, including children, many opportunities to learn and to be entertained, how people interpret media images and media messages also can be a contributing factor to a variety of public health concerns. Among children and adolescents, research shows that key areas of concern are:

- Aggressive behavior and violence; desensitization to violence, both public and personal
- Substance abuse and use
- Nutrition, obesity and dieting
- Sexuality, body image and self-concept
- Advertising, marketing and consumerism

As a result of this research, the AAP and its members have been working on many fronts to help parents and children glean the best from unending media exposure. The AAP launched its Media Matters campaign (www.aap.org/advocacy/mediamatters.htm) five years ago to help pediatricians, other health professionals, parents and children become more knowledgeable about the impact that media messages can have on children's health behaviors. Public education brochures on the media have been developed and distributed, including one that explains how the various ratings systems work. In addition, the Academy established a Media Resource Team (www.aap.org/mrt) in 1994 to work with the entertainment industry in providing the latest and most accurate information relating to the health and well being of infants, children, adolescents and young adults.

Parents alone cannot stem the tidal wave of images their children are exposed to throughout a given day. They need help, particularly from the entertainment industry and retailers.

Impact of Music Lyrics and Music Videos

Pediatricians' concern about the impact of music lyrics and music videos on children and youth compelled the American Academy of Pediatrics to issue a policy statement on the subject 13 years ago, with revised, updated versions developed and published multiple times since then. Policy statements communicate the official position of the Academy concerning health care issues, and help guide pediatricians in their assessment and treatment of patients.

As a pediatrician who specializes in adolescent medicine, I am keenly aware of how crucial music is to a teen's identity and how it helps them define important social and interpersonal behaviors. In fact, one study showed that 24% of high school students ranked popular music as one of their top 3 sources for guidance on social interaction. We often use music to define our beliefs and convictions. We are attracted to music that will confirm and support these beliefs and convictions. Music can truly affirm and confirm a teenager's struggles, joys, sorrows, fears, and fantasies.

During the past four decades, rock music lyrics have become increasingly explicit—particularly with reference to drugs, sex, violence and sexual violence. Heavy metal and rap lyrics have elicited the greatest concern, as they compound the environment in which some adolescents increasingly are confronted with risk-taking, substance use, pregnancy, HIV/AIDS and other sexually transmitted diseases, homicide and suicide.

Despite stories in the popular press relating suicides, ritualistic killings and school shootings to popular music influence, to date, no scientific studies have proved a cause-and-effect relationship between violent or sexually explicit lyrics and adverse behavioral effects. Causality is exceedingly difficult to prove, as we have all witnessed in the debate about whether tobacco smoking causes lung cancer, heart disease, and stroke. However all of us, pediatricians, parents, and responsible members of society, must pay attention to the associations that have been observed between music content and health outcomes. There is some music that communicates potentially harmful health messages, especially when it reaches a vulnerable and impressionable audience. Teenagers become absorbed in songs they believe help better define them during this rocky transition into adulthood. The words and images evoked by popular music are powerful influences on how they are socialized. Youth who feel rejected and alienated are especially responsive to lyrics that glorify hostility and violence. Numerous studies indicate that a preference for heavy metal music may be a significant marker for alienation, substance abuse, psychiatric disorders, suicide risk, sex-role stereotyping, or risk-taking behaviors during adolescence. With the advent of MTV and VH-1, not only do we have to listen to violent lyrics, but we also get to see violent narratives graphically portrayed. Research studies indicate that music videos may have a significant behavioral impact by increasing violent attitudes and behaviors in viewers, desensitizing male college students to violence against women, disproportionately reinforcing racial and gender stereotypes, and by making teenagers more likely to accept and engage in unsafe sex.

The world can be a threatening and scary place, especially for young people who feel powerless, disenfranchised, or disrespected due to economics, race, or beliefs. Artists should have the right to reflect that reality and address any issue in any way that they choose. However, we must recognize that the content that we choose to listen to inevitably affects us and we must choose accordingly. Changes in young people's attitudes and behaviors toward each other hurt all young people, regardless of their race, gender, religious or ethnic backgrounds. Parents and pediatricians believe that it is important to know the contents of the food we feed our children's bodies. To protect their physical and mental health, we should be equally aware of what, to paraphrase Jefferson Airplane, we feed their heads.

AAP Recommendations

Although there is no one solution, awareness of and sensitivity to the potential impact of music lyrics and videos by consumers, the entertainment and music industry is one important piece of the puzzle. It is in children's and teenagers' best interest to listen to lyrics or to watch videos that are not violent, sexist, drug-oriented, or antisocial. As a result, the Academy has, in our November 2001 policy statement on media violence, suggested that "music lyrics should be made easily available to parents so that they can read before deciding whether to purchase the recording." To date, this has not occurred. Many recordings are broadcasted in sanitized radio versions, which are difficult, if not impossible, to buy retail. The current system of parental advisory labels applied by the producers themselves provides inadequate information for parents to make appropriate choices for their children. To disclose the content of their product is not a violation of rights, but truth in advertising.

The Academy strongly opposes censorship. We advocate for more child-positive media. As a society, we have to acknowledge the responsibility that parents, the music industry and others have in helping to foster the nation's children. The entertainment industry should extend personal concern for the well being of children to their business of creating and selling music, movies, television programming and video games.

Although the evidence is incomplete, based on our knowledge of child and adolescent development, the AAP believes that the public, including the recording industry and parents, should be aware of pediatricians' concerns about the possible negative impact of music lyrics and videos. The Academy recommends that:

- **The music industry should develop and apply a system of specific content labeling of music regarding violence, sex, drugs, or offensive lyrics.** We label the food we eat—why not label the music? Let the consumer, including parents and youth, know what the music contains and let the educated consumer make the decision. For those concerned about the “forbidden fruit” syndrome, one study has examined the impact of parental advisory labels, and it found that teens were not more likely to be attracted simply because of the labeling.
- **Music lyrics should be made easily available to parents so that they can read before deciding whether to purchase the recording.**
- **Broadcasters and the music industry should be encouraged to demonstrate sensitivity and self-restraint in decisions regarding what is produced, marketed and broadcast.**
- **Performers should be encouraged to serve as positive role models for children and teenagers.**
- **Research should be developed concerning the impact music lyrics have on the behavior of adolescents and preadolescents.**
- **Parents should take an active role in monitoring music that their children are exposed to and which they can purchase, as well as the videos they watch.** Ultimately, it is the parent's responsibility to monitor what their children listen to and view. Pediatricians should encourage parents to do so.
- **Pediatricians should counsel parents to become educated about the media.** In order to help this process, the Academy has launched Media Matters, a national media education campaign targeted to physicians, parents and youth. The primary goal of the Media Matters campaign is to help parents and children understand and protect themselves against the sometimes negative effects of images and messages in the media, including music lyrics and videos.

Media education includes developing critical thinking and viewing skills, and offering creative alternatives to media consumption. The Academy is particularly concerned about entertainment media images and messages, and the resulting impact on the health of vulnerable young people, in areas including violence, safety, sexuality, use of alcohol, tobacco, and illicit drugs, nutrition, and self-concept and identity.

For example, if a music video shows violence against women to any degree, a viewer, including young girls, could be led to believe such action is acceptable. If they were educated about the media, the premise in the video would be questioned and hopefully rejected.

Parents should also be reminded that if we, as consumers, do not buy or use entertainment media that are harmful to children, these media would no longer be produced. Media are not the only cause of violence, sexism, racism, or health risk behaviors, but they are a powerful influence on these behaviors over which we have some control.

There must be a collective solution to this social problem. Parents, pediatricians, the music industry and others have critical roles in discussing and addressing the increasing amount of violence in society, particularly when it comes to children and adolescents. If we can make our lives and our future safer by paying attention to these issues and intervening where necessary, then we owe it to our children, ourselves, and our society to do so.

Thank you for your time today, and I am willing to answer any questions you may have.

Mr. UPTON. Thank you very much.
Ms. Rosen.

STATEMENT OF HILARY ROSEN

Ms. ROSEN. Thank you, Mr. Chairman, Congressman Gordon. Thank you for having me here today.

And, Mr. Shimkus, while I actually didn't take the Red Eye last night, I am equally sleep deprived, having been up with a sick child all night. So if I am a little slow, I apologize.

The RIAA is a trade association of record companies. Obviously, the recording industry's marketing practices have been the focus of a significant amount of attention from this Congress and from the FTC over the last several years, and there has been significant change in these practices over the last several years, although I think it is worth noting that in the very first FTC study a public opinion poll showed that there was over 75 percent approval for the existing program before we made all of these changes.

My written testimony has a description of all of our successful implementation of our guidelines which have been revised and put in place over the last 18 months. I will highlight a couple of them in short.

Since much of the reason that music marketing is different from other media is the existence of edited versions of the same product which is sold with explicit versions, we have significantly increased awareness of edited versions of these recordings. We have put a new sticker on the package and have added new information about edited versions in all advertising. In addition, our periodic reviews have shown excellent compliance with our advertising guidelines, print, and TV publications. And, finally, we have continued our efforts with organizations who focus on opportunities for young people as well as troubled youth.

Today, I am pleased to report a new partnership we recently developed with the National Mental Health Association, a partnership whose goal is to find creative and supportive ways to encourage young people who need help to seek such assistance. The National Mental Health Association views what Dr. Rich said as an opportunity. If young people are attracted to alienating music, that is a signal for adults to go in and help them intervene; and our project with NMHA will help find ways to encourage young people to do that.

So, as you can see by my testimony, I am proud of our record to date.

Since Mr. Towns raised it, I would like to raise something but make it clear to this committee that I raise it not to avoid any responsibility on our part. We have responsibility. I think we take it, and we embrace it. But this committee should know about some significant statistics that have literally changed the environment for kids in their getting music.

A significant percentage of 12- to 18-year-olds, almost 70 percent in many cases, for those kids our marketing practices are largely inconsequential. That is because they don't go to stores or legitimate on-line music sites to get or learn about music. They are logging on to a peer-to-peer network and trade music with millions of others.

Our most recent and, frankly, depressing poll shows that the 12- to 18-year-old kids are the most likely ones to go to these sites when they are looking for music and the least likely to go to a legitimate place to buy it by a margin of 67 to 19 percent. The operation of these networks certainly fall into this committee's natural jurisdiction. I would like to share a couple of examples.

When you go to a legitimate on-line site, because of our new guidelines you will see—and I think I gave this handout out, if people will just look at this handout—you will see that what we have here of a stickered record is shown stickered on the Amazon.com site. If you go to one of the on-line subscription services, the sticker on explicit lyrics is plainly obvious. The on-line subscription services often have parental controls that allow parents to exclude explicit content, all of these as the focus of our industry over the last couple years.

Now go to Kazza, where 70 percent of 12- to 18-year-olds go for their music. Key in the same JZ, and you get page after page after page of tracks and albums available for download without a single advisory. And probably somewhat, as parents, most disturbing of all is for those artists who are particularly popular with young teens and artists like Britney Spears, you key in Britney Spears and you can see an overwhelming amount of porn focused in with all of the rest of the tracks that are available.

The peer-to-peer networks are not per se illegal. It is their activity that is illegal; and, frankly, they are supported by advertising from many legitimate significant companies.

You know, I encourage the FTC to spend time investigating this and encourage this committee to ask the FTC to do this and investigate these systems as much as they have the legitimate music industry. Because, in sum, while I am proud of our record, we have an obligation to do it. We care about parents and our consumers. The reality is, in today's marketplace our efforts are so diluted in this target-age group that—because of this rampant peer-to-peer use that it is just interrelated to the issues we are talking about today.

Thank you, and I would be happy to answer any questions.
[The prepared statement of Hilary Rosen follows:]

PREPARED STATEMENT OF HILARY ROSEN, CHAIRMAN AND CEO, RECORDING
INDUSTRY ASSOCIATION OF AMERICA

INTRODUCTION

Mr. Chairman, Mr. Markey, and members of the Subcommittee, thank you for the opportunity to appear before you today.

I am Hilary Rosen, Chairman and CEO of the Recording Industry Association of America, an association that represents over 600 record companies.

I welcome this opportunity to provide you with the details of our industry's efforts since this Subcommittee's review last July.

There are two points that I would like to raise at the outset: (1) the unwavering commitment of our industry to the success of the Parental Advisory Program; and (2) my concern that the recording industry's "marketing practices" have not been evaluated by the FTC in a manner that fairly takes into account the specific nature of music and mass advertising that includes to more than one demographic group at the same time.

THE RECORDING INDUSTRY TAKES ITS RESPONSIBILITY SERIOUSLY

First, I would like to underscore that the recording industry takes its responsibility to parents and consumers very seriously. The Parental Advisory has been in existence for seventeen years. We created this program, have guided its development, and are proud of its impact. Moreover, we value the respect and trust that we have developed with parents over the years.

I have met personally with each of the major record companies to review the implementation of our guidelines and we have been meeting with our retail partners as well. There is a commitment at every level in the recording industry to the continued success of the Parental Advisory Program.

WE PRODUCE AND MARKET A DIVERSE RANGE OF SOUNDS

The recording industry releases over 36,000 albums each year. The vast majority of these titles contain no explicit content. In fact, I would like to note that despite the emphasis at these hearings on recordings with explicit content, they comprise a relatively small proportion of our industry's output. In an average retail store with 110,000 titles, about 500 will carry the Parental Advisory logo. That's less than one-half of one percent of that store's total inventory. Moreover, the overwhelming majority—if not all—of the titles that are explicit are also available in an edited version. Unlike any other entertainment industry, music lovers have a choice. If a movie is rated "R", a consumer does not have the choice to see a "PG" version in the theatre or to purchase it in the store. When considering advertising of an album, the availability of an edited version should be taken into account. The industry is not advertising an explicit album, it is advertising an album available in two versions.

Let me now turn to the significant steps we have taken over the last year to ensure the continued success of the Parental Advisory Program.

THE INDUSTRY CONTINUES TO STRENGTHEN ITS GUIDELINES

An important aspect of our commitment to the Program is making sure that it evolves to meet the changing needs of retailers and parents without compromising the twin principles that guide it: (1) alerting parents to explicit content; and (2) protecting the First Amendment rights of artists to free expression.

We recently implemented changes to the guidelines that accomplish this goal. The RIAA has published revised guidelines that became effective on April 1, 2002. The guidelines include three new provisions:

- **The implementation of an "Edited Version" Label on packaging:** If an edited version of an album designated with the Parental Advisory Label is released, it should include an "Edited Version" Label plainly displayed either on the front of the album (on the cellophane wrapper or on the album cover itself), or on the top spine of the CD. The Edited Version Label is a notice to consumers that an album has been modified from the original, and does not include all of the same content contained in the Labeled version.
- **Adoption of an "Edited Version Also Available" Label in advertising:** If an "edited" version of a recording is available for sale, consumer print advertising may contain language indicating that fact. This will be accomplished with the wording "Edited Version Also Available" placed near the specific album or sound recording that has been designated with the Label.
- **The extension of the existing guidelines for print advertising to radio and television promotions:** In cases where the decision has been made to place a Parental Advisory Label on a recording, all consumer print, radio, and television advertising (collectively "consumer advertising") for that recording shall communicate the presence of explicit content.

THE RECORDING INDUSTRY IS ADHERING TO ITS GUIDELINES

In February 2001, the FTC issued a report on the industry's implementation of its guidelines and gave us a failing grade. I came before this Committee and indicated that we deserved that failing grade. I also stated that future reviews would demonstrate progress. We have kept our word and have made significant progress.

- **All of the major record companies have issued internal policy guidelines and have appointed a senior level employee** to ensure full compliance with the Parental Advisory Program, including the new provisions.
- According to the Commission's February 2001 study: *only 8%* of print ads in reviewed magazines displayed the PAL. According to our review of the October and November issues of the same magazines reviewed by the FTC that number is now *nearly 100 percent*. In fact, there was only one add that did not carry the Logo, and the album in that add is available in an edited version.
- **100 percent** of the PAL's were clearly legible.
- Additionally, parental controls have been included on many online subscription services with an "exclude explicit content" option check box: "Check here if you would like to exclude tracks from albums that contain a parental advisory logo. A description of the parental advisory program can be found at <http://www.parentalguide.org>"

WE HAVE CONTINUED OUR EDUCATIONAL OUTREACH EFFORTS

Parents overwhelmingly recognize and support the Parental Advisory Program. All of the recent surveys on this issue have confirmed that fact. We have not, how-

ever, rested on our laurels. We continue our efforts to raise public awareness about the Parental Advisory Program.

- The RIAA designed and distributes an **informational brochure in English and Spanish** for parents and caregivers describing:
 - The evolution of the Parental Advisory label,
 - How determinations for its application are made,
 - And the meaning of the label with suggestions for links to community-service based organizations.
- The RIAA and its members have worked to ensure “Edited Version Also Available” has been quickly integrated into the consumer lexicon.
- The RIAA have worked on creative methods of **distributing the PAL PSA**, including in video magazines.
- **The RIAA continues to partner with the National Association of Recording Merchandisers (NARM)** on many fronts, including updating all parental advisory label displays in retail stores.
- **Additionally, we have established a partnership with the Association for Independent Music (AFIM) to further advance our educational outreach efforts.**

I am proud of the significant strides we have made in the last year. We are committed to continuing to work hard to ensure the Parental Advisory Program remains successful and a priority for our industry.

INFORMATIONAL RATING SYSTEMS SHOULD REFLECT THE NATURE OF THEIR RESPECTIVE INDUSTRIES

Our labeling system is often compared to the ratings systems in place for the television, motion picture and videogame industries. While our industries work together to bring information about our systems to parents through the www.parentalguide.org website, our systems are very different. And for good reason. Each system is designed and has evolved to reflect the media to which it applies.

We think that it would be unwise and improper to assume that a record label knows what kind of music and lyrical content is “suitable” for whom. Like books or poetry, different listeners will take away different meaning from musical recordings and their lyrics, making a “one-size-fits-all” determination particularly unsuitable. Record labels should not be in the business of making assumptions about the values or maturity levels of their customers. The purpose of the advisory label is to provide a clear “heads-up” to all consumers that a sound recording contains explicit content. Books have no label or rating, even those that contain explicit content and are marketed directly to children. Why? Because words are particularly subject to interpretation and imagination, and most feel that labeling books is a bad idea. Lyrics likewise are susceptible to varying interpretations. Words can have different meanings depending on who is hearing them. We offer alternatives and trust that consumers will the choice that is best for them.

Moreover, advertising an album in a publication where a significant percentage of those who see it are over 17 years of age should not be regarded as intentionally “targeting children.” Advertising an album available in two versions to a mixed audience is far different than targeting kids with explicit material. Yet it is described in such a manner for purposes of government review.

CONCLUSION—NO REGULATION IS NECESSARY

In summary, the recording industry has in place a system that works—one that reflects the nature of the art form; is being strengthened and promoted; and is overwhelming supported by America’s parents.

To its credit the Federal Trade Commission has recognized that the First Amendment precludes government intervention in this area and that “vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children’s exposure to entertainment media with violent content.”

We have proven over the last year that self-regulation is the way to progress. In the last year, we have seen at the state level that efforts to regulate content are fraught with danger. Some states have even imposed criminal penalties for failing to adhere to voluntary standards. Rather than improving parent’s access to information, such statutes create a disincentive to adopting voluntary standards. By essentially punishing those who adopt voluntary guidelines, the legislation would have the unintentional result of discouraging participation in the successful Parental Advisory Program. Fortunately, these statutes have been challenged in the Courts and ruled unconstitutional.

Without regulation we have strengthened our guidelines and have seen tremendous improvement in the areas explored by the FTC. Without regulation, one of our members has expanded on our voluntary program and now provides content descriptors. This experiment by BMG will give us some insight into whether content descriptors will work with music and whether consumers will find it helpful or confusing.

What is clear from the debate on the state and national level is that at bottom there are some people who simply don't like some types of music. That is fine. You have the option of listening to and purchasing what you do like. What we don't have the option of doing is silencing some voices based on personal prejudices. Taking away angry music will not take away angry feelings. Society and life is more complicated than that. We are willing to do our part by providing parents and consumers generally with information and choices in the music. They must also accept their role in the process.

In the end, I am proud that the RIAA's Parental Advisory Program and the balance we have struck in respecting the free expression of artists while providing information and choice to consumers.

Thank you.

Mr. UPTON. Thank you.
Mr. Simmons, welcome.

STATEMENT OF RUSSELL SIMMONS

Mr. SIMMONS. Thank you, Mr. Chairman. Am I on?

Mr. UPTON. You should know more about microphones than anyone else here.

Mr. SIMMONS. No, sir. I am not an artist. I usually shy away from microphones, but for this occasion I am thrilled to use one. Thank you.

The first thing, I am going to read my testimony, but I wanted to make a statement. I was—because I haven't been paying attention to some of the things that have been going on here in Washington. But I was surprised to hear that there was a connection between enforcing legislature against stealing and the willingness of this panel to work for—to protect our rights for our music and this panel's looking into our practices in regards to protecting youth from music that they found to be upsetting. So I think they should be separate, and I think that that is the kind of legislation that you have a right to explore, protecting us from stealing. But I think that we are here now discussing something we don't have any rights.

But I want to read my testimony. I just wanted to make that statement, if you don't mind, and I want to read the testimony.

I am here today to speak on behalf of the Hip Hop Summit Action Network. It is the largest national coalition of hip hop artists, recording industry executives, civil rights and business leaders. I am also joined by Network President Dr. Benjamin Chaves Muhammad, who is the former Executive Director and CEO of the NAACP.

We represent the interests of the hip hop community, and we are very concerned and committed to protecting the First Amendment rights of hip hop artists and the rights of the freedom of cultural expression. The hearing today on Recording Industry Marketing Practices: A Check-Up is an opportunity for us to inform you that the theme of Hip Hop Summit Action Network is taking back responsibility. We work closely with the industry on issues related to marketing and promotions, and in fact we have strongly supported the extensive dissemination and display of Recording Industry As-

sociations of America's parental advisory label. This has proven to be an effective tool that alerts parents to explicit content and helps parents to make decisions about music for their children.

During the past 2 years, we have made tremendous progress, I think, in increasing public awareness on the positive value and cultural impact of the hip hop on our society. We have sponsored successful summits in New York, Los Angeles, Kansas City, Washington, Miami. Next week, we will be in Dallas. We continue to bring young people together for many good social causes; and the effects are obvious in many places, if you guys are paying attention.

But hip hop has evolved into a global phenomenon, cultural phenomenon, has transcended race, ethnicity, class, and language. We believe in telling the truth. Hip hop music lyrics bear witness to truth of the social, economic, and political condition in our communities. I believe they must continue to tell the truth about the street, if that is what we know, and must continue to tell the truth about God, if that is what we found.

Part of telling the truth is making sure that you know and talk more about and speak more about the truth than to appease those who are in power. Speaking truth to power is important, is essential.

The Congress of the United States should not censor free speech nor cultural expression. It is unconstitutional for government intrusion or dictation concerning rating of music or limiting marketing that has the effect of denying free speech. What is offensive is any attempt by the government to deny the expression of words, lyrics, or music that emerge out of a culture that has become part of the soul of America. Congress should not attempt to legislate preferences in music, art, and culture.

Last year, the FTC report on explicit content and marketing disproportionately focused on black hip hop artists. Once again, we are concerned that our culture is being targeted and profiled by people who don't understand our reality. We therefore appeal for more understanding and hope that the Congress would do the right thing and not censor hip hop.

I am happy to answer any questions that you have regarding this culture and this music. Thank you for your time.

[The prepared statement of Russell Simmons follows:]

PREPARED STATEMENT OF RUSSELL SIMMONS, ON BEHALF OF THE HIP HOP SUMMIT ACTION NETWORK

My name is Russell Simmons and I am submitting this statement on behalf of the Hip Hop Summit Action Network and its Executive Director, Minister Benjamin Muhammad. I am Chairman of the Hip Hop Summit Action Network and I have worked in the music and entertainment industry for more than twenty-five years. Minister Benjamin is the former Executive Director and CEO of the NAACP and has over thirty-five years of experience in civil and human rights.

The Hip Hop Summit Action Network is the broadest national coalition of Hip Hop artists, entertainment industry executives, civil rights and community leaders. Established this year, the mission of the Hip Hop Summit Action Network is to support Hip Hop and freedom, justice, equality and empowerment for all based on the principles of freedom of speech, music and art creativity, and the universality of humanity.

The Hip Hop community has decided to take a leadership position toward the evolution of our artistic destiny and responsibility. We convened an historic summit last year in New York and we are planning others in Los Angeles and Miami in

August to explore questions related to violence in our own communities, racial profiling, police brutality, representation of women, and the profanity of poverty, and how we can work from within our industry to expand and elevate the artistic presentation of our culture and experience.

Although we know that the harsh underlying social realities that some of our music exposes have not changed much in our communities, we are committed to speaking the truth. We believe that we must continue to tell the truth about the street if that is what we know and we must continue to tell the truth about God if that is who we have found. Part of telling the truth is making sure that you know, and talk more about what you know than to speak or do music to appease those who are in power. Hip Hop represents truth telling, speaking the truth to ourselves and speaking the truth to power out of the context and condition of our community.

The Congress of the United States should not censor free speech nor artistic expression. It is unconstitutional for government intrusion or dictation concerning "labeling of music" or "rating of music" that has the effect of denying free speech. What is offensive is any attempt by the government to deny the expression of words and lyrics that emerge out of a culture that has become the soul of America. In fact Hip Hop has now grown to become a global cultural and artistic phenomena. Congress should not attempt to legislate preferences in music, art and culture.

My final point is that this is often largely about race. And it makes some of us very concerned that few will publicly admit that this effort to censure Hip Hop has deep seated racial overtones. Hip Hop emerged out of the African American experience. Eminem is a successful white Hip Hop artist who, power to him, has excelled and profited from the genre of black music. He stands on the shoulders of other originators of Hip Hop. The Federal Trade Commission's report on explicit content disproportionately focused on black Hip Hop artists. These reports are flawed scientifically as well as morally and culturally and should not, therefore, be used as a basis for constructing a system of "ratings" in regard to music and other forms of entertainment.

Simply put, we conclude by appealing to this Committee to refrain from censoring, labeling, or rating our music and culture in the absence of understanding and appreciation of our artistic work which represents the genius of our culture and talent of our youth, in fact all youth of today—black, white, Latino, Asian and all others. Thank you.

Mr. UPTON. Thank you, Mr. Simmons.
Mr. Marmaduke.

STATEMENT OF JOHN MARMADUKE

Mr. MARMADUKE. Good morning, Mr. Chairman. My name is John Marmaduke. I am the President and CEO of Hastings Entertainment, and I am a past Chairman of the Board of Directors of the National Association of Recording Merchandisers, and I currently serve on NARMS' Retailer's Advisory Council as well as the Board of Directors of the Video Software Dealers Association. I appreciate this invitation to update you on our retail marketing practices.

Hastings is a publicly held company headquartered in Amarillo, Texas. We have 144 stores; and we sell not only music, but video, computer software, books, magazines, newspapers, and video games. We have over 30 years of retail experience in a variety of markets, from towns as small as 15,000 people to large urban centers in the 21 Western States. For 3 years we have also had our Web site, GoHastings.com.

Hastings' corporate mission is to satisfy our guests' desires for personal entertainment and information; and that mission is reflected in every store we open, regardless of the size of the community. We hear directly from our customers. In fact, the first thing I do every morning is scroll e-mails from our store associates, and also I get about 100 "Postcards to the President" every morning that customers fill out that are at every cash and exit vestibule in

our stores. So we are pretty well connected; and, like a lot of retailers, that is the way we want to be. That is who we serve.

In terms of music selection, our company's policy is today, and always has been, is to stock titles that carry parental advisory because they do meet a demand from our customers. However, we do require them to be 18 years old to purchase it. I think we were probably the first retail chain to do that, and we had quite a bit of publicity at the time. But we also have the same policy with video games and movies that we sell.

We stand behind these programs. We know they work well, because in those hundred postcards that I read every morning I don't think I have had a complaint on the "18 to purchase" in over 3 or 4 years, and I can assure you that I hear complaints on about everything that customers don't like with some frequency.

Not every retailer's policy is just exactly like ours. Some don't stock these titles at all, like Wal-Mart. Some may restrict the sales; some may not. Each retailer's decision about what to stock, how to merchandise, how to advertise, and what to sell is driven by their desire to meet their target customers needs. It is just that simple.

Even though each retailer may take a different tack when it comes to marketing music to customers, our common goal is to keep improving the program as a whole. Over the years, through NARM, we have provided the record companies with feedback from our customers; and we have offered suggestions on a variety of things like, for example, standardizing the placement of the logo, adding merchandising materials or instituting guidelines to applying the labels so it doesn't cover that logo.

In turn, we welcome information and dialog provided by the FTC and you elected officials. This ongoing review has resulted in many improvements, and Hastings has also improved the way we have handled the parental advisory information in our advertising and also on our Web site. Last fall, we made brochures printed courtesy of the RIAA that describe this program and made it available to our customers.

Since the subcommittee's hearings on this subject a little more than 1 year ago, NARM has been working with the Federal Trade Commission and other entertainment retailing organizations on a more comprehensive consumer education campaign about the various ratings programs. We think the more information the parents have about these programs, the better they will work.

I want to assure you, Mr. Chairman and the members of the subcommittee, we music retailers take these challenges seriously. I know I speak for fellow retailers when I say that our stores are a part of the communities they are located in; and our stores, especially being in smaller communities, we are very sensitive to those communities' desires and needs. We know we must be responsible to their concerns and—because we want to stay in business.

Can we do more? I am certain we can, and we are happy to keep meeting with you and with the RIAA to keep improving this program.

Thank you again for giving me this opportunity to testify today.
[The prepared statement of John Marmaduke follows:]

PREPARED STATEMENT OF JOHN MARMADUKE, PRESIDENT AND CEO, HASTINGS
ENTERTAINMENT

Good morning Mr. Chairman and Members of the Subcommittee. My name is John Marmaduke and I am President and CEO of Hastings Entertainment. I am a past Chairman of the Board of Directors of the National Association of Recording Merchandisers, and I currently serve on NARM's Retailer's Advisory Council as well as on the Board of Directors of the Video Software Dealers Association. I appreciate the invitation to appear before you today to update you on retail marketing practices for music that carries the Parental Advisory.

Hastings is a publicly held company headquartered in Amarillo, Texas. Our 144 stores carry music, video, computer software, books, magazines and videogames representing nearly 3 million square feet of retail space. Between our warehouse, offices, and stores, we have 7000 employees. We have over 30 years of retail experience in a variety of markets, ranging from small towns to large urban areas throughout 21 states of the Western U.S. For three years we have also operated GoHastings.com, our e-commerce initiative.

Hastings' corporate mission is to satisfy our guest's desire for personal entertainment and information. That mission is reflected in every store we open, regardless of the size of the community. We hear directly from our customers whenever they think we're not doing something right. So our success, like that of every retailer, depends on our ability to meet the needs of our customers every day.

In terms of the music selection, my company's policy is to stock titles that carry the Parental Advisory because they do meet a demand from our customers. However, we require purchasers to be at least 18 years old. Hastings was one of the very first retailers to have such a policy and we were considered quite brave when we launched it. We now have similar programs in place for movies and for video games. I get approximately 100 "Postcards to the President" every day. I have not received a complaint from a customer or a parent on inappropriate music in the hands of their under-18 year old children in years. We stand behind these programs; we think they work well; and we know our customers appreciate them.

Not every retailer's policy or program is exactly like ours. Some don't stock titles with the Parental Advisory; some offer edited versions, while others may not restrict the sale of these titles to minors. Each retailer's decision about what to stock, how to merchandise, how to advertise, and who to sell to is driven by the desire to meet the needs of their target customer. These different approaches in the marketplace offer parents a choice when it comes to deciding what's best for their family.

Even though each retailer may take a different tack when it comes to marketing music to its customers, our common goal is to keep improving the program as a whole. Over the years, through NARM, we've provided the record companies with feedback from our customers. We've offered suggestions on a variety of things like, for example, standardizing the placement of the logo, or adding merchandising materials, or instituting guidelines for applying the label. In turn, we have welcomed the information and dialogue provided by the FTC and by elected officials. This ongoing review has resulted in many improvements. Hastings has improved the way we handle Parental Advisory information in our advertising and on our website. All of our ads contain the Parental Advisory logo, and our website contains a link to ParentalGuide.org, the industry site that contains information on all the media rating programs. When NARM made point-of-purchase materials that describe the Parental Advisory available a few years back, we began ordering those and replenish them as necessary. Last year, when brochures on the program were made available through NARM, we offered those to Hastings' guests.

Since the Subcommittee's hearing on this subject a little more than one year ago, NARM's retailers have undertaken a fairly comprehensive review of the Parental Advisory program that covered such aspects as the guidelines for applying the label, the quality of information conveyed by the label, promotional support of the program, and edited versions.

There were a number of recommendations that were communicated to RIAA, including the need for more information about why titles carry the PAL, adding guidelines for radio, adding a label for edited versions and perhaps guidelines for editing PAL titles. RIAA did adopt many of the recommendations, including the addition of labeling edited versions of PAL titles, and both organizations worked together to encourage greater support for the PAL program from independent labels. (A detailed report on the review, the conclusions, and NARM's activities in response to the review is attached.)

NARM has continued to provide retailers with copies of the FTC reports, with updates to the RIAA guidelines, and with samples of copy that we can use to help educate our customers about the program both in the store and online. NARM has re-

cently begun working with the Federal Trade Commission (FTC) and other entertainment retailing organizations on a more comprehensive consumer education campaign about the various ratings programs. We welcome that initiative and think the more information parents have about these programs the better they will work.

I want to assure you, Mr. Chairman, and the members of the Subcommittee that music retailers take these challenges very seriously. I know I speak for my fellow retailers when I say that our stores are part of the communities where they are located. We know we must be responsive to community concerns if we want to stay in business. Can we do more? I'm sure we can, and we're happy to keep meeting with you and with the RIAA to keep improving this program.

Thank you again for giving me the opportunity to testify today. I look forward to answering any questions that you may have.

NATIONAL ASSOCIATION OF RECORDING MERCHANTISERS
April 19, 2002

Mr. Dick Kelly
Ms. Mary Engel
*Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580*

DEAR MR. KELLY AND MS. ENGEL, Thank you for the opportunity to update you regarding the efforts of NARM and our member companies to support the Parental Advisory program for music. Since our last update there have been a number of activities and communications about which we would like to make you aware. Our activities have reflected two primary goals: 1) a review of the guidelines for the Parental Advisory for the purpose of identifying areas which could be improved; 2) enhancing the educational efforts of both NARM and our members so that the public has a better understanding of the Parental Advisory program and how it works. We believe that the activities as outlined in this report reflect real progress in both areas as well as the ongoing commitment of NARM and its member retailers to the success of the Parental Advisory program.

PARENTAL ADVISORY GUIDELINES

A joint NARM/RIAA Task Force was formed in 2001 for the purpose of evaluating the Parental Advisory program and making recommendations for improving the program. NARM began this process by soliciting feedback from our member retailers and wholesalers regarding various aspects of the program, including the guidelines for applying the Parental Advisory Label, the consistency with which the label is applied, the quality of the information conveyed by the label; the placement of the label, promotional support for the label, and edited versions of labeled releases. NARM concluded that there were a number of ways in which the program could and should be improved:

1. More information needed to be communicated to consumers about titles which carry the Parental Advisory Label.
2. More independent labels needed to be encouraged to support the program.
3. Advertising guidelines needed to be revised to include radio as well as TV ads.
4. Better labeling of music videos with music from CD's carrying the Parental Advisory Label.
5. Edited versions of titles that carry the Parental Advisory Label needed to be clearly marked with a standardized label. Artwork built on the existing Parental Advisory was the preference. Guidelines for editing PAL titles would be helpful.
6. A coordinated set of guidelines for placement of the PAL logo and placement of retail price stickers might be necessary to insure that price stickers never obstruct the visibility of the PAL logo.

These recommendations were communicated to RIAA through a series of communications and meetings over the fall and winter. RIAA responded by revising their guidelines in February, 2002. The revised guidelines call for 1) an expansion of the advertising guidelines to include all media: print, radio, TV, and internet; 2) the adoption of standardized labeling for edited versions of PAL titles along with recommendations for advertising the availability of edited versions. Retailers would still like more information about why titles receive the PAL designation or a link to song lyrics. Many would prefer a more consistent approach to editing PAL titles. (Currently some edited CD's may delete whole songs, or bleep certain words, or include a revised version with new lyrics.) Because the labeling of edited versions is new, there will be an ongoing evaluation of the placement of the "edited version"

label to ensure that the current recommended placement (top spine) works. Retailers concurred with labels that the top spine placement was the most logical place to start the identification process, but have some concerns about the lack of permanence of the label once the sticker is removed.

In addition, both organizations promised to encourage greater support for the PAL program from independent labels. NARM used the opportunity of a joint convention with the Association for Independent Music (AFIM) in March to reinforce the message. Retailers were invited to notify RIAA regarding music videos that should be carrying the Parental Advisory Logo.

Discussions regarding the coordination of PAL placement guidelines and guidelines for retail price stickers are ongoing. The current guidelines for PAL placement from RIAA instruct labels to place the logo in the lower left corner of the front face whenever possible. NARM guidelines ask retailers to avoid placing price or other stickers over the Parental Advisory Label. Despite the two guidelines, the consensus of both groups was that keeping the labels separate while not covering up the title of the work or imposing rules on artists that could not be followed 100% of the time posed a challenge. NARM was asked to review the placement of advisory information on movies and games to determine how the placement issue is handled for those products. We've learned that the MPAA rating for both VHS and DVD is on the back face of the product. While the icon for video game ratings appears on both the front and back face, the important content descriptor information appears on the back face. With that information as background, it would appear to make sense to move the placement of the PAL logo to the back face of music products so that the consumer can begin looking for rating logos in a consistent place. If retailers kept their pricing labels on the front face, any possibility of accidental covering of the PAL would be eliminated. This possibility is actively being discussed.

EDUCATIONAL EFFORTS

Retail Education

A number of activities have been initiated with the goal of educating consumers about the Parental Advisory program. NARM's efforts have also included a component which focuses on educating retailers about the importance of the Parental Advisory Label program, how it works, and how to support it. As was promised last year, NARM created a section on our website devoted to the Parental Advisory Label program. Posted on the site are a philosophical statement from NARM about the value of the program and its importance to the public along with the current guidelines for the PAL program. We also include a sample descriptive statement about PAL for retailers to use in their stores or on their websites, links to the RIAA page on the Parental Advisory, links to parentalguide.org, (the site hosted by the entertainment companies covering music, games, and movies), and a copy of the reports from the FTC on Marketing Violent Entertainment to Children. These published materials are supplemented by updates in our electronic newsletter, and verbal presentations at meetings of the NARM Board of Directors and the Retailers Advisory Council.

Consumer Education

Educational efforts to consumers this past year included the ongoing NARM/RIAA merchandising program of posters and counter cards depicting the PAL logo with an explanatory paragraph. This year the pieces were revised to include the URL to the parentalguide.org site. Nearly 8000 pieces of material were shipped to retail and wholesale locations prior to the important holiday selling season. These materials were supplemented with the addition of a new brochure describing the PAL program in more detail. Nearly 100,000 of these brochures were made available to the public through 4,447 stores beginning last September. We are currently in discussions with RIAA about the possibility of a reprint and ongoing distribution of the brochure. In addition to the specific programs run by NARM, we know that a number of our member companies created their own in-store materials regarding PAL and other rating/advisory programs. Several companies either conducted in house training programs for store personnel or reissued policy statements on the program in the fall to help insure consistent dissemination of information and execution of policies.

Advertising

Another important component to many retailers efforts regarding the PAL program was a review of existing advertising programs and policies. The very helpful feedback that NARM received last summer regarding specific approaches to the incorporation of the PAL logo in print, radio, TV, and internet advertising was passed on to retailers and wholesalers in September, 2001. Many retailers have reported

that they have revised their internal guidelines in response to this feedback and these changes should be readily apparent in these media. One area in which many retailers continue to disagree with both the FTC and the RIAA relates to the need for the PAL to appear on every screen throughout a sales transaction online. While some retailers have adopted this approach, others believe that showing the PAL logo at the initial depiction of the album graphic, and again at the point of sale provide sufficient warning to consumers about the lyric content of the title.

Sales Policies

No retailers have reported a change of policy regarding the sale of music carrying the Parental Advisory Label to individuals under age 17. Those companies that decline to stock titles with the PAL continue to believe that approach best serves their clientele. Those that had restrictive sales policies prior to the FTC report continue them, and those that do not believe such policies work for their customers have not adopted them. Most retailers continue to express concern about the appropriateness of the FTC recommendation for restricting sales of PAL titles to those under 17 when the RIAA guidelines do not provide for an age based program. The only significant change in this area is that more companies are stocking edited versions of titles with the Parental Advisory Label now that such titles are identified with their own label.

The Parental Advisory Label program is now 17 years old. Like any teenager, it's learned a lot, but has room for improvement. We continue to believe that most parents appreciate the industry's efforts to inform them that certain titles may not be appropriate for some of the children in their families. We also believe that they appreciate having a choice in the marketplace regarding how different retailers stock, merchandise, and sell Parental Advisory Label products.

Thank you again for the opportunity to recap our efforts in this area for the FTC. We welcome any comments or information that you'd like to share with us.

Sincerely,

PAMELA HOROVITZ

cc: Alan Malasky
John Mitchell
David Schlang

Mr. UPTON. Thank you very much.
Mr. Severson.

STATEMENT OF GARY SEVERSON

Mr. SEVERSON. Mr. Chairman, members of the subcommittee, I am Gary Severson, Senior Vice President and General Merchandise Manager for Wal-Mart stores. I have a written statement that I would like to have introduced into the record.

My predecessor, Doug McMillon, testified before your subcommittee last July on the—last year on the issue of the entertainment industry's efforts to curb children's exposure to violent content. I understand the hearing today is a follow-up to the July hearing and the purpose is to review the recordings industry's marketing practices.

Before addressing the marketing issue, I will briefly describe Wal-Mart's approach to our customers and entertainment ratings.

At Wal-Mart, we have worked hard to create and protect our relationship with our customers. They are and always have been the guiding force behind our decisions. We have created stores that offer every day low prices, quality merchandise, and fast and friendly service. Our associates have also been involved with the individuals and families in our communities. Last year alone, we supported our communities with \$190 million in charitable giving. Ninety-seven percent of that money was donated at the local level through our stores. We aspire to be an important part of our customers' communities and to provide products and services that raise the standard of living for American families.

Consistent with that aspiration, Wal-Mart attempts to sell entertainment product in a way that allows our customers to make informed decisions and to exclude from our shelves merchandise that a majority of our customers would find objectionable due to its sexually explicit or extremely violent nature. The challenge we face is in our ability to, one, help the customers understand what they are buying and, two, to determine which products they find objectionable either before and in some cases after we have made it available for purchase. At times, this is harder than it sounds due to the subjective nature of some of these decisions.

Any success we achieve in these efforts is accomplished, in large part, by following rating systems established by the entertainment industries. We have rating systems that we follow in the sale of movies, video games, and computer software.

As I indicated in my written testimony, we use rating systems to enforce our policy on selling age-restricted products to customers under age of 17. Our customers must be 17 or older to purchase R-rated movies and M-rated video games and computer software. We use register prompts to verify the age of a customer.

Unfortunately, in the case of music, the recording industry has not provided us a ratings system to follow. The music label has determined on a title-by-title basis whether to attach a parental advisory sticker or not. We refer to this as stickered music; and, today, we do not carry parental advisory stickered music in our stores.

The music labels make edited versions of some stickered music available to us. We do carry most edited versions of music on selected product. This product is labeled "edited version." Our buyers for music determine which music to carry based on their best judgment. As we testified last year, from our perspective, an unbiased, standardized rating system would help our customers determine whether specific music is appropriate for their needs and taste.

If the recording industry adopted a rating system, we would educate our customers about the rating system, train our associates about our company policy on the sale of rated music, and would most likely restrict the sale based on the rating. We would enforce the restriction through a register prompt as we do with R-rated movies and M-rated games.

The marketing of music is generally a partnership between the recording industry and the retailer. The recording industry will fund the marketing and provide the content in coordination with us. As for Wal-Mart, our marketing of music is much more limited than that of other retailers. Our main approach is to market the music in the store and drive customer traffic to the entertainment area where we do display the music. Occasionally, we will do television and print advertising of title-specific music. We control the content of the advertising and try to ensure the ad is appropriate and appealing to our customers.

While we use our best judgment at Wal-Mart on which items we carry and while we work hard to restrict the sale of certain products to those under the age of 17, it is simply not possible to eliminate every image, word, or topic that an individual might find objectionable. In addition, we are the first to admit our systems and our associates, good as they are, are not infallible. However, it is our sincere hope that our policies make it possible for our cus-

tomers to make informed decisions and for them to feel we are handling entertainment product in an appropriate matter.

At this time, I am pleased to answer any of your questions. Thank you.

[The prepared statement of Gary Severson follows:]

PREPARED STATEMENT OF GARY SEVERSON, SENIOR VICE PRESIDENT AND GENERAL MERCHANDISE MANAGER, WAL-MART STORES, INC.

INTRODUCTION

Mr. Chairman, members of the Subcommittee, I am Gary Severson Senior Vice President and General Merchandise Manager, for Wal-Mart Stores.

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Before addressing the marketing issue, I'll briefly describe Wal-Mart's approach to our customers and entertainment ratings.

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Consistent with that aspiration, Wal-Mart attempts to sell entertainment product in a way that allows our customers to make informed decisions and to exclude from our shelves merchandise that a majority of our customers would find objectionable due to its sexually explicit or extremely violent nature. The challenge we face is in our ability to 1) help the customers understand what they are buying and 2) determine which products they find objectionable either before, and in some cases after, we have made it available for purchase. At times, this is harder than it sounds due to the subjective nature of some of these decisions.

Any success we achieve in these efforts is accomplished, in large part, by following rating systems established by the entertainment industries.

MOVIES

In the case of movies, we use the MPAA, Motion Picture Association of America, voluntary ratings (G, PG, PG-13, R, and NC-17) as we make decisions about which movies to carry. For example, we do not carry NC-17 rated content. We do carry G, PG, PG-13 and most R rated content. Our buyers for movies determine which movies to carry based on their best judgment. They use their knowledge of our customers and the customer response to the movie in theaters to make a decision on a specific title. We then utilize a register prompt at our cash registers to verify the age of the customer buying the R rated movie. In accordance with our policy only those customers who are age 17 and above are permitted to purchase R rated movies.

We believe that because MPAA ratings have been in consistent use since 1968, there now exists a widespread customer understanding of the ratings. As a result, we have few customer questions about the ratings themselves. Our customers seem to clearly understand what they are purchasing.

VIDEO GAMES AND COMPUTER SOFTWARE

In the case of video games (for example, Sony Playstation or Nintendo games) and computer software, we use the ESRB, Entertainment Software Rating Board, ratings (EC, E, T, M, and AO) as we make decisions about which products to carry. We do not carry software rated adults only (as rated by the ESRB). As a rule, we do not carry Parental Advisory stickered product. We do carry EC, E, T, and select M titles. Our buyers for video games and computer software determine which M rated products to carry based on his or her best judgment. They use their knowledge of our customers to make decisions on specific titles. We then utilize a register prompt at our cash registers to verify the age of the customer buying the M rated

product. In accordance with our policy only customers who are age 17 and above are permitted to purchase M rated titles.

Since the ESRB has only been in existence since 1994, we have taken several steps to educate our customers on how to interpret the ratings including in store signing; print advertising; and associate training. As a specific example, Wal-Mart stores display in store signing which explains the ESRB ratings. For video games and software, in store signing is placed in either the glass case or section where the item is stocked and explains the ESRB ratings to customers.

MUSIC

In the case of music, the recording industry has not provided us a rating system to follow. The music labels determine on a title-by-title basis whether to attach a parental advisory sticker or not. We refer to this as stickered music. Today, we do not carry parental advisory stickered music.

The music labels make edited versions of some stickered music available. We do carry most edited versions of music on selected product. This product is labeled "edited version." Our buyers for music determine which music to carry based on their best judgment. As we testified last year, from our perspective, an unbiased, standardized ratings system would help our customers determine whether specific music is appropriate for their needs and tastes.

If the recording industry adopted a rating system, we would educate our customers about the rating system; train our associates about our company policy on the sale of rated music, and would most likely age restrict the sale based on the rating. We would enforce the restriction through a register prompt as we do with R rated movies and M rated video games.

MARKETING OF MUSIC

Marketing of music is generally a partnership between the recording industry and the retailer. The recording industry will fund the marketing and provide the content in coordination with the retailer. As for Wal-Mart, our marketing of music is much more limited than that of other retailers. Our main approach is to market music in a store and drive customer traffic to the entertainment area where we display the music. We display the music to encourage sales. Occasionally we will do television and print advertising of title specific music. We control the content of the advertising and try to insure the ad is appropriate and appealing to our customers.

CONCLUSION

While we use our best judgment at Wal-Mart on which items we carry, and while we work hard to restrict the sale of certain products to those under the age of 17, it is simply not possible to eliminate every image, word or topic that an individual might find objectionable. In addition, we're the first to admit our systems and our associates, good as they are, are not infallible.

However, it is our sincere hope that our policies make it possible for our customers to make informed decisions and for them to feel we are handling entertainment product in an appropriate manner.

At this time I am pleased to answer any of your questions.

APPENDIX

MPAA (Motion Picture Association) Ratings.

G (General Audience)—All ages admitted.

PG (Parental Guidance Suggested)—Some material may not be suitable for children.

PG-13 (Parents Strongly Cautioned)—Some material may be inappropriate for children under 13.

R (Restricted)—Under 17 requires accompanying parent or adult guardian.

NC-17—No One 17 and Under Admitted.

ESRB (Entertainment Standards Ratings Board) Ratings.

EC (Early Childhood) content suitable for persons ages 3 and older.

E (Everyone)—Content suitable for persons ages 6 and older.

T (Teen)—Content suitable for persons ages 13 and older.

M (Mature)—Content suitable for persons ages 17 and older.

AO (Adults Only)—Content suitable only for adults.

Mr. UPTON. Well, thank you all.

At this point, we will go to the questions from the members; and we will limit the time for us to 5 minutes. We may have a second round, depending on where things stand.

Again, I know that Chairman Tauzin is intending to come downstairs.

I go back to my statement, as a dad of an 11-year-old and an almost a 15-year-old, I know that when I go to purchase music at any store, I would say that very few parents actually take the time to read the lyrics before they buy the CD packet.

First of all, the lyrics are inside the wrapper, which takes a little while to get off, I would note. And sometimes they are in the long box so they make sure you don't put it in your coat jacket. For those that try to shoplift those things out, it is obviously more difficult. But it is also nearly impossible then to read the lyrics.

As a dad, I think it is much better to simply look to see if in fact there is a warning sticker on the outside, particularly if your kids are going to be with you or that is the music that they would like to hear.

Now, Mr. Peeler, you said in your opening statement that movies and games have made substantial improvement from—over the last couple of years, but the music industry has made some progress but not a lot. Now, I don't know if you were aware of BMG's new announced policy, and I would be interested to know what you think about their—if all studios have or recording industries have followed their lead, if that would substantially change your report card. My guess is that it would. Is that correct?

Mr. PEELER. Well, in our report, we are looking at what the industry self-regulatory program is and whether members have complied with it. We cited the BMG initiative in our report as a positive development. We look forward to seeing it rolled out in the marketplace.

From talking to parents, we think that a lot of parents are like you; that they would like more information about the basis for the parental advisory on the album.

Mr. UPTON. As a dad, I would say that what BMG has done is perfect. I don't think they need to go beyond that, and I think that it works well.

Mr. SIMMONS, I don't know if you have seen precisely what BMG has done. But what are your thoughts? It is actually on the screen behind you.

Mr. SIMMONS. Okay. You know, I have seen it, and I think it is good if—

Mr. UPTON. I mean, we are not talking censorship.

Mr. SIMMONS. No, I got it. I think that it is good and is acceptable to me. I don't believe it should be standardized. And let me say that, you know, it is very difficult to measure words. If I were to say—for instance, if I were to say God, everyone in this room would have a different image. Some might even be offended. So it is very—you know, in words and in books and in poetry, which is what rap music and even song is written in that kind of form, it is poetry. And it conjures up—you know, it is about the imagination. And, you know, what you hear—and the whole rating system for me—for instance, what most people on this panel might refer to as a gangsta rapper, artists like DMX, I find him quite inspira-

tional, and I think the artists and the people who understand his music feel that way about him.

I believe that there is such a cultural divide that the people whose job it has been to make these decisions and the people—even the industry—and the people who are listening on this panel don't speak the language of the young people. People are so offended sometimes by profanity, what they refer to as profanity, the language, that content and real—the meaning of these songs is left un—I mean, completely not understood. Misunderstood.

So I think if BMG wants to do that, since they have a small amount of relevant hip hop music, I mean, that is fine. I don't think at Vivindi where we have—Def Jam records, where we have most of the hip hop music, it is a good idea.

I think that we—parents—it says parental advisory, we have gone a long way to change since the last time we spoke. I mean, we have made sure that every radio commercial, television commercial, or any kind of a promotion is very clear or—sticker music, what the stickered music is. And I think that that is a good stand. We have all agreed to do that. And I think that is a lot, really. Because still there is, you know, such a—there is such different meanings depending on who is listening to most of this poetry. And the audience is getting a diverse group of ideas and they are important ideas. They are voices for people who would be voiceless.

The last time I was here, Senator Thompson made a point because he had a cultural—he had a certain opinion. He said, Saving Private Ryan was a strong movie. It taught young people about war. And he thought that every young person—that was his opinion, and he made it clear that that was only his opinion—that every young person should see that movie so they would understand war.

Well, I think it is important that every young person hear Snoop Dog, because I think it is a war that is going on down the block in some cases. I think it is important that kids in Beverly Hills hear—since mostly rappers' voice is for voiceless people, not only in the ghettos now, the urban environment, it is the trailer parks that have become very popular and a group of people who haven't had a voice in a long time.

And now you have the trailer parks and the projects collaborating and having a dialog, and you have the kids in Beverly Hills riding around listening to them. And they are getting to understand the plight of those people who are in the poor—or I mean in these conditions. And that is the profanity, is the condition that they are living in, not in some of the words that people find offensive. And that is my opinion. So I know that that is not something you share, but language is a lot less important, again, than the content.

And I think that when young girls who are listening to the songs—I know that there are some very sexist songs out there. I know one thing in the projects, no one wants to be the daddy of the baby's momma. Madonna had a song, "Papa Don't Preach," before Hip-Hop, "I'm having my baby." Nobody in Hip-Hop or in the project is bragging about having a baby today, because what is being said in the back rooms now is clear to them, and there is an opinion about it.

About drugs, they talk about drugs, and I know people think that they influence people, but mostly it is against drugs, and mostly it is the effect of drugs that they talk about. But you may not hear the same thing that most of the Hip-Hop audience hears. I think it is important that there is truth, have an opportunity to come out, and I think that we shouldn't worry about the reflections that come, because the music is like a reflection of our realities. Breaking the mirror is not going to help the problems. When they said "F" the police, everybody got in an uproar. It called attention to what was in Compton at that time, a terrible situation.

I think it is very, very important that these kids have a chance to express themselves, and I think that we have a very strong rating system. And I think that—I commend BMG on taking the initiative. I don't think it should be something that everybody has to accept.

Mr. UPTON. My time has expired, but we will come back.

Mr. Gordon.

Mr. GORDON. Mr. Peeler, you stated that in this checklist or this criterion that you are using for a report card, that the three groups—the motion picture industry and the video games and the recording industry—it all made progress, but that the recording industry has made less progress.

What are some of the areas that would be applicable that these other groups are doing in terms of reducing the marketing to minors that, in your opinion, that the recording industry could do?

And, Ms. Rosen, if you would listen to that, and I would like your opinion as to whether you think those are valid, and if so, what are you doing to meet that?

So, Mr. Peeler, we will start with you.

Mr. PEELER. Again, our tracking of the appearance of the advisory label and advertising has shown considerable progress over the last 2 years, but our most recent numbers show only about half of the ads contained—accurately reflected the parental advisory label. I think that the industry's current efforts to monitor that and increase that are a very good sign. We would like to see those numbers higher.

I think the two big areas where the Commission has expressed concern are, first, the area that the Chairman was just raising, that we think it would be a better system if there was information about the reason for putting the parental advisory label on the recordings. The second big area has been that the current system does not include any restrictions on marketing of the product directly to children. We believe that the movie and game industry systems, which do include restrictions on direct marketing of rated products to children, is a better model.

Mr. GORDON. Okay. So what are they doing? More specifically, how are they, the motion picture industry, how are they limiting this marketing to minors?

Mr. PEELER. Well, they have come up with voluntary industry self-regulatory guidelines which limit where they will place their ads in an attempt to reduce advertising, or programming or in publications that are very popular with teens. We have in our report suggested that they could do a couple of things better in that area,

but they certainly have a program, and our review indicated that their members are complying with it.

Mr. GORDON. Ms. Rosen, is this an adequate analogy? You know, is there—the motion picture industry, are they smarter, or are they more socially conscious than the recording industry, or is it just different?

Ms. ROSEN. It is not analogous at all, and I think there are two issues. Let us deal with the age-based marketing restrictions that Mr. Peeler referred to.

We are the only industry that has edited versions of music. So we have a choice. When you have edited versions of music on the radio and edited versions of videos on MTV—and the only place this ever comes up is on MTV and BTV. Frankly, the record companies don't advertise as significantly as other industries do. We do more marketing, street marketing, things like that, than we do advertising.

But if you market—if you are advertising an edited version, you are recognizing inherently that there is a differentiation between music and other content products, because the edited versions will still have the same music, same artist, similar sentiments, but the explicitness will be edited out.

And so what's better? We have this constant discussion with the FTC. Not advertising the edited version means that people don't know that there is an edited version available. We came to the conclusion that advertising the edited version was more informative and more productive for both parents and young people than not advertising at all, and the only thing that people would understand is that there is an explicit version.

So it is a very different industry. It is not analogous to the situation in—

Mr. GORDON. Well, you have edited versions of movies.

Ms. ROSEN. No, they don't.

Mr. GORDON. When you go into—

Ms. ROSEN. In airports, in airplanes, but—

Mr. GORDON. I mean, when you—if you go in to rent one, you will see sometimes that they say, this is an edited version.

Ms. ROSEN. I actually have never seen that.

Mr. GORDON. Haven't you?

Ms. ROSEN. I have actually seen director's cuts, which is the opposite, where they put in all the stuff they have taken out. Television, they edit out the same way they do with music broadcast, of course. So, you know, is the notion that there is an edited version—but they are not selling them commercially. I think that is what we are talking about. Broadcast is fine. That is not an issue. MTV edits their videos. Radio edits their songs, so there is no sort of, you know, innocent exposure in music.

If you want the explicit version, you have to actually secure it.

Mr. SIMMONS. This may not be helpful but it is a point I made earlier, if you don't mind if I interject here. I want to add, you know, when you edit a song or a movie, you don't take out the content. You just take out a word, you know, a language. I mean, we are all—the whole discussion, when—what is—you know, in all—every book that you can think of, any good book, the Sutras, Yoga Sutras, or the Bible, or the Koran or the Tora, nobody ever talks

about language. It is what you intend to do. It is—you know, first rule—nonviolence. You know, that is one of the first rules, spiritual rules, I mean, for any—you know, wherever it is that you practice, you know, your higher self.

Why do we think when we take a word out and the whole idea is still communicated, the whole thing is—I mean, we don't have a—the judgment that we are making—

Mr. GORDON. Well, the response might be this, my response might be this: There is a different responsibility in terms of—

Mr. SIMMONS. This is cultural. The whole discussion is cultural.

Mr. GORDON. I think there is a different—throughout cultures, there is a different responsibility to minors versus adults, and I think—I mean, Spike Lee, you know, has been successful in conveying a message, and somehow he lives within the motion picture industry's effort not to censor. But to rate in an effort to give parents tools, I don't think anybody is talking about taking out words. The question is: Are you going to give notice of the words beforehand? So we should not think this is editing anywhere.

Ms. ROSEN. Let me respond, if you would, Congressman, to the content distributor, because Mr. Peeler raised two issues. One is that we don't prevent advertising in vehicles where young people go. I have already said we made the decision that it is better to advertise that there is an edited version available, because that is what puts pressure on retailers and others to go out and pursue the edited version.

On the content descriptors, we are in a very different world than motion pictures. The motion picture guidelines basically say, if you have these words and it is showing these naked body parts or this level of blood and violence connected with these words, then it gets this rating. Words don't provide that. Words are simply interpretative. They are subjective. That is why content descriptors are not appropriate for music.

BMG is undergoing an experiment. Everybody is looking at BMG's experiment, but it is worth noting that as fantastic as BMG's announcement is, people should know that the only album that has actually come out from BMG so far has all of the content descriptors that our logo already has. There is one record. It is clips, I think. You know, it says it is strong language, sexual and violent content. Guess what? That is what every single retail store, that is what every single advertisement, that is what every single Web site already says the logo means. The parental advisory is a notice to consumers that recordings identified by this logo will contain strong language or depictions of violence, sex or substance abuse. There is no mystery—I find this a bit of a red herring—there is no mystery about what this means. We constantly advertise it.

Mr. GORDON. You might—my time is up, but just for your information, Albertson's now is selling edited versions of movies.

Mr. UPTON. Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me begin by just asking you, Mr. Severson and also Mr. Marmaduke, you are saying to the committee that the age-based system is in the best interest of consumers. Who would enforce such a system? Because it seems that those large companies and

those who own a number of stores having, you know, greater resources to enforce such a system, while small music stores like ones that are around in my district who are struggling to stay relevant due to the illegal downloads, might not have the luxury nor the resources to enforce such a system.

Mr. SEVERSON. I think that we are calling for more age-based to help the parents to be better educated to determine for their minor children what a better system would be. The enforcement of that can be systematic, but also it requires on human beings at the cashier level to be able to understand policies and then enforce those policies. So we are calling on a human element to make sure that while you can have a system to help support that, that even in small companies where you might not have those systems, you still have to rely on the cashier to enforce policies that an individual retailer might set to determine age appropriateness.

Mr. MARMADUKE. Well, Congressman, I would say that the contrary would be the case in my experience. And that is that the small retailer generally is the proprietor who is in charge of his store, and he knows his customer base better than any chain will ever know their customer, and so enforcement would be actually easier for a small and local retailer if they elected to do so.

Mr. TOWNS. I was sort of looking at it a different way. I was thinking that a store like Wal-Mart that sells everything else, you know, that they could have a different attitude about it. You know, I was thinking—you know, because you sell all kinds of goods, so therefore, you know, you could take a hard line and whatever on anything, because that is not really, you know—it just happens to be a minor product that you are involved in.

Mr. SEVERSON. I am not sure I understand the question.

Mr. TOWNS. I am saying to you that Wal-Mart could take a position that a small store could not take, you know, in many instances, because the fact that this is basically what they are selling. You are selling a lot of different products. So, therefore, you could draw the line and say, no, we are not going to do this, we are not going to sell this or whatever, because of the fact that that is just a minor item with you in terms of what you are selling.

Mr. SEVERSON. Well, we are not suggesting that every retailer has to do a certain thing; that every retailer sets their own policies in accordance with what they believe their customers want and need. And we would be setting the policy that we believe our customers would expect us to do, while the individual company could set their own policy and enforce it as they wish.

Mr. TOWNS. The age-based system, what would—let me put it this way. What type of content would Wal-Mart not sell?

Mr. SEVERSON. That is a very subjective question to ask, and there is no simple answer where I can give that, but we try and represent the interests of the majority of our customers. Okay? And if we believe that the majority of our customers would expect to find this product on our shelves, then that is what we want to represent.

Now, if there are certain products that might have an explicit nature to it that our customer might expect, we would also hope to be able to restrict that sale to minors, so that parents can make

that choice and determine whether it is appropriate for their children or not.

As far as what we—I mean, we have stated policies that we will not carry X-rated movies, we will not carry explicit magazines, we will not carry adult-only video games. Those are ratings that exist that we have determined that we are not going to be involved in. Everything after that becomes subjective to a point where you determine and you try and make the best choice you can, based on what you believe your customer wants and expects.

Mr. TOWNS. Mr. Simmons.

Mr. SIMMONS. I was going to ask what kind of music wouldn't you sell. You mentioned four different kinds of visual products, but you didn't mention what kind of music. And that is an important question, since we are here addressing the music issue today. What kind of poetry would you limit? So that is really the question I think he was asking.

Mr. SEVERSON. Well, our current policy states that we will not carry parental-advisory-sticker music, and that is our current policy on that. That could certainly change if there were to be a change in the rating system that would become age-appropriate. That would be consistent with the other entertainment products that we do carry that we do have a very consistent policy on.

Mr. SIMMONS. Would you, for instance, not carry music that describes nudity, or do you already carry tons of product that describes nudity and describes—you probably do, I guess?

Mr. SEVERSON. Yeah. I don't pretend to understand every single lyric that is on every single album in every single one of our stores, but we rely on the industry's policy currently of parental-advisory-stickered music as our policy to determine what we carry. Thank you.

Mr. TOWNS. You know, I think that what we are really saying here is that, you know, different words have different meanings based on your life experience, and I think that, you know, that is something you just can't lose sight of. And, of course, these young people, in many instances this is what they are doing; they are expressing themselves out of their own little life experience. And, of course, we cannot lose sight of that, and that is something that I think that has to be discussed even more, because what is offensive in one sense might not be offensive in another. And that is also a key issue that I think we need to spend some time talking about, because the background, here again, makes a difference in terms of the person's definition of, you know—and it could be different from yours, it could be different from mine.

But the point is this: I think that this is something that we should not ignore and cannot ignore. And of course a lot of times, you know, once you stop and you listen to it, then you find out that maybe it is not really that, it is something else.

So, you know, Mr. Chairman, I think it is good that you are having this hearing. I think that this is something that we need to have a tremendous amount of dialog around, because this is a very serious issue. And I think that the interpretation, you know, many times is just so different, you know, based on the person's background.

I yield back.

Mr. UPTON. Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman.

I first want to say that the participation of Mr. Simmons on this panel is very helpful to me. I think his testimony was important. His comment about speaking truth to power is extremely important. We should never forget that we don't have all the answers up here, and we do need to hear from artists and others about how they view all sorts of situations.

And I want to say to our colleague, Mr. Towns, that many of the points he has made this morning I feel are valid, and while I may make choices for my kids that he might disagree with, I think that is also protected under our Constitution. And I think that it is very important that we do have a First Amendment and that we can hear different voices and that one person's definition of truth may not be another person's definition of truth, and I think that is healthy in a democracy.

At any rate, I wanted to follow up on a comment that Ms. Rosen made at the end of her testimony. She didn't expand on it, but I think her point was that a number of these peer-to-peer networks don't have any guidance for consumers. They also pose other problems, but I don't think this is a hearing on digital rights management. I have strong views on that, but I will save them for another forum. But I am interested in these peer-to-peer networks as they affect the subject we are talking about today, which is advice to parents.

And so I thought I would ask Mr. Peeler for his views on this and whether he has looked at this and what he thinks ought to be done about this. And then I would like Ms. Rosen to comment on whatever he might say.

Mr. PEELER. Well, we certainly think that it is an important music distribution channel, and we certainly intend to include it in this ongoing review that we are doing right now. It is an issue that is different from the issue that we have looked at in the past, that focuses on what types of active marketing is done for the music. Kids have to learn about the music from some source, and what we have been looking at is what advertising and what marketing leads kids there.

Ms. HARMAN. And just let me follow up for 1 second. Her claim was that a lot of legitimate companies are involved in some of this advertising on these P-to-P networks. Have you found that to be the case?

Mr. PEELER. I don't believe we have looked at it yet. As I said, that is one of the issues that we are looking at in this current review.

Ms. HARMAN. Okay. Thank you.

Ms. Rosen.

Ms. ROSEN. The United States Air Force, Orbitz, Comcast, significant companies are advertising on these networks. I think it is—you know, it is not just another distribution network. I think we are finding that in targeted audiences, it is a primary axis. And the issue is if a kid hears a song on a radio, which is still where the majority of people hear new music, and then says, oh, I like an artist, what our statistics are showing us is they don't go anywhere else.

So they are getting it from the radio, and they are going to a peer-to-peer network, and they are getting that song or other songs by similar artists. There are share files where you go into the drive of the person who you have pulled down the song that you like and say, "Show me what else you have." So it is not that they are learning about it from reading the New York Times on Sunday, which I noticed was a big criticism in the FTC report. It is that they are learning about it through these networks and through the sales point, is normally where you would have that sticker go all the way through. That is where we have been careful that sticker goes all the way through.

If I could just beg your indulgence, Congresswoman, on one point. I think that the committee would really benefit from thinking about the testimony of these two really thoughtful, successful retailers, because both of them are good retailers and successful companies and have been in the business a long time.

Hastings Records, run by Mr. Marmaduke, uses a sticker as a sales restriction tool. They have other information in the sticker for their constituents to say, you know what, if you are under 18, you cannot buy it. Wal-Mart is saying, oh, no, no, no; we need more information to use this as a sales restriction tool. But Hastings is being pretty successful doing it.

And so I think it is important to recognize when people are so—are cynical and accuse us of just ignoring what would be the right thing to do for profit, Wal-Mart, which is 25—and Kmart, which is 25 to 30 percent of all music physical sales, is telling us you would sell more music if you gave us a rating system.

The fact that the industry isn't doing it, you know—and this gets to Mr. Shimkus's point. The fact that we are not doing what everybody says they want us to do maybe actually is based on some level of principle and rationale, on the substantive artist's view, as Mr. Simmons has said.

Retailers are telling us we would sell more, although other retailers are telling us they think the tool is just fine. This is not a black-and-white issue.

Ms. HARMAN. My time is up, Mr. Chairman, but I would just comment that I don't think it is black and white either. I think that most of the issues we address in this committee involve shades of gray, and making a better decision is a hard thing to figure out often. And often regulation is not the answer, as I think it is not the answer here. But I—if I were cynical, I wouldn't be in this line of work. I am not cynical, and I think that we are looking at some very smart people who are testifying before us and who are searching for answers, not just for our kids and not just for other people's kids, but for their own kids.

So I see a bunch of responsible parents out there, and I think that as we search for answers together, we need to be very, very careful that we don't define truth in our own way and ignore truth as others define it. Thank you.

Mr. UPTON. Mr. Simmons, did you want to just respond to that?

Mr. SIMMONS. The one thing I want to make a point—and I heard the gentleman say about, you know, the will of Congress to act on legislation that will protect this industry and that there was some connection. And the point—I took offense to it, but the thing

to realize is that in a few years if we don't start to protect ourselves, if the Congress doesn't move to protect us, we won't have an industry. It will be out of business, I mean, in a few years.

The dramatic drop in record sales is—if we don't address it now, there will be no way for any of us to be in business, and I think that, you know, that is—we know that it is illegal to steal people's copyrights and take advantage of people's music or trade it, and we really need to address it. It is a separate issue, but it is certainly one I would like to bring up, because it really is the end of our industry as we know it.

I think my company is one of the last really profitable ones. Everybody has taken a tremendous downturn, more than the economy, much, much, more than the economy, and we have what has traditionally been a recession-proof business; not only music, but it is small—this kind of entertainment. But we are almost out of business, and we really need to move to protect this industry, and I hope it is not tied to whether or not we can censor the music.

So I just want to make that comment. Thank you.

Mr. UPTON. Again, I just want to reiterate that I don't think any member wants to censor music. That is the furthest thing from any of our minds, and I just want to give you that—

Mr. SIMMONS. I am sorry. I didn't mean to—but we do have to address that issue. That has got to be one of the most important things if we are going to have a record industry. If Time Warner Music and Vivendi Music and these companies are going to be in business at all, we have to address this issue immediately.

Mr. UPTON. Ms. Rosen, you said that there was no mystery surrounding the numerous reasons why it wouldn't go to the more expansive label which we are looking at, which is behind you. If that is the case, why not just go ahead with that type of label? I have to admit I really not have seen your brochures in different places where I shop for music in terms of what the "parental advisory, explicit content" means in terms of the full description. And if there is no mystery behind it, why not go along with what BMG has done?

Ms. ROSEN. Actually, that—BMG has four different versions of their sticker, and this is only one of them that says—that has everything in there. And one just says language, and one just says sexual content, and one just says violence. I don't think it is very hard to figure out that maybe you would put this sticker on every one, regardless of my personal view of whether or not it is pejorative. I think the issue is how you parse those particular content descriptors. And we have made a significant progress in public awareness. Our surveys, and the FTC's also, show well over 90 percent awareness of the parental advisory logo and its meaning. So I don't believe that there is this lack of understanding about explicit content.

Mr. UPTON. Do you know if any of the member companies are looking to follow what BMG has done? Do they see that as an experiment, short term, long term? What is the reaction from the other—

Ms. ROSEN. I don't know of any other companies that are looking to adopt it. I think people are just watching to see what happens in the marketplace.

Mr. UPTON. Mr. Marmaduke, Mr. Severson, do you want to comment on what BMG has done specifically? Do you think that has been positive? Dr. Rich?

Mr. MARMADUKE. Well, since I don't have to sit there and parse them out, I would say that it is probably viewed as positive by us. But I would say that the current system seems to work very well for us. We see no customer irritation at all. Our customers seem to be very satisfied with the parental advisory. If we come up with more information, certainly we would not see that as a negative but, you know, it doesn't seem—the system right now to us, from our customer's viewpoint, doesn't seem to be broken. So we would just as soon stay where we are.

Mr. SEVERSON. And from our point of view, obviously it has had no effect for us, because we do not carry the parental-advisory-stickered music, but we do see it as a step in the right direction and would encourage it to continue.

Mr. UPTON. Dr. Rich.

Mr. RICH. I think that as Mr. Simmons said, this is all about truth, and I think truth needs to go both directions. I think that the artist should have the right and, in fact, the obligation to speak the truth to all of us, so we know what is going on in the streets. You know, I take care of the kids in that street, and I am always learning more of the language as it evolves, because it is a dynamic entity. And so I want to emphasize it from our perspective. This is not about what is offensive or hard to relate to or from another person's world. It is about simply what is understood by the research in hand to be potentially dangerous to their health and their long-term health.

And I think that while there is information out there, that there are edited versions—go into a store and try to buy one—with the exception of Wal-Mart, it is exceedingly difficult. And I have been laughed out of a number of stores, like don't be ridiculous, we would never carry such a thing. So I think that that is key.

I agree with the sentiment that if it is no big deal to the BMG information, that it would be good to have it there. I think that as much as people understand something to have a simple binary system of on or off, parental advisory is less informative to parents than one that tells them exactly what they are buying here. And I think, to add to that, one of the key features that is problematic for me as a parent and as a pediatrician is that this is not an objective or unbiased placement of the sticker. This is decided by the producer of the music who stands to make or lose money, depending on whether Wal-Mart puts it on their shelves or not.

Mr. UPTON. Mr. Marmaduke, would you agree with the comment with regard to the availability of edited—

Mr. MARMADUKE. Well, he doesn't shop at our stores because we have always had edited and unedited.

Mr. UPTON. Remember, he is in the East. You are in the West.

Mr. MARMADUKE. So I think every retailer has their own unique way of dealing with this issue, but we have customers that desire both, and we have both for them.

Mr. UPTON. Mr. Gordon, do you have other questions?

Mr. GORDON. I am sort of in Mr. Upton's situation, Ms. Rosen. I am really not as familiar with the current system that you have

in terms of the advisory label. Could you tell me what you do and how you arrive at those decisions?

Ms. ROSEN. There is a broad series of guidelines that accompany the logo that are available to sound recording producers and actually are available on our Web site for the public to see and critique, which they never do. And it essentially gives guidance to a record company about what they ought to look at to make a determination on whether or not to put the sticker on it. So it is along the lines of if there are explicit violent lyrics that could be associated mentally with violent images, if there is language or profanity, things like that.

Mr. GORDON. And does the record company or the artist make that decision?

Ms. ROSEN. Usually it is a joint decision, but the record company has responsibility for the decision.

Mr. GORDON. So then I guess we are over this thing about censoring, then, Mr. Simmons, because apparently you are already making those decisions, and that is—but it is not considered censoring, so I don't think that is really an issue before us today.

Mr. SIMMONS. I am sorry. My point is that if we put strong language, sexual and violent content, parental advisory, explicit content on that sticker, it would not affect our sales at all. Maybe we would sell more. And the reason we would sell more, as this gentleman said, it would be easier for him to determine.

So it is not—it is difficult to answer the questions in the way that you guys are asking us. Again, these are words.

Mr. GORDON. Right. But apparently the word—

Mr. SIMMONS. Describing on NBC at 6 o'clock news with the language that you guys are comfortable with is okay. Describing a violent act, describing in words a violent act at 8 o'clock prime time on Fox is okay. It is acceptable to you. But the point I am making is—

Mr. GORDON. So are you opposed to what the industry is doing now?

Mr. SIMMONS. I am not opposed to it. I am telling you that it is not—once you put “parental advisory, explicit content” on there, again, it is not going to affect my business. I am just recommending to you that we don't go any further. You know, the FTC—or FCC has made choices about a women's lib poem, and they sued the radio or threatened to close the radio down if they played it anymore. I am just afraid of any more involvement. I am concerned about the level of involvement in pushing from this panel and other—you know, because I believe—

Mr. GORDON. If I could—if I could just reclaim my time. I have a limited amount of time.

So, Ms. Rosen, as I understand it, then, the industry is already, if you want to—I won't say editing, but someone other than the artist is already making some decisions now about an advisory opinion, not changing the words or anything, but about advisory opinion.

Ms. ROSEN. Right. And I think your question was why can't we go farther than that.

Mr. GORDON. Not necessarily.

Ms. ROSEN. And parse out.

Mr. GORDON. I am not saying why can't you go further. I am just trying to establish that there is already something being done along that line.

Ms. ROSEN. Yes. And I think what you have heard Mr. Simmons say is really the—you know, welcome to my life. This is the balance that the industry tries to achieve between our responsibility to the community and to parents and extremely strong feelings in the creative community about this issue. And so the sticker itself and what it implies is specific enough to be useful to retailers and useful to parents. After all, more than 75 percent of them already approve of it. But it is general enough to not be specifically pejorative and interpretive about the lyrics.

And when you get to the level that BMG—of the BMG proposal, some people are concerned it is too specific to say that a song about rape is—is that sex, is that violence, is that strong language? What is that? And ought the artist not be able to say, you know, that it is explicit, it is mature content, you make your own decision.

And so that is I think the raging analysis that constantly goes on, and it comes, as has been said, from a place of principle. What Dr. Rich just said is exactly wrong. Everybody tells us we would make more money if we acceded to this. You guys would like us better. It would be politically the right thing to do. It would be financially the right thing to do. And yet we can't go there, because it comes from a place of—

Mr. GORDON. The question before us then is not whether or not there should be some arbitrary decision made as to whether or not a label should be on a product. So apparently we are all—at least we are not arguing that. The question is just what level of specificity, and so that we have established apparently that artists and the industry can accept some type of a labeling process. Is that correct?

Ms. ROSEN. Absolutely. And I think we have not just accepted it, I think we have embraced it and promoted it very effectively.

Mr. SIMMONS. I think if that—if you don't mind my interjecting. We have made dramatic changes in the way that we promote our labels and in the way that we market and include the labels in the way we market our product. And we have gone to such lengths to let people know that there is, you know, some content that you may find offensive.

To go further is part of—is going down a path that I feel is—that it is already a bit disturbing, because how do we then define what is offensive? That is already a subjective issue that we agree that anything is—because we can put a parental advisory sticker on anything and sell more. Anything we smack a parental advisory on sells more. Every time you attack rap music or young people's music, whether it is jazz, blues, rock and roll, or any new art form, Shakespeare and plays, whatever you attack, whatever the censors are, people are uncomfortable with the young culture attack, it sells more.

I remember I was so thankful when my brother "Run" from Run DMC, all he ever sang about was God, school, and surviving in the ghetto. He is now Reverend Run. The whole world attacked him. His album sales went up. He was on the cover of every newspaper as he came into town. And now people, of course, love Reverend

Run and Run DMC and they love the old songs. The old songs are now American classics, and he listens to them closely. And the album is about God, again, school, and higher aspirations, higher American aspirations. That is what Run DMC sang about, and they were gangster rappers in 1983.

Matter of fact, when I met Ben Chavis, who is now the head of the Hip-Hop Summit Network, he used Reverend Run and Run DMC to register voters. The board of directors almost fired him. That was their rigid attitude about young people and their voice.

Mr. GORDON. So are you following the RIAA's system of putting the rating—

Mr. SIMMONS. Yes, sir. In fact, we at our summit—

Mr. GORDON. That doesn't stifle you?

Mr. SIMMONS. [continuing] we added to the way—we gave a long list of additional ways to promote that system, and we have been the ones who are promoting it to the rest of the industry through our vehicles to accept this new, even greater promotion of these labels. So we absolutely want to support them. We just don't want to go down the wrong path.

Mr. GORDON. Sure. So I guess what we have established then is that it is not censorship, and we ought not be crying censorship to talk about—

Mr. SIMMONS. Well, there have been some instances where industries have attacked artists in—

Mr. GORDON. But you are using a system of rating—

Mr. SIMMONS. That's correct.

Mr. GORDON. Okay. Thank you.

Mr. UPTON. Mr. Towns, do you have additional questions?

Mr. TOWNS. Just one quick question, Mr. Chairman. To Mr. Peeler, this billboard, how did you develop this?

Mr. PEELER. I am sorry; the billboard?

Mr. TOWNS. Yes. How did you develop it?

Mr. PEELER. This billboard here?

Mr. TOWNS. Yeah, yeah. Right. What I have—

Mr. PEELER. That is—

Mr. TOWNS. Actually I am talking about the July 15th, 2000—the billboard where you have the archives chart? Do you see this? Basically, you know—pass it to him.

I got that from someplace.

Mr. PEELER. This is, I believe, a private publication of the Billboard 200. It is a listing of top-selling albums.

We used that information and other information in connection with our December 2001 report to determine which corporations to send requests to ask about specific marketing practices.

Mr. TOWNS. Let me make sure I understand that.

Mr. PEELER. This is a published list of top-selling albums that is published by the industry by Billboard.com.

Mr. TOWNS. Published by—

Mr. PEELER. It is published by an industry source, Billboard.com.

Mr. TOWNS. You had nothing to do with what?

Mr. PEELER. We had nothing to do with that particular list. We used this list, which is published by an industry trade source, to develop the list of music recordings that we were going to ask about the marketing practices of.

Mr. TOWNS. And—

Mr. PEELER. This is a list of top-selling albums that we got off the Internet the same way anybody else would.

Mr. TOWNS. And the 25—you know, the reason I am asking this question is that, you know, looking at that list, the top 25, you know, 22 of them were urban, you know, and that just sort of hit me—struck me funny, you know, that out of the top 25, 22 of them were. And that didn't strike you funny?

Mr. PEELER. Well, again, this is a list of what consumers are buying in the marketplace.

Mr. TOWNS. In a random kind of way, you are saying?

Mr. PEELER. It is not in a random way. It is the industry's tracking of what consumers are purchasing in the marketplace. These are the music recordings that consumers are buying the most of. These are the most popular music recordings, and it shows what their rank is this week and what their rank was last week. This is very much like what is published every—Monday morning, about which movies everybody goes to over the weekend.

Mr. TOWNS. I am trying to figure out how you get to this, because 22 of those 25 are black, and that is the reason why I am asking that question. So how do you arrive at—that doesn't seem to be a—

Mr. PEELER. The industry tracks sales, and the industry reports the sales.

Mr. TOWNS. That is the way you do it? That is the way you have—

Mr. PEELER. That is the way the industry does it.

Mr. SIMMONS. But you also have some poor white rappers in there. So that would be about it. It is a cultural issue, and I believe that—it is very—we have to be very careful. Again, these are voices of people who are not so visible, you know, and the reason that I am so adamant about protecting them is because they are talking about conditions in our society that are swept—you know, people are very offended by the Jerry Springer show, and Maury Povich and these shows; and, of course, sometimes you realize there is some ignorance and some poverty in this, and you see it.

You see white people. God, you only see rappers mostly, poor people who have voices. So when you see the white people who have voices, it is amazing, because it has not been in style until now. So you say 22 of those 25 people are black, but then they are also those white rappers, you add to the 24, the 25 or something like that. So it is just—the fact is that these are reflections of the conditions of—in our society, and these reflections are not always pretty. They are honest, and it is all reality, and breaking the mirror will not change that.

And that is the point I want to make, and I want to protect these artists. I think it is important that America hears them. We have made a lot of change. I think that some of the good that you see when you watch those shows now, that couldn't happen a few years ago before rap. I remember when my brother got on MTV, there was no one black on MTV except Michael Jackson, and he had his hair straightened and nose broken. But Run DMC, their first record, they said they made a connection and the beginning of a connection between the projects and the trailers. They speak the

same language now, you know, and I am hopeful that will have great ramifications, political ramifications in this country. There is a commonality in this poverty that they share amongst each other. And, again, the kids in Beverly Hills understand it, and I want to protect it because of its socially redeeming qualities.

And, again, when you watch Maury Povich and they want to know who is the baby's daddy, and there is the white guy and the black girl or vice versa, they never mention race, ever. There is so much that rap has done to bring people together. So that is what I am protecting, and that is why I am here, not for the number of records I sell. If I slap one more sticker on the record, I will just sell more records.

Mr. TOWNS. Mr. Peeler, though, in closing, you picked 25—FTC picked 25, and of course of those 22, you know, you don't know anything about this? I am trying to figure out how do you do that. Of course, out of the 200, you did pick the 25. Right?

Mr. PEELER. There are two separate issues, as I understand it.

Mr. TOWNS. Help me, then, because my understanding is that you selected the 25.

Mr. PEELER. Again, as I understand it, there are two separate issues. One of the issues that you have raised with us before was the ads that we monitored and reported on.

Mr. TOWNS. Right.

Mr. PEELER. And those are ads that we monitored in our own review of the advertising. Seventy-five percent of the ads that we monitored—in other words, when we looked at publications, we picked ads out of the publications for explicit-rated music and made a decision whether or not about the parental advisory was properly displayed. Seventy-five percent of those ads were by urban artists.

The other issue I think you are raising is how do we select, when we prepare our reports, what music marketing we look at? And we have used industry publications like this billboard chart to ask about the marketing practices for the top-selling most popular parental-labeled albums for the purpose of preparing reports back to Congress to say, here is how this is going.

Now, obviously the issue that you have raised about what the mix is, is one that we need to be sensitive to, and we have been. You have raised it with us before, and we appreciate that. It is an issue that we want to be sensitive to. This should not be about Hip-Hop music. This should be about the industry's advisory program and whether consumers are getting the information they need. And we agree with you on that.

Mr. TOWNS. Yield back.

Mr. UPTON. Thank you. Recognize the Chairman of the full committee, Mr. Tauzin.

Chairman TAUZIN. Thank you, Mr. Chairman, and I to welcome you all. Thank you for coming. Let me make a point. Ms. Rosen, I was absent. We were upstairs with the corporate responsibility hearings on Quest and Global Crossing, and I apologize for being a little late. And I missed your opening statement. But I understand you mentioned the problems of peer-to-peer and of content protection for musicians and those of you who are in the context business, either in creative works or in retail/wholesale.

Let me make a couple points, and then I want to ask you some questions. One, this committee, of all the committees of Congress, is as solid I think in joining you in attempting to find solutions to those problems, not simply because we want to direct kids to the stores where they see these labels and where they are going to get the benefit of whatever labels are put on this music, but simply because we want to protect content. We understand that those of you in the creative world who make a career of this deserve to have your creativity protected, and those of you who are valuing these products deserve to have the value protected.

And so I want to associate myself with those comments you made. I think we all have a joint interest in that. That is on the one hand.

On the other hand, we also have a joint interest in not substituting ourselves for parents and asking you to become the parents of all the kids of America—that is not our job, or yours either—but simply helping parents in the business of raising their children in regard to some of these questions about exposure to violence and other things that may hurt them in their young age.

In that regard, you wrote a letter to the FTC which basically said that we have found that parents who are aware of the parental advisory program are not only satisfied but find the program effective.

First question. I am sending you a letter, by the way, with some very specific questions I would like you to respond to, but let me just take you through some of it right now. What was the methodology used for you to make that statement? Did you have focus groups? Did you go around the country inviting parents to look at these warning labels and comment on them? Did you show them alternatives? BMG has—one of your members has now, as you know, indicated that they are willing and are now putting a little more information up there so parents can know why explicit content advisory is on a label, a little bit more about what may be in the package.

In your methodology, did you show parents this alternative? Did they have a chance to say, I would rather that; I would really appreciate it if the music industry would all adopt a warning label that included just a little more information for me to know what may be in it. I may, for example, not have any problem with my children hearing some sexual-related music, but I may have a problem with violence. Vice versa. I may have a problem with music that may tend to, you know, subject them to too much violent content, and I may be okay—parents have different ways of—views about raising their children. This kind of stuff looks like it might help them. Did you give them that choice—is what I am asking—in your methodology? What was your methodology? Could you describe it to us?

Ms. ROSEN. Actually, it was the FTC study, not ours, that found that parents approved of the system.

Chairman TAUZIN. So you have not done any kind of focus groups or—

Ms. ROSEN. Well, we used to do it pretty regularly, but I think because they are always received with an appropriate level of cynicism by members, why bother? That is what I figured. But since

the FTC study showed such good results for us, I figured that would probably be as credible as we need it to be.

Chairman TAUZIN. The FTC, we know, didn't give them this kind of a choice or this kind of a look.

Do you think if parents had a choice between a program that had the parental advisory explicit content only and one that had a little more information about what may be in the package, that they would choose the first instead of the latter?

Ms. ROSEN. Well, I don't know the answer to that. Mr. Marmaduke from Hastings Records, he was here saying that they used the existing parental advisory to restrict sales, and that they get support from parents and consumers who are not clamoring for more information. We do a lot of promotion on our logo and what it means, and it already says all of those things. So I don't think that is an issue.

Chairman TAUZIN. But you are a parent, Ms. Rosen. I mean, we know a little bit about parents. If you had a choice between these two systems, wouldn't you as parent love to have a little more information about why explicit content is on this package, because parents have different views about what they want to subject their children to?

Ms. ROSEN. Well, I am not sure if you are focusing on this particular sticker, because that is what our sticker already says and means when it has language and sexual and violent content. If you are asking me as a parent if somebody could tell me it is sex versus violence, would I like that? Yeah, I would probably like that, but I don't think that is the easy answer. It is too—

Chairman TAUZIN. It may not be the easiest answer, but it is something parents want. I want to go to Mr. Marmaduke. What good is a label if you put the price sticker on top of it?

Mr. MARMADUKE. Well, we don't, but—

Chairman TAUZIN. Somebody does. Who does that? I am looking at—I have got a couple of them—

Mr. UPTON. Best Buy, I think.

Chairman TAUZIN. Yeah. Best Buy. The Best Buy price is right on top of the warning.

Mr. MARMADUKE. We put all our stickers on the top right-hand corner, and I believe Wal-Mart does the same, Congressman. So there is no conflict there.

Chairman TAUZIN. So this is just a problem with some marketers?

Mr. MARMADUKE. Yes.

Chairman TAUZIN. And—

Ms. ROSEN. And that would be a violation of the policy.

Chairman TAUZIN. That would be a violation of your policy, right? Best Buy ought to be advised of violating your policy. Who does that? Do you do that, or does the FTC do that?

Ms. ROSEN. We leave retailer issues to the Retailer Association. I am sure Best Buy is going to get a letter tomorrow.

Mr. MARMADUKE. They have been sent a letter.

Mr. UPTON. Yield just a second. We did send Best Buy a letter. They never responded back.

Chairman TAUZIN. Well, somebody needs to send somebody a letter. There are a lot of letters here.

Ms. ROSEN. We do sort of reprimand, if you will, record companies when we see them violating the policy.

Chairman TAUZIN. Let me sum up, Mr. Chairman, again. You guys have got a lot of friends here. This panel and Members of Congress love music and arts as much as anybody in the country does. Our kids love it, and we love to listen to new forms and varieties of music just as much as anybody. That is not the issue. The issue is not whether or not we are all, you know, struggling in a crazy age to raise kids. That is true. We all are. The only question is, can you help a little bit? Can you help a little bit with more information on these labels? Can you help to make sure retailers don't obscure?

You are going to find big defenders over here for your creativity rights and for your rights to make a profit and to fight those who are trying to steal your music.

One of my dear friends, Trace Adkins, was in town the other day, and he told me he was out in Los Angeles to do a little video for one of his songs, and one of the ladies who was singing and dancing in his video came up to him and said, you know, Trace, I never heard your music, but I got on the Internet the other day and streamed some of it down, and let me tell you, you are pretty good. He said he wanted—he didn't, obviously, but he is a country western boy—he wanted to do a little number on her for that.

The bottom line is we object to that as much as you do. And when you come to us, asking for us to give you help to make sure that your creativity rights and your value rights are protected, we are here; but we are also asking you to stretch it if you can. It is not our business to censor.

It is not our business to write labeling laws. I don't think that some people want to do that around here. I certainly don't, but I sure want to encourage you to give parents as much of a helping hand as you can in some tough times.

Thank you, Mr. Chairman.

Mr. UPTON. Mr. Shimkus.

Mr. SHIMKUS. Thank you. I will be brief. And I apologize for missing some of the question-and-answer period because of another commitment. But—and I think enough has probably been said, and I did listen to all of your opening statement.

Ms. Rosen, let me just ask a question. You are familiar with my Dot Kids Dot U.S. bill, and if you are—and I think the Chairman mentioned it—we would like to see you-all's more vocal support in that, in that it does try to address and help parents with another tool to protect their kids on the Internet. It also could address some of the piracy issues, training kids properly. And we know you haven't taken a position on the legislation yet, and I was just wondering what comments you might have on it.

Do you know what I am—

Ms. ROSEN. I am embarrassingly unprepared. Is this the one where you set up a separate domain name?

Mr. SHIMKUS. What it does, instead of attempt to establish a sort of a red-light approach, which is constitutionally debatable, it establishes a green-light approach, a positive approach, voluntarily, for people to go and for marketers to go—

Ms. ROSEN. Right.

Mr. SHIMKUS. [continuing] and we are very optimistic, moving aggressively through this committee and through the floor, and had a good hearing on the Senate side.

Again, it may not address the whole parental involvement and content debate, but it could also address, you know, a firewall on some of this downloading of music.

So I would just ask if you would and your organization would take a look at that and be helpful in that venue, if you may.

Ms. ROSEN. Okay. It is a good idea.

Mr. SHIMKUS. And I will yield back my time.

Mr. UPTON. Well, thank you.

This is the conclusion of the hearing. We appreciate your testimony. We look—all of us look forward to continuing to watch the progress and appreciate your attendance here today.

I might just note that we may submit some questions in writing from either side. We will get those out as promptly as we can.

Ms. ROSEN. Mr. Chairman, I am so sorry to do this, but my friends in the motion picture industry have asked me to make it clear to Mr. Gordon and other members of the committee who may be interested that the use of edited videos has been objected to by the Directors Guild and the studios, and they are in litigation right now.

Mr. UPTON. Thank you. Have a good day.

[Whereupon, at 12:12 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF LAVERNE EVANS, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, LEGAL AND BUSINESS AFFAIRS, BMG

Chairman Upton, Ranking Member Markey, and Members of the Subcommittee: my name is LaVerne Evans, Senior Vice President and General Counsel, Legal and Business Affairs for BMG. Thank you for this opportunity to submit brief testimony for the record. I had hoped to appear in person before the Subcommittee, but regrettably, a prior commitment requires me to be out of the country on the day of the hearing.

BMG, which employs approximately 1,700 persons in the U.S., is the global music division of Bertelsmann AG, one of the world's leading media companies. BMG is a home for creativity to artists across the musical spectrum, including Alan Jackson, Christina Aguilera, Alabama, Toni Braxton, Dave Matthews Band, Foo Fighters, Five, Whitney Houston, Kenny G, Andy Lau, Alicia Keys, Sarah McLachlan, Misia, Wolfgang Petry, Eros Ramazzotti, Santana, TLC, and George Winston. These and other artists work with BMG and its 200 record labels based in 42 countries, including well known labels such as Arista Records, RCA Records, RCA Label Group-Nashville, and Ariola. In addition, BMG owns one of the world's largest music publishing companies.

On June 3, 2002, BMG announced that it was expanding upon the Recording Industry Association of America's (RIAA's) Parental Advisory Program with its own additional descriptive labeling categories aimed at providing more information to parents and consumers. At that time, we also announced a new policy that will enforce labeling compliance and consistency company-wide, as well as the extension of the new advisories to advertising. BMG's Arista Records, BMG U.S. Latin, RCA Records, RCA Label Group—Nashville, and J Records will use the expanded parental advisory labels (PALs) (a sample of which is appended to my testimony).

Since announcing the expanded advisory, BMG has released a number of CDs and twelve-inch singles with our expanded PAL. For example, the following releases carry an expanded PAL:

- Clipse, "Lord Willin" (full-length CD released 8/20/02, with "Strong Language, Sexual + Violent Content" advisory);
- Midwikid, "Something Wikid This Way Comes" (full-length CD released 10/1/02, with "Strong Language, Sexual + Violent Content" advisory);
- Clipse, "Grindin" (twelve-inch single released 7/30/02, with "Strong Language" advisory);

- Clipse, "When The Last Time" (twelve-inch single released 8/20/02, with "Strong Language, Sexual Content" advisory);
- Rob Jackson, "Breakin' Sketti" (twelve-inch single released 7/16/02, with "Strong Language" advisory);
- Youngbloodz, "Wathcu Lookin At" (twelve-inch single released 7/16/02, with "Strong Language" advisory); and
- Youngbloodz, "Cadillac Pimpin'" (twelve-inch single released 9/3/02, with "Strong Language" advisory).

The process that culminated with the announcement last June of our new PAL began almost a year ago. We at BMG recognize that parents and consumers are in search of more information to guide their purchasing decisions. At the same time, we sought to ensure that artists continue to maximize their creative expression. This is a delicate balance, but one we are committed to achieving, and refining if need be.

We concluded in the final analysis that an expanded version of the existing industry-wide PAL that we have adopted achieves the critical balance we are seeking. As our Chairman and CEO, Rolf Schmidt-Holtz, said when announcing the new advisories: "BMG recognizes our dual responsibility to help parents make informed decisions about the entertainment their children consume and to protect the right of our artists to express themselves freely," said Schmidt-Holtz. "Our labeling initiative will offer parents additional tools to help them decide what is appropriate for them and their families, keeping in mind the rich diversity in our communities."

According to the new BMG policy, any BMG record release in the United States that warrants a PAL will receive an additional label (or labels, as the case may be) describing the nature of the explicit content according to three classifications: Strong Language, Violent Content and Sexual Content. Depending on its content, a release may fall into more than one classification and therefore receive multiple labels, which will be placed on the bottom right corner of the album itself directly under the PAL. While all labeling decisions will continue to reside with the record labels, BMG has appointed me to oversee compliance. The BMG policy will be in accordance with and expand upon the RIAA's Parental Advisory Program guidelines, which establish basic principles on which labeling decisions are based.

At this early stage of implementation, we are still gathering feedback from all affected parties, including consumers, artists, advertisers, retailers, and our record labels. But based on the initial positive response, we are hopeful and optimistic that our expanded advisories are serving the interests of all involved. I would particularly like to thank you, Chairman Upton, as well as the Chairman of the Full Committee, Mr. Tauzin, for your kind words of support for our new advisories. We look forward to your continued support, and working with you on this important matter. Thank you.

SONY MUSIC ENTERTAINMENT INC.
October 31, 2002

Honorable W.J. "BILLY" TAUZIN
United States House of Representatives
Washington, DC 20515

DEAR CHAIRMAN TAUZIN: Thank you for contacting us with your questions about Sony Music Entertainment Inc.'s views about BMG's decision to change its policy concerning the labeling of recorded music. As we understand its new policy, BMG has decided to qualify the parental advisory label by separately categorizing the content of each labeled recording as containing strong sexual language or strong violent language, or a combination thereof.

Sony Music has worked for some time to develop a system of labeling and informing parents that works as best as possible. We have been deeply interested in and respectful of the views of you, your committee, and parents throughout this nation who care deeply as do we about informed choices with respect to consumer purchases. In addition, we have found ourselves working ever more closely with retailers and distributors on these issues, to make sure we understand as best as we possibly can how people actually want to receive information with respect to their choices, so that we can be as responsive as possible.

Sony Music has adopted and supported the RIAA's enhanced guidelines for the parental advisory labeling program. Our goal is to provide adults and parents with notice of explicit content so they can act as they deem appropriate with respect to their children's record buying and listening choices, including on the internet. To that end, we have extended use of the parental advisory label to all advertising in all media and have widely publicized the existence and meaning of the parental ad-

visory label through, among other things, a web site, brochures, an industry task force, and in-school educational programs.

Unlike songs, movies and videogames which are longer, multimedia works, have visual and narrative context; content labeling of movies and videogames may therefore be possible. However, the only way to attempt to categorize a song is by labeling its unadorned language. The many problems with this include the fact that words and the various contexts they are placed in have different meanings to different people. Indeed, some words may have special ethnic or cultural meanings significant to the writer or a particular audience. Songwriters and recording artists might well object to having record company employees delegated with the power to review and impose value judgments on songs by imputing inferences and meanings where none may have been intended. An attempt to subjectively categorize the words and meanings in a song will all too often result in arbitrary and misleading labels and, possibly, threaten artistic integrity and freedom of expression. We believe that our successful implementation of the current parental advisory labeling policy, with its attendant publicity, continues to be the best way to achieve the goal of providing clear and reliable information to parents.

Please be assured that we fully share your concerns and that we are committed to empowering parents with reliable information that helps them guide their children's purchases. We have been responsive to concerns that our own practices need improvement. We are proud of the commitments that we have made and continue to make to give consumers choices. We are respectful of the fact that there are different ways to approach this same goal, and we will as always be responsive to concerns and views about informed consumer choice, artistic integrity and freedom of expression.

Respectfully,

THOMAS C. TYRELL
Executive Vice President, External and Government Affairs

EMI RECORDED MUSIC
October 29, 2002

The Honorable W.J. "BILLY" TAUZIN
*Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115*

DEAR CHAIRMAN TAUZIN: I write in response to your letter of October 1, 2002 to Hilary Rosen of the Recording Industry Association of America (RIAA), signed by eight members of the House Committee on Energy and Commerce. As the Chairman and CEO of EMI Recorded Music, North America, I can assure you that EMI is committed to effectively addressing the concerns of parents and consumers. Because we take this responsibility very seriously, it is important to carefully consider the adoption of any new policy or practice. Specifically, regarding the inclusion of content descriptors in Parental Advisory Labels, EMI has not yet determined that such an expansion to the RIAA Parental Advisory Program is effective in achieving the intended goal, nor capable of doing so without unintended negative consequences. For that reason, although we remain open to the future adoption of such a policy, until we are able to evaluate the effects of an expanded Parental Advisory Program on an informed basis, EMI believes that the existing RIAA Parental Advisory Program best addresses the needs of parents and consumers while balancing the attendant concerns of our recording artists and our record labels.

The overriding purpose of the Parental Advisory Program is to inform parents and consumers that a recording carrying the Parental Advisory Label contains explicit content and, accordingly, that parental discretion is advised when that recording is purchased for children or listened to in the home by children. The Program does not attempt to make the decision as to whether or not a particular recording is appropriate for individual listeners. As a record label executive, I want to ensure that parents and consumers are advised that a decision is warranted, but I also want to protect our artists' First Amendment rights of free expression. As a parent, I would want to be the Person making the decision as to whether or why a particular recording is appropriate for my children, and not have it made for me by a third party. EMI is not yet convinced that the use of general content descriptors adequately assists a parent in making a decision and, therefore, believes that it is not necessarily an appropriate approach.

Music, unlike film and video, is a non-visual mode of expression, and is often difficult to accurately characterize. Even the task of determining whether or not a par-

ticular recording warrants the application of a Parental Advisory Label is not a simple, objective undertaking. At EMI, each of our label presidents is ultimately responsible for making the decision whether or not to apply the Parental Advisory Label on recordings released by that label. The decision is necessarily subjective, and a variety of factors are considered in addition to straight lyrical content, including context, frequency, emphasis and interpretation. An attempt to capture all of this subtlety through the use of a limited number of general descriptors may be inaccurate and misleading.

EMI releases thousands of album-length sound recordings in the United States each year. While we applaud BMG for attempting to provide parents with additional information, we remain cautious about whether the new policy will be effective—and we remain wary about any potential unintended negative consequences, including legal concerns over claims, however, unwarranted, that product is in fact mislabeled. In sum, therefore, before we take the significant step of making a far-reaching change to our current Parental Advisory Policy—one that we believe works quite well to achieve its goals—we want to better assess the effects of the new BMG policy.

I hope that this letter is helpful in providing you with an understanding of EMI's views on this important issue. I am happy to continue this dialogue and to update the Committee on any changes to EMI's policy in the future.

Sincerely,

DAVID MUNNS, *Chairman and CEO,*
EMI Recorded Music, North America

cc: Alain Levy, Chairman and CEO, EMI Recorded Music
Mike Dungan, President and CEO, Capitol Nashville
Bill Hearn, President and CEO, EMI Christian Music Group
Bruce Lundvall, CEO, Blue Note, Angel and Manhattan Records
Matt Marshall, President, Higher Octave Music
Jorge Pino, President and CEO, EMI Recorded Music Latin
Phil Quartararo, Executive Vice President, EMI Recorded Music, North America
Matt Serletic, Chairman and CEO, Virgin Records America
Andy Slater, President and CEO, Capitol Records
Wesley Van Linda, President and CEO, Narada Productions

WARNER MUSIC GROUP
October 31, 2002

The Honorable BILLY TAUZIN
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

DEAR MR. CHAIRMAN, I am writing in response to your October 1st letter to Hilary Rosen in which you asked her to solicit from RIAA member companies their position on adding content descriptors to parental advisory labels. Warner Music Group understands your concerns in this area and your interest in providing parents with information that will be helpful in guiding their decisions about music choices.

We are seriously considering your suggestions. Warner Music Group has been engaged in a process to evaluate the merits of including additional information on our parental advisory labels describing the nature of the recorded musical content. As part of this process, we are speaking with our record labels, our artists' representatives, parents and music retailers. In order to reach a decision, we need to learn whether the addition of content descriptions (of the BMG sort or otherwise) would be helpful to music retailers and will assist parents in making purchasing decisions for and with their children.

We expect to have all feedback by the end of this year so that a final decision can be reached at that time. We will keep you apprised of the process as we move forward.

Very truly yours,

DAVID H. JOHNSON,
Executive Vice President & General Counsel

cc: Hilary Rosen

UNIVERSAL MUSIC GROUP
October 31, 2002

The Honorable BILLY TAUZIN
*Chairman
 Committee on Energy and Commerce
 U.S. House of Representatives
 Washington, DC 20515*

DEAR MR. CHAIRMAN: Hilary Rosen forwarded to me your letter regarding the programs we use to advise parents and other consumers about sound recordings that contain explicit content. My colleagues and I followed the Commerce Committee's recent hearing and appreciate your views as well as those of others on the Committee. The Universal Music Group has a comprehensive review process in place to monitor the content of releases from all of its record labels, and over the years UMG has chosen not to release certain music. We take this subjective and difficult undertaking quite seriously, knowing that not everyone will always agree with the decisions that are made.

The company is also committed to following the voluntary stickering program devised in cooperation with the record industry and the Recording Industry Association of America to alert consumers to potentially offensive material. A recent study by the Federal Trade Commission from September 2000 found that more than 70% of parents surveyed were satisfied with the current Parental Advisory label. UMG supports the Parental Advisory labeling system as an effective and recognizable tool for parents to help them determine if the content is appropriate for their children. UMG believes that the Parental Advisory label can be an effective tool for parents in the online world as well. It is noteworthy that pressplay, an online music venture with which UMG is associated, enables parents to block from their homes songs that have been stickered with the RIAA Parental Advisory label. Pressplay is virtually the only online music site to take such steps to educate and empower parents. In fact, the limited availability of parental advisory information or controls on peer-to-peer networks was one of the concerns cited by Senator Rick Santorum and Representative Joe Pitts in their request that the FTC conduct a study on the problems of peer-to-peer networks.

Importantly, as part of our ongoing relationships with our retail partners and with consumers, we continue to review and assess the viability of the current labeling system. In June of 2001, the Universal Music Group initiated changes to our Parental Advisory labeling procedures with respect to the marketing of albums carrying the Parental Advisory label, in order to more clearly identify such labeled product for parents.

UMG required that all radio and television advertisements for "stickered" UMG releases carry the Parental Advisory label. Furthermore, it is our policy that such advertisements carry a notice indicating "Edited Version Available," if applicable. UMG also adopted an internal compliance process to ensure that the appropriate steps are being taken by each label within the Universal Music Group.

More recently, as you have noted, one record company—BMG—has opted to adopt a different labeling system. We have been meeting with retailers around the country to obtain their views on whether they and their customers find the RIAA system satisfactory, whether or not the BMG-adopted system is being well-received, or whether a different approach should be explored. At this stage, there has been very little practical experience with the BMG-adopted system, although it has certainly stimulated further analysis and internal debate.

Universal Music Group takes this issue seriously and is dedicated to maintaining a viable balance among its artists, the preferences and demands of audiences in the marketplace and our effort to inform parents.

Respectfully submitted,

MICHAEL OSTROFF
Executive Vice President, Business & Legal Affairs

cc: The Honorable Joe Barton
 The Honorable Eliot Engel
 The Honorable Paul Gillmor
 The Honorable Chip Pickering
 The Honorable John Shimkus
 The Honorable Lee Terry
 The Honorable Fred Upton
 Hilary Rosen