

107TH CONGRESS
1ST SESSION

H. R. 2246

To prohibit the targeted marketing to minors of adult-rated media as an unfair or deceptive practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 2001

Mr. ISRAEL (for himself and Mr. OSBORNE) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the targeted marketing to minors of adult-rated media as an unfair or deceptive practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Media Marketing Ac-
5 countability Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Children have easy access to a variety of
9 media and entertainment options without leaving
10 their own homes. The vast majority of homes with

1 children have a VCR, a CD player, and either a
2 video game console or a personal computer.

3 (2) Children, and especially teenagers, spend a
4 large amount of time listening to music, seeing mov-
5 ies, and playing video games. Specifically:

6 (A) Children ages 8 through 13 spend ap-
7 proximately 3 hours per week in a movie the-
8 ater, on average. In addition, 62 percent of chil-
9 dren ages 9 through 17 spent an average of 52
10 minutes per day watching video tapes.

11 (B) 82 percent of children play video
12 games, and do so for 33 minutes per day, on
13 average.

14 (C) Children ages 14 through 18 listen to
15 music approximately 2½ hours per day on av-
16 erage.

17 (3) Teenagers spend tens of millions of dollars
18 annually on movies, music, and video games, making
19 them a highly valuable demographic group to the
20 producers and distributors of entertainment prod-
21 ucts.

22 (4) Media violence can be harmful to children.
23 Most scholarly studies on the impact of media vio-
24 lence find a high correlation between exposure to
25 violent content and aggressive or violent behavior.

1 Additional studies find a high correlation between
2 exposure to violent content and a desensitization to
3 and acceptance of violence in society.

4 (5) On September 11, 2000, the Federal Trade
5 Commission reported that companies in the music,
6 movie, and video game industries routinely target
7 children under age 17 in the advertisement of adult-
8 rated products. Specifically:

9 (A) The Commission found that 80 percent
10 of the R-rated movies studied had been targeted
11 to children. In addition, marketing plans for 64
12 percent of the R-rated movies studied explicitly
13 mentioned children under age 17 as part of the
14 target audience.

15 (B) The Commission found that all mar-
16 keting plans for music recordings with explicit
17 content labels either explicitly mentioned chil-
18 dren under age 17 as part of the target audi-
19 ence or called for ad placement in media that
20 would reach a majority or substantial percent-
21 age of children under age 17.

22 (C) The Commission found that 70 percent
23 of Mature-rated video games studied were tar-
24 geted to children under age 17, and 51 percent
25 explicitly mentioned children under age 17 as

1 part of the target audience. Additionally, the
2 Commission found that 91 percent of the video
3 game manufacturers studied had at one time
4 expressly identified children under age 17 as
5 the core, primary, or secondary audience of an
6 M-rated game.

7 (6) To correct this problem, the Commission
8 called on these industries to adopt voluntary, uni-
9 form policies expressly prohibiting these practices
10 and to enforce these policies with real sanctions for
11 violations.

12 (7) To date, as the Commission noted in a fol-
13 low-up report released on April 24, 2001, only the
14 video game industry has agreed to adopt such a
15 marketing code. The Commission also noted that,
16 despite some encouraging changes in behavior since
17 the release of the Commission's original report in
18 2000, a number of companies in all three industries
19 have nevertheless continued to market adult-rated
20 products in venues popular with children.

21 (8) Because the entertainment industry con-
22 tinues to target its advertising of adult-rated prod-
23 ucts to children, there is need for narrowly targeted
24 legislation to prohibit, as a false and deceptive trade
25 practice, the targeting of children in the advertise-

1 ment and other marketing of products rated for
2 adults, and to authorize the Federal Trade Commis-
3 sion to stop these practices.

4 **TITLE I—TARGETED MARKETING**
5 **OF ADULT-RATED MEDIA TO**
6 **CHILDREN**

7 **SEC. 101. PROHIBITION ON TARGETED MARKETING TO MI-**
8 **NORS OF ADULT-RATED MEDIA AS UNFAIR**
9 **OR DECEPTIVE PRACTICE.**

10 (a) IN GENERAL.—The targeted advertising or other
11 marketing to minors of an adult-rated motion picture,
12 music recording, or electronic game, in or affecting com-
13 merce, shall be treated as a deceptive act or practice with-
14 in the meaning of section 5 of the Federal Trade Commis-
15 sion Act (15 U.S.C. 45), and is hereby declared unlawful.

16 (b) TREATMENT AS TARGETED ADVERTISING OR
17 MARKETING TO MINORS.—For purposes of this section,
18 the advertising or other marketing of an adult-rated mo-
19 tion picture, music recording, or electronic game shall be
20 treated as targeted advertising or other marketing of such
21 product to minors if—

22 (1) the advertising or marketing—

23 (A) is intentionally directed to minors; or

24 (B) is presented to an audience of which a

25 substantial proportion is minors; or

1 (2) the Commission determines that the adver-
2 tising or marketing is otherwise directed or targeted
3 to minors.

4 **SEC. 102. SAFE HARBOR.**

5 (a) IN GENERAL.—The advertising or other mar-
6 keting to minors of an adult-rated motion picture, music
7 recording, or electronic game shall not be treated as tar-
8 geted advertising or other marketing to minors, for pur-
9 poses of section 101, if the producer or distributor respon-
10 sible for the advertising or marketing adheres to a vol-
11 untary self-regulatory system with respect to such product
12 that satisfies the criteria under subsection (b) and is sub-
13 ject to the sanctions referred to in subsection (b)(3).

14 (b) CRITERIA.—The Federal Trade Commission
15 shall, by rule, establish the criteria referred to in sub-
16 section (a). Under such criteria, a voluntary self-regu-
17 latory system shall include the following elements:

18 (1) An age-based rating or labeling system for
19 the product in question.

20 (2) For all products that are rated or labeled
21 as adult-rated under such system—

22 (A) prohibitions on the targeted adver-
23 tising or other marketing to minors of such
24 products; and

1 (B) other policies to restrict, to the extent
2 feasible, the sale, rental, or viewing to or by mi-
3 nors of such products.

4 (3) Procedures, including sanctions for non-
5 complying producers and distributors, meeting such
6 requirements as the Commission includes in such
7 criteria in order to assure compliance with the prohi-
8 bitions and other policies referred to in paragraph
9 (2).

10 **SEC. 103. REGULATIONS.**

11 (a) IN GENERAL.—The Federal Trade Commission
12 shall prescribe rules that define with specificity the acts
13 or practices that are deceptive acts or practices under sec-
14 tion 101.

15 (b) IN PARTICULAR.—The rules under subsection
16 (a)—

17 (1) shall specify criteria for determining wheth-
18 er or not an audience is comprised of a substantial
19 proportion of minors for purposes of section
20 101(b)(1)(B); and

21 (2) may include requirements for the purpose of
22 preventing acts or practices that are deceptive acts
23 or practices under section 101.

1 **SEC. 104. MATTERS RELATING TO REGULATIONS.**

2 (a) IN GENERAL.—The Federal Trade Commission
3 shall prescribe rules under sections 102 and 103 in accord-
4 ance with the provisions of section 553 of title 5, United
5 States Code.

6 (b) TIME LIMIT.—The Commission shall prescribe
7 the regulations required under sections 102 and 103(b)(1)
8 not later than 12 months after the date of the enactment
9 of this Act.

10 **SEC. 105. ENFORCEMENT.**

11 (a) IN GENERAL.—This title shall be enforced by the
12 Federal Trade Commission under the provisions of the
13 Federal Trade Commission Act (15 U.S.C. 41 et seq.).

14 (b) ACTIONS BY COMMISSION.—

15 (1) IN GENERAL.—The Commission shall pre-
16 vent any person from violating section 101, or a rule
17 of the Commission under section 103, in the same
18 manner, by the same means, and with the same ju-
19 risdiction, powers, and duties as though all applica-
20 ble terms and provisions of the Federal Trade Com-
21 mission Act were incorporated into and made a part
22 of this title.

23 (2) PARTICULAR RULES.—A rule prescribed
24 under section 103(b)(1) shall be treated as a rule
25 prescribed under section 18(a)(1)(B) of the Federal
26 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)),

1 and any violation of a rule prescribed under such
2 section 103 shall be treated as a violation of a rule
3 respecting unfair or deceptive acts or practices
4 under section 5 of the Federal Trade Commission
5 Act (15 U.S.C. 45).

6 (3) RIGHTS AND LIABILITIES OF PARTIES.—
7 Any person or entity that violates section 101, or a
8 rule of the Commission under section 103, shall be
9 subject to the penalties, and entitled to the privileges
10 and immunities, provided in the Federal Trade Com-
11 mission Act in the same manner, by the same
12 means, and with the same jurisdiction, powers, and
13 duties as though all applicable terms and provisions
14 of that Act were incorporated into and made a part
15 of this title.

16 (c) EFFECT ON OTHER LAWS.—Nothing in this title
17 shall be construed to limit the authority of the Commission
18 under any other provision of law.

19 **SEC. 106. DEFINITIONS.**

20 In this title:

21 (1) ADULT-RATED.—The term “adult-rated”, in
22 the case of a motion picture, music recording, or
23 electronic game, means a rating or label voluntarily
24 assigned by the producer or distributor of such prod-
25 uct, including a rating or label assigned pursuant to

1 an industry-wide rating or labeling system, which
2 rating or label—

3 (A) indicates or signifies that—

4 (i) such product is or may be appro-
5 priate or suitable only for adults; or

6 (ii) access to such product by minors
7 should be restricted; or

8 (B) in the case of a music recording, ad-
9 vises or signifies that such product may contain
10 explicit content, including strong language or
11 expressions of violence, sex, or substance abuse.

12 (2) MINOR.—The term “minor” means an indi-
13 vidual below the age established under the rating or
14 labeling system in question to be an appropriate au-
15 dience for adult-oriented material, but in no event
16 includes an individual 17 years of age or older. If no
17 specific age is so established under the rating or la-
18 beling system in question, the term means an indi-
19 vidual less than 17 years of age.

20 (3) ADULT.—The term “adult” means an indi-
21 vidual who is no longer a minor.

22 (4) ELECTRONIC GAME.—The term “electronic
23 game” means any interactive entertainment soft-
24 ware, including any computer game, video game, or
25 on-line game, sold or rented on any tangible medium

1 or by any electronic or on-line medium by which the
2 right to play a specified interactive-entertainment-
3 software product is purchased.

4 (5) MOTION PICTURE.—The term “motion pic-
5 ture” means any theatrical motion picture shown in
6 a commercial theater or sold or rented by videotape,
7 digital recording, or other tangible medium or by
8 any electronic or on-line medium by which the right
9 to play an individual theatrical motion picture is
10 purchased, except that such term shall not include
11 anything shown on broadcast television or cable tele-
12 vision.

13 (6) MUSIC RECORDING.—The term “music re-
14 cording” means any recording of music sold or
15 rented on compact disk, tape cassette, vinyl record,
16 music video, or other tangible medium or by any
17 electronic or on-line medium by which the right to
18 hear a specified work of music is purchased, except
19 that such term shall not include anything shown on
20 broadcast television or cable television.

21 **SEC. 107. EFFECTIVE DATE.**

22 This title shall take effect 90 days after the date of
23 the enactment of this Act.

TITLE II—OTHER MATTERS

SEC. 201. STUDY OF MARKETING PRACTICES OF ENTERTAINMENT INDUSTRIES REGARDING ADULT-RATED MATERIALS.

(a) IN GENERAL.—The Federal Trade Commission shall conduct a study of the advertising and other marketing practices of the motion picture industry, music recording industry, and electronic game industry regarding adult-rated motion pictures, music recordings, and electronic games.

(b) MATTERS TO BE STUDIED.—In conducting the study under subsection (a), the Commission may examine—

(1) whether and to what extent the industries referred to in that subsection direct to minors the advertising and marketing of adult-rated materials, including—

(A) whether such materials are advertised or promoted in media outlets in which minors are present in substantial numbers or comprise a substantial percentage of the audience; and

(B) whether such industries use other marketing practices designed to attract minors to such materials;

1 (2) whether and to what extent retail mer-
2 chants, movie theaters, or others who engage in the
3 sale or rental for a fee of products of such
4 industries—

5 (A) have policies to restrict the sale, rent-
6 al, or viewing to or by minors of adult-rated
7 materials; and

8 (B) have procedures to ensure compliance
9 with such policies;

10 (3) whether and to what extent such industries
11 require, monitor, or encourage the enforcement of
12 their voluntary rating or labeling systems by indus-
13 try members, retail merchants, movie theaters, or
14 others who engage in the sale or rental for a fee of
15 the products of such industries;

16 (4) whether and to what extent such industries
17 engage in activities to educate the public in the ex-
18 istence, use, or efficacy of their voluntary rating or
19 labeling systems; and

20 (5) whether and to what extent the policies and
21 procedures referred to in paragraph (2), any activi-
22 ties referred to in paragraphs (3) and (4), and any
23 other activities of such industries are effective in re-
24 stricting the access of minors to adult-rated mate-
25 rials.

1 (c) FACTORS IN DETERMINATION.—In determining
2 whether the products of an industry are adult-rated for
3 purposes of subsection (b), the Commission shall use the
4 voluntary industry rating or labeling system of the indus-
5 try, both as in effect on the date of the enactment of this
6 Act and as modified after that date.

7 (d) AUTHORITIES.—In conducting the study under
8 subsection (a), the Commission may use its authority
9 under section 6(b) of the Federal Trade Commission Act
10 (15 U.S.C. 46(b)) to require the filing of reports or an-
11 swers in writing to specific questions, as well as to obtain
12 information, oral testimony, documentary material, or tan-
13 gible things.

14 (e) REPORTS.—

15 (1) REQUIREMENT.—The Commission shall
16 submit to Congress and the public two reports on
17 the study under subsection (a), as follows:

18 (A) An initial report, not later than two
19 years after the date of the enactment of this
20 Act.

21 (B) A final report, not later than six years
22 after that date.

23 (2) ELEMENTS.—Each report under paragraph
24 (1) shall include—

1 (A) a description of the study conducted
2 under subsection (a) during the period covered
3 by the report;

4 (B) any findings and recommendations of
5 the Commission arising out of the study as of
6 the end of that period; and

7 (C) the identification of the particular pro-
8 ducers and distributors, if any, engaged in ad-
9 vertising or other marketing practices relevant
10 to such findings and recommendations.

11 (f) DEFINITIONS.—In this section, the terms “adult-
12 rated”, “electronic game”, “motion picture”, “music re-
13 cording”, and “minor” have the meanings given those
14 terms in section 106.

15 **SEC. 202. SEPARABILITY.**

16 If any provision of this Act, or the application of such
17 provision to any person, partnership, corporation, or cir-
18 cumstance, is held invalid, the remainder of this Act, and
19 the application of such provision to any other person, part-
20 nership, corporation, or circumstance, shall not be affected
21 thereby.

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