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EMA's Mission:

To protect the right to sell and rent entertainment products and content; promote the sale and rental of entertainment products and content; and provide a forum for all those engaged in the sale, rental and/or commercial delivery of home entertainment to consumers.

EMA's Court Win Featured in the News

The U.S. Supreme Court's ruling in the *Brown v. Entertainment Merchants Association* case was prominently covered by practically all general news outlets in the nation (and many others around the world). It was front page news in a number of newspapers and was the subject of television and radio reports.

EMA President & CEO Bo Andersen was interviewed in stories on the ruling on the *CBS Evening News*, *NBC News*, a widely published Associated Press story, and AP Radio. EMA representatives were also featured on local television, radio, and newspapers throughout California. Additional news outlets included quotes from EMA's news release on the victory.

Quarterly Newsletter of the Entertainment Merchants Association (EMA)

Supreme Court Sides with EMA and Rejects Video Game Restrictions

On June 27, the United States Supreme Court handed EMA and the Entertainment Software Association (ESA) a resounding victory in the associations' challenge to a California video game restriction law in the *Brown v. Entertainment Merchants Association* case.

In 2005, the California legislature passed and then-Governor Arnold Schwarzenegger signed the sweeping video game restriction law. This law, like several hundred similar bills introduced in 32 other states and the U.S. Congress over the past decade, would have banned sales and rentals to minors of video games depicting violent images. A massive lobbying effort by EMA, the Entertainment Software Association (ESA), state retail associations, civil liberties groups, and others was successful in defeating the vast majority of these measures, but bills were signed into law in California and eight other jurisdictions. EMA and ESA sued to bar the enforcement of each of these laws and were successful in U.S. District courts and federal appellate courts, so that none of these laws went into effect.

The California law sought to ban all sales and rentals of video games in which the range of options available to a player included killing or maiming the "image of a human being" and which a reasonable person (juror) would find appeals to the "deviant or morbid interests of minors," is patently offensive to community standards as to what is suitable for minors, and considering the game as a whole, lacks "serious literary, artistic, political, or scientific value for minors." Under the law, if a game publisher or distributor were to find that a game meets these subjective standards for offensiveness, it would be required to mark the physical copies of the game with a large "18" and retailers would be prohibited from selling or renting games so marked to persons under the age of 18.

Because these variable standards were vague, unworkable, and unconstitutional, EMA and ESA sued and won a permanent injunction barring the enforcement of the law and successfully defended that injunction in the U.S. Court of Appeals for the Ninth Circuit.

California sought review by the U.S. Supreme Court, asking the Court to rule that violent depictions in video games are equivalent to obscenity for minors.

A majority of five justices of the Supreme Court, applying the traditional "strict scrutiny" analysis used for speech restrictions, found that the law violated the First Amendment's guarantee of freedom of expression. Two other justices concluded that the law should be overturned because it is impermissibly vague.

The dispositive elements of the majority opinion for the Court can be summarized as follows:

- First Amendment protections do not depend on the nature of the medium.
- Because video games convey ideas and social messages, they are forms of speech entitled to full-scale protection under the First Amendment.
- Legislatures cannot declare some forms of speech unprotected merely because they are disgusting or "too harmful to be tolerated."
- Legislatures cannot treat depictions of violence as a form of obscenity.
- States have no "free-floating power to restrict the ideas to which children may be exposed" – minors have free speech rights (although not as expansive as those held by adults).

“ No doubt a State possesses legitimate power to protect children from harm, ... but that does not include a free-floating power to restrict the ideas to which children may be exposed.”

– Justice Antonin Scalia, in *Brown v. EMA*

- Because many parents may not object to their children purchasing games covered by the law, its underlying effect is to support "what the State thinks parents *ought* to want" and is thus "overinclusive."
- Because the California law does not restrict minors' access to other media – books, television and movies – it is "wildly underinclusive" and could not achieve the objectives presented as a justification for the law.
- The ESRB video game ratings system and retailers' voluntary enforcement of these ratings provide an effective alternative to the law and those parents concerned about violence in video games "can readily evaluate the games their children bring home."

The decision represents a landmark holding against state censorship of expressive content in video games, books, movies, and in forms of expression in technology yet to be developed.

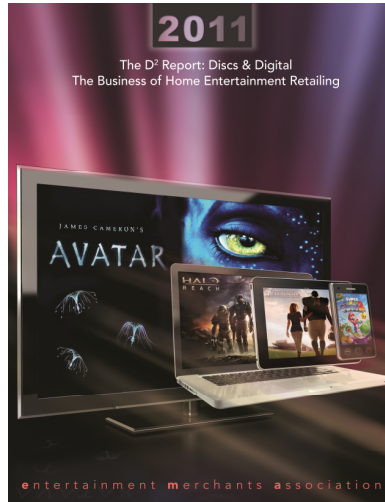
Responding the ruling, EMA President & CEO Bo Andersen stated, "While we appreciate this victory in the court of law, video game retailers remain committed to maintaining what the Federal Trade Commission has termed their 'vigorous' voluntary enforcement of the video game ratings."

Annual “Business of Home Entertainment Retailing” Report Available

EMA's 2011 *D² Report: Discs & Digital – The Business of Home Entertainment Retailing* is now available and is being sent to all members. This annual publication provides a current snapshot of the video and video game industries, discussing consumer spending, technology, product and retail trends, and projections for growth and change.

Highlights of the report include:

- **The video game industry was flat in 2010** with \$15.5 billion in consumer spending.
- **Consumer spending in 2010 for DVD, Blu-ray and digital totaled \$18.8 billion** – a 3.3% decline over 2009. There were significant areas of growth in spending:
 - ◆ Blu-ray disc spending increased 53% over 2009



- ◆ VOD increased 21%
- ◆ Electronic sell-through (EST) increased 16%
- **Physical discs still the most common format** - In the fourth quarter of 2010, 71% of video games purchased by consumers were in physical formats.
- **Digital game content growing**
 - ◆ 44% of console households have purchased downloadable game content. This is expected to grow to 58% by 2013.
- The rental business models for consumer spending in 2011 are projected to be 22% in traditional stores, 50% through subscription, and 28% at kiosks.

Jane Florentinus Retires



Long-time EMA employee Jane Florentinus retired in May after working for EMA and its predecessor, the Video Software Dealers Association, since 1997. At the time of her retirement, Jane served as Executive Assistant to Bo Andersen, President & CEO of the Association. Andersen said, “We are very sorry to see Jane leave, but happy for her that she will now have more opportunity to enjoy other aspects of her life. We wish her the best and thank her for her outstanding service to the Association and its members.

Buyers and Independent Studios Gather at Independent Product Market

EMA's Independent Product Market celebrated its third sold-out event June 28-29 at the Fairmont Miramar Hotel in Santa Monica. Independent Product Market is the premiere invitation-only hosted buyer event in home video, offering two-days of pre-scheduled meetings and networking opportunities for leading independent studios and many of the industry's leading buyers.

Seventeen independent studios met with 15 of the industry's key buyers in a series of pre-set meetings. EMA hosts the buyers for the event and develops the schedule to ensure that each buyer meets with each studio. Studios participating in the event were Anchor Bay, The Asylum, Gaiam, Image, Magnolia, Maya, Millennium, MPI, New Video, Phase 4, Questar, Screen Media, Summit, VCI, Virgil, Vivendi, and WEA. In addition to meetings, participants enjoy networking breakfasts, lunches, and a cocktail party.

During the event, EMA presented Home Entertainment Awards to four exceptional titles from independent studios that performed remarkably well in the past year.

Collecting the award for Sell-through Title of the Year was Summit Entertainment's **The Twilight Saga: Eclipse**. Winner of the Rental Title of the Year was **The Way Back** from Image Entertainment. The best Direct-to-Video/Limited Release Title of the Year was **The Human Centipede** by MPI Media Group. Virgil Film's **Restrepo** was awarded the Documentary/Special Interest Title of the Year.



Digital Media Pipeline To Be Held September 7 in Los Angeles

EMA's annual Digital Media Pipeline will be held again this year at the Skirball Cultural Center in Los Angeles. This year's conference will take place on Wednesday, September 7.



Growing Sales and Profit Through Efficiency"; "Viewing Choices – Multiple Screens For Everyone"; and "The Future of Digitally Delivered Entertainment."

Digital Media Pipeline is EMA's one-day conference focusing on business-to-business opportunities in the digital delivery of home entertainment to the consumer. It is in its third year.

The still-young digital delivery industry is growing quickly, and new technologies and new business models continue to launch almost weekly. Digital Media Pipeline offers opportunities for retailers, distributors, aggregators, content owners, and technology and service providers to share knowledge and experiences and to collaborate in

the business of retailing digital entertainment. It is anticipated that executives from all the leading providers of movie and television content as well as major retailers and distributors of digital content will be in attendance and on the stage sharing their insights.

The theme of Digital Media Pipeline is "Network, Collaborate, and Discover!" This year's program will include the following sessions: "The Business Models of Today and Tomorrow"; "It's All About the Content"; "The Digital Supply Chain –

There is ample time allocated to networking, including the "skip the traffic" cocktail party. EMA will also present its annual DIGI awards at the conference. These awards recognize outstanding achievement in digital entertainment retailing, content, and innovation.

More information and registration is available at www.digitalmediapipeline.com. Registration starts as low as \$245. For sponsorship opportunities please contact Steve Apple at steven@greenapplemedia.net.

Kongregate's Jim Greer To Keynote 2011 GamePlan Summit

Jim Greer, Co-Founder and CEO of the online game destination Kongregate, will keynote the 2011 GamePlan Summit. The Summit will be held September 13-15, 2011 at the Hyatt Regency Hotel in Chicago, IL.

The topic of Greer's address is "Achieving Community: Connecting Gamers Online." He will discuss who make up the Kongregate community, how Kongregate brings games to life, the future of online gaming, and how it fits in the overall menu of game consumption. He will conclude with "lessons learned."

"Jim Greer is a visionary in online video gaming and has created one of the most-successful and compelling gaming experiences," said EMA

President & CEO Bo Andersen. "We are looking forward to his discussion of how the video game business will change in the coming years and how retailers can be part of that change."

GamePlan Summit is the premiere industry-only video game conference designed to provide strategically focused retailer-supplier meetings and effective networking opportunities under one roof. An Executive Forum focusing on the future of the industry has been added to 2011 schedule to enhance the value of the GamePlan Summit. In addition, a special charity event to support the EMA Scholarship Foundation will also be presented. For more information, visit www.GamePlanSummit.com.



2011-2012 EMA Officers and Directors



EMA Board Chairman Bob Geistman

The Board of Directors of the Entertainment Merchants Association has elected its officers for the 2011-12 year. Bob Geistman (Ingram Entertainment) has been re-elected to a seventh consecutive term as Chairman of EMA, John Marmaduke (Hastings Entertainment, Inc.) was elected to serve as Vice Chairman, and Marty Graham (Rentrak Corporation) was named Treasurer.

Bruce Eisen (Dish Network) and Mike Gimlett (GameFly, Inc.) were selected to serve as at-large members of EMA's Executive Committee, which directs Association activities in-between Board meetings. All the Officers and at-large Executive Committee members were elected unanimously.

In addition to the members of the Executive Committee, the following individuals are members of the 2011-2012 EMA Board of Directors: Richard Barry (Toys R Us, Inc.); David Benson (Best Buy Co., Inc.); David Cook (RoxioNow, Inc.); Mindy Herman (Redbox Automated Retail, LLC); Mark Higgins (Trans World Entertainment); Daniel J. Kaufman (GameStop Corporation); Jim Loperfido (Emerald City Video); Ken McAleer (Video Headquarters); Joe Miller (Giant Eagle, Inc.); Steve Oliver (Amazon.com); Anna Lee (Netflix, Inc.); Mike Thielman (Target Corporation); and Mark Vrieling (Rain City Video/ScreenPlay, Inc.)



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EMA Awards Scholarships

The Entertainment Merchants Association Scholarship Foundation has awarded four outstanding college and college-bound students with scholarships.

This year's recipients (and the EMA-member company with which they are associated) are:

Samantha DeMatteo, New Castle, PA (Giant Eagle)
Alexandra Mientus, Pittsburgh, PA (Giant Eagle)
Nathan Rubin, Pittsburgh, PA (Giant Eagle)
Chelsea Riley, Amarillo, TX (Hastings Entertainment)

The students will receive \$1,500 per year for up to four years .

EMA's scholarship program is open each year to high-school seniors who will be entering college as freshmen in the following year as well as to undergraduates currently attending a four-year college institution. Scholarships are also now available to those pursuing a graduate degree. Employees, children, and spouses of EMA regular and associate member companies worldwide are eligible for EMA Scholarships.

Established in 1987, EMA's Scholarship Program has awarded more than \$1 million in scholarships to over 232 students.



Loss Prevention Statistics Available

EMA's recently completed 2011 Loss Prevention Shrink Metrics and Practices Study is now available. The annual study is based on confidential reporting by EMA-member retailers on their DVD, Blu-ray Disc, and video game shrink experience in the prior year.

Among the many data points in this year's study are:

- 2010 DVD (Sell-Thru) Shrink as a percentage of DVD (Sell-Thru) Revenue: 2.14%, down from 2.54% in 2009, but up slightly from 2.09% in 2008.
- 2010 Blu-ray (Sell-Thru) Shrink as a percentage of Blu-ray (Sell-Thru) Revenue: 6.98%, down from 8.17% in 2009, and from 9.02% in 2008.
- 2010 Video Game Shrink as a percentage of Video Game Revenue: 0.87%, down from 2.02% in 2009 and from 1.68% in 2008.



The study is free for EMA members and costs \$50 for non-members. For a copy, please contact Mark Fisher (mfisher@entmerch.org).