Session 2

Gender, Language, and Image in Electrical History

The "Girl" Next Door in Virtual Play Space: Victim, or Vixen, or Invisible?

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The computer age may be giving kids a new outletfor their dark fantasies, but this hardly means it is turning them into killers--Chris Taylor, 1999, 50

Entertainment can not be divorced from its representational politics--Henry Giroux, 1995

Ya don't picture girls playing those computer games, saying, "Oh fuck--I lost again"--Nathan, young male gamer, quoted in Alloway and Gilbert, 1999, 110

Abstract This paper begins a comprehensive analysis of gender and virtual gaming, and the ethics and legality surrounding this dyad. The first part of the paper introduces the ideas of gaming as an act of representational politics--what *is* taking place with female images, girls and women as characters, and as players, and consequently, how can we assess the ethical significance of these in a broad social realm? While various sociologists, psychologists, educators, and others debate the direct and causal impact of video and computer gaming on children and young adults in terms of violence, this paper avoids that hotly contested link (especially within the current climate of school shootings and children on children violence). Instead, the legalistic concept of "dangerous information" is invoked and explored.

We argue that such forms of expression as music, games, film, television, et cetera, do not in and of themselves incite or promote violence, bias, bigotry, or sexism. A large amount of case law is presented and discussed to support this premise. Instead, these forms of "entertainment" contribute to forms of social discourse and maintain a rigid politics of gender in which women and girls are relegated to the unethical social realm where they exist only as victims or vixens, or exist not at all.

Keywords Gender, video gaming, dangerous information, women and video games, ethics and video games, legality and video games

INTRODUCTION

The cultural climate during which we are researching video games, their significance and representational politics, and the idea of dangerous information has progressed in a downward spiral over the last few months, with the well-known and much discussed rash of school shootings. It has become very popular and indeed, politically correct, to blame the entertainment industry, which encompasses film, TV, music, and computer and video games for these acts, while other such significant factors as broken homes, poverty, hunger, domestic violence take a concealed and ignored seat behind *Doom, Marilyn Manson,* and other such "murder simulators" (Wallace, April 25, 1999). It is not our intention here to defend or blame entertainment and we believe that to be a useless discussion without considering the truly important influences and issues that affect our children, young adults, and society at large. Our specific focus here asks where are girls and young women situated in this new climate, and what implications arise in the world of video gaming for gender equity and representational politics? Do video games contribute to dangerous information, insofar as their representational politics incite sexism, violence against women, degradation, and a cultural climate in which it is acceptable to treat girls and women unethically?

The three quotes with which this paper begins hold weight and indeed open avenues for a hopefully more enlightening discussion: What are these dark fantasies, to whom do they belong, and what do they mean to society as a whole? What ethical implications arise out of the representational politics of girls and women in these virtual spaces and by extension, "real" spaces? Case law supports our inclination that violence, for instance, in video games does not incite school children to shoot their peers, nor lyrics from *Korn* songs to foster homophobia, nor does rap music in and of itself promote misogyny. However, these things may contribute to an ethical environment in which children and young adults fail to see and

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understand what it is they are doing and buying into. The ethical climate of gender representation in gaming is indeed questionable. Philip Brey's (1998) approach to understanding the ethics of virtual reality provides a suitable argument for the discussion herein. He notes that not only is unethical misrepresentation and biased representation a commonality in VR , the behaviors encouraged through VR are often unethical and immoral, and thus should be questioned not based on individual concerns but on the social level. He also is calling attention to representational politics, similar to Giroux. Undoubtedly, we'll continue to see more blame placed where it ought not to be, as President Clinton has just this month released an 18 month study on the effects of virtual violence on children. Our hope lies in calling attention where it ought to be, on social discourse and the ethics of video gaming as contributors to this discourse, and introducing some aspects of policy formation to change the social climate towards girls and women in virtuality and reality.

Ethics of Virtual Representation: Boys will be Boys?

For decades, indeed centuries, we've been socially and culturally taught the clear distinctions between boys and girls--their behavior, manners, school yard antics, appearances, areas of "appropriate" studies and "expertise," toys, and much more. We've seen differences in the ways in which women are positioned in film, TV, and theatre as characters and as viewers. We've been told of "essential" differences between the sexes, and such differences are accepted as legitimate rationale for inequity and bias. We've seen dolls and "action figures" "represent" boys and girls, and now, we are seeing similarly prescribed technological distinctions in the form of computer games, video games, and software. We've come to expect and as some assert, desire, such differences--this is what society deems "right." Girls wear pink and boys wear blue--this is the way it is. Associations between the masculine and the feminine are defined for us and are continually reinforced through various cultural mechanisms: The high-tech information age in which we are currently living offers a plethora of avenues through which such reinforcement takes place. The politics in and of representation, whether virtual or real, are extremely gendered.

Researchers have recognized the inherent masculinity contained within and around computer/video gaming (Braun and Giroux, 1989), while others, such as Durkin (1995) and Provenzo (1991), acknowledge great aggression as the defining trait of video games, and the existence of more violent male figures and characters in video games than on television. The now-defunct Purple Moon's Brenda Laurel flat out acknowledges that girls' interests are simply, fundamentally different from boys; girls seek relationships and exploration as opposed to repetitive, so-called skill-building tasks found in games for boys. And, within these differences lies a deep cultural significance: Alloway and Gilbert assert "[J]ust as the Barbie doll culture constructs a highly gendered representational field targeted at girls, which includes multimedia cultural texts, images and objects, the world of video games offers much the same to boys and young men" (95). Further, this world " is semiotically marked out in terms of difference and opposition: an understanding, for example, of what it means to be a male or female subject; to have dominant ethnic or racial status; to be privileged or silenced. Young people take up positions within their social worlds according to how they are situated and constructed as gendered, classed and ethnic identities, although the interplay between these positionings is always complex" (97).

To begin to understand these issues in video gaming, one must look at the virtual characters as well as the ways in which girls and women are addressed in and through the games. We need to adopt a critical perspective and understand both levels of gaming--the world of the game as well as the "real" world. How do we assess the ethics of both, without making the invalid leap found in many correlational studies? Can we look at the issues raised by gender representation in computer and video games from a philosophical perspective, specifically, through various ethical theories with much confidence? Brey asserts no, and his argument is worth a brief presentation. Two major positions can be identified; first, the "standard pro-censorship," in which

> it is claimed that such games are immoral, that they hinder moral development, that they cause immoral or anti-social behavior in the real world, and that under these circumstances, the state has the right to impose censorship. In the "standard anti-censorship position," the libertarian viewpoint is defended that since immoral acts in a virtual environment do not cause harm to others, the decision to engage in such behavior is private, and morality of these games or the right of individuals to use them should be decided by private citizens individually and not by the state or other acting body. (Brey, 12)

These two positions form the philosophical continuum which is at the heart of this paper. Should

we censor *Resident Evil* because of its "animated blood and gore," or, is the "Mature, 17+ rating" sufficient to ensure that libertarian ideal? *Tomb Raider*'s Lara Croft (with 36-24-36 measurements) promotes an image of femininity nearly unattainable by most girls. But, "when Lara's got a problem, she doesn't talk it through, she blasts it to smithereens" (Kafka and Levine, 1998, 39). Thus, the female character possesses agency, something not too common among popular games: Of the top 5 best selling games, none has a female protagonist at the helm (NYT, The Year's Top Media Buys, 1/4/99, C21). As Brey noted, misrepresentation and biased representation raise significant ethical issues, and our focus on gender reveals further ethical dilemmas within such games. Must girls and young women be indoctrinated into a world of such few choices--can virtual females be protagonists if they don't look a certain way? Do "real" girls and women have virtual characters with whom to identify? They don't identify with Lara Croft, and the producers of *Tomb Raider* really do not care: "Eidos has sold 3 million copies to retailers, aiming at America's hormonal midsection: men 18 to 35 years old" (Kafka and Levine, 1998, 39). Does *Tomb Raider* succeed in the boys' world of games and of fantasies because she has agency or because she wears a tight t-shirt?

Furthermore, concrete ethical theories such as Kantian deontology or utilitarianism, two major ethical camps recognized universally (Kohlberg, 1976) fall to lend to coherent policy formation guiding video gaming. The invocation of the Kantian categorical imperative is problematic in a direct application to video game characters. We are to treat others with respect and treat all humans as ends, not as means. Can we apply this to the virtual characters? Do they "need" respect? Is there a societal benefit to treating virtual characters as real and with respect (and then, the argument infers, such shootings as Columbine High would cease to occur)? If we treat these virtual characters as non-real, do children and young adults understand the difference between chopping up someone in the game and chopping up her best friend? The pro-censorship position says no, children do not have the faculties to make these distinctions and we must protect them from such virtual forms of violence if we want to avoid real violence. Kant's ethics demand that we treat all peoples as ends, never to be treated simply as means. But, what is the purpose of video games and their characters? Characters comprise the vehicles through which something is attained--a high score or lots of victims. They are means and nothing else. The *relationship* the gamer forges with the characters in the game raises the flag for those who want to censor violent or misogonyistic content. And, as we will discuss, it is precisely this relationship that many look to when invoking claims of dangerous information. Yet, the fact that girls and young women often are denied this relationship, for reasons presented momentarily, they have little control with how they are then extending the video world into the real world. Herein lies an ethical dilemma grounded in gender representation. As an interesting aside, Brenda Laurel discovered with girls and games is that they are not necessarily opposed to the violence, but that they are boring, with no story or elaborate plot (Belsie, 1997, 12).

A simple, straightforward utilitarian approach seems unproductive; are video games a social good? If so, do they benefit the greatest number of social members? Given that girls and women are left out of much of the gaming world on a number of levels, it is simply unethical from the utilitarian perspective. And, the case for video games as a social good is a difficult sell: In our current cultural climate, they are seemingly little more than a social blight, and establishing any argument for their social good remains laborious.

We can however, analyze them and address a number of issues. The application of ethics in video gaming takes a number of additional directions. In addition to misrepresentation and biased stereotypes, as Brey discusses, further areas in need of ethical examination in direct relation to gender include:

Agency: Do women characters have a significant role and are they able to make decisions and actions that affect the world of the game?
Passivity: Are women characters relegated to passive positions, such as the flag-waving race starter (or "Race Chick" as I've been told) in Ridge Racer Type 4? This passive role resembles the long history of women in film and theatre. Women as objects of desire or detestation--the virgin or the whore--the victim or the vixen. Must women characters be relegated to such dichotomous existences? While Lara Croft is an active agent, she uses her sexuality in questionable ways.
Invisibility: Some games contain no women characters at all--many sports simulations are typical of this absence. Girls and women aren't included in such games as the NHL Hockey or NFL Football.
Reality: Brey notes that certain standards of accuracy must ground VR; can video games support such a standard? Can girls and women look like Lara Croft without sickness or air brushing?
Identity: With whom do girls and young women identify in the world of games? Again, to call on Lara

Croft, an Eidos spokesperson says, Lara Croft isn't just somebody the testosterone-addled players want to bed; she's somebody they want to be. It used to be that when we played video games, it wasn't cool to be a girl" ((Kafka and Levine, 1998, 39).

Audience/Address: Does the video game industry "speak" to girls and women? Can they carve their own niche in arcades, pick up a gaming magazine and connect with others? Is there a textual connection between girls and video games? Why is Nathan, the young boy quoted early on saying "You can't picture a girl saying, 'Oh fuck, I've lost again?'" right in his assessment?

Points of View/Subjectivity: Very few video games offer the narrative perspective through female perceptions and sensations. Do games offer choices for aligning oneself with a character? Some games, such as *Resident Evil* do offer a choice between a male and female lead character and the stories are unique. Most games, however, fail to present this choice. Significance surrounds the availability of different access points, narratives, and tasks, again, noting that such qualities are appealing to girls over the repetition of "meaningless" tasks. Brunner and Bennett (1998, 59) hold that "we should make sure...that the feminine perspective on technology is as much part of the conversation as the masculine one."

Intent: What is it we games are teaching to girls and young women? The fact that *Barbie Fashion Designer* was the top selling game for girls raises significant issues surrounding claims of progress made on a feminist front. And, just recently, Mattel and Apollo Computers announced their "mist gray" and "glitter pink accented" Barbie printer: "Every little girl that walks into the store and sees it on a shelf will fall in love with it," says Apollo's general manager. And, with such products, they are priming young girls for their role in a consumer culture where they are being transitioned from computers to the appliance market, "where color and style become major selling points" ("A Printer with Pink Accents Lends a Barbie Touch," NYT, 6/3/99, D3).

Quantity: In plain numbers, the availability of games directed towards a female audience are minimal; the situation is this: "Walk the aisles of the local video game store and you'll find slim pickings beyond the shoot-em, bash-em, race-em, variety of software titles. Even well-regarded software is often male-oriented....No wonder girls fall behind boys in computer use around the sixth grade. The industry virtually ignores them" (Belsie, 1997, 12). From this, one can gather that the lack of women in the computing industry, sciences, and other technological fields makes perfect sense: "Women remain underrepresented in high-tech careers....As a result, some women in technical careers are eager for software or any other intervention that will increase girls' interest in physics, engineering, and other non-traditional careers" (Appleton, 1999, 1C).

Thus, the ethics surrounding virtual gaming is complex. The representational politics of gender in games need greater evaluation and assessment and our work will continue to analyze games with particular attention to the issues raised above. However, despite the unethical representation of women and the means through which girls and women are positioned in the cultural climate of video gaming, they are not necessarily dangerous information, as the next section will explore.

Virtual Game Space as Dangerous or Harmful Information

If one maintains that the portrayal or representation of girls and women in the new genus of video games is objectionable from some moral or ethical perspective and thus "unhealthy" for society, the question becomes what existing or developing legal regimes might be available for structuring a corrective normative process. This section explores several possible threads of existing and developing legal precedent. The most conceptually analogous precedent involves cases in which a claim of societal harm underlies the impetus for regulation. A suitable example includes attempts to have pornography constitute discrimination against women, as an entire class of victims. The rich line of cases involving the liability of publishers for erroneous and dangerous information have also been for the most part unsuccessful as an impetus for curtailing the production of erroneous or dangerous information. Related to these cases are those involving publications where readers or viewers are either influenced by exposure to the material or subsequently attempt to imitate the conduct portrayed with disastrous consequences. The most factually similar case are perhaps those involving the allegedly harmful effects of video and other games upon the gaming participants.

Various authors have categorized existing precedent into various categories, Sims (1992) identifies four categories: instruction, exhortation, facilitation and inspiration. Quinlin and Persels (1994) use a slightly different categorization: imitation, mood shift, and attracted violence. Crump (1994) uses a variation of incitement, camouflaged incitement based upon Marc Antony's speech in Julius Caesar, act 3, scene 2, i.e., "inciting" the honorable men to run the traitors out of town.

Considerable difficulty lies in establishing a nexus between the stimulus and the harm. This nexus, however, is becoming a common claim--Mifflin (1999, 3A), in response to the recent Littleton, Colorado shootings, describes the situation: Many academic-based studies exist and continually attempt to reveal a correlational link between violent entertainment media, "Proving such links irrefutably is almost impossible, and many studies have been criticized for methodological or other flaws....links do not prove cause and effect and are therefore relatively unimportant." Quoting Jonathon Freedman, professor of psychology at University of Toronto, "My reading of the research is it's pathetic in terms of showing the link to be causal." Furthermore, the questionable research which does exist focuses more commonly on television and films, while "far less research exists on the effects of popular music...or of violent video games...." This is changing as politicians are feeling an impetus to place blame all across the industry, and parents and other relatives of victims involved in school shootings are bringing lawsuits against the entire entertainment industry. A significant indication of the current tension was revealed a recent *60 Minutes*, featuring Ed Bradely, Anti-Censorship Attorney Robert Vanderet, and Ms. Sabrina Steger, a parent of a slain teen:

> **Mr. Vanderet:** Well, Ed, probably that same night two million other Americans watched *Natural Born Killers* that they had rented form the video store and they didn't go out and imitate the violence. We can't in a society allow the access to films and books to be determined by the least common denominator.
> **Ed Bradely:** I mean, there are a lot of people who would look at the track record of suits like this and say, you know, "there's not much chance this--that you can win this." You--you think you can win this?
> **Ms. Steger**: We're asking--telling the--entertainment industry that we expect them to be responsible for what they put on the market. If they want to make violent video games, go ahead. But you're responsible for what you do....Well, 10 years ago, who would have thought you could take out big tobacco companies? Even if we don't win the case, per se, we've already made a great stride towards winning just by getting people talking about the issue. But, if we kind of, sort of pave the way, and maybe the next family gets a little bit farther, and the next family, and it will happen.

From a purely intuitive perspective this is a threefold problem: First, creating or identifying a moral imperative that requires social re-alignment against the harm; secondly, establishing a rational link between the source and the eventual social harm (evidenced by research and study); and thirdly, molding a response within the limits of legal precedent. In order for a producer of a video or virtual reality game to held legally responsible for the subsequent harm caused by players of its game requires that a legal nexus be established between the game and the subsequent harm against women or other victim. Another question is whether this harm must occur in a physical sense of violence, or whether is it possible to rely upon a general social harm, i.e., that society is somehow hurt or lessened by the mere portrayal of women in the games? In other words, is it reasonable that a game producer would expect that its games would produce such an effect? If so then liability might lie. Defendants are negligent if their conduct poses an unreasonable risk of harm to others. A risk is unreasonable if it is probable or foreseeable. Judges and juries must then weigh the gravity and likelihood of the danger against the utility of conduct or the burden of requiring alternative conduct (Dee, 1991). In general, attempts to make publishers and producers of such information strictly liable have been unsuccessful (Mintz, 1992).

Information Harmful to a Class of Citizens: Regulating Pornography

Is there an established nexus between viewing violence through traditional media or simulating violence through, as is the scenario under review here, gaming? Commentators such as Pally (1994) and Carol (1994) doubt, after reviewing existing research, whether that nexus has been established, between pornography and sexual aggressiveness or sexual violence. Grazia (1992) also supports this conclusion. Other commentators such as MacKinnon (1993) argue for a generalized harm to society by having that sort of content (pornography: images depicting women as subservient or as victims) published or produced and available. Unfortunately there is little definitive work on the impact of video or computer gaming; Cassell and Jenkins' recently released volume contributes to the intellectual discussion surrounding computer and video gaming, and provides a thorough initiation into the subject, however, ethics and legality aren't addressed comprehensively. Over a decade ago, Cooper and Mackie (1986) compared the effects of Pac-Man to the effects of playing Missile Command. However, such early research did not anticipate the effects of the newer and more technologically-advanced generation of games, and did not juxtapose virtual play with aberrant behavior. The current cultural climate allows for this juxtaposition to be taken to extremes: We are now seeing prominent

opponents of video gaming such as Lieutenant Colonel David Grossman compare video games such as Doom to "murder simulators:"

> The very same video games that are found in homes and arcades across the United
> States ...have also been used as training tools to help soldiers and police officers hone their shooting skills....There's a game over there that equips you to fire a
> shotgun and get extraordinarily good with a shotgun, like the kids in Denver did.
> Then there's this one that develops your pistol skills and teachers you to go
> for the head shots--and persevere and hit multiple targets with incredible skills.
> The same basic mechanisms that we use, step by step to make killing a conditioned
> response in our soldiers, are being done in the games now that the kids go and play.
> (Wallace, 1999)

If the behavioral nexus can be established or if it is agreed that a societal harm is generated, from an ethical perspective, then the problem of representation of girls and women in and by video gaming is of major societal concern. According to Saunders (1994, 458): "The relationship between violent video games and aggressive behavior is not as well established as that between television violence and aggression. It would seem that aggression is more likely to follow from the player's direct and active involvement in video game violence than from passive involvement in televised violence. That conclusion has, however, to been demonstrated." Whitaker (1993) reviews traditional tort (negligence) liability for physical harm resulting from pornography but could the mere existence of it be deemed harmful to society in other more fundamental ways? Researchers such as Strossen (1996) have supported laws that characterize the regulation of pornography as essential to the obtainment of equality for women. One Canadian court has made this assessment, seeing its construction as part of Canadian obscenity law (Butler v. Queen, 1 S.C.R. 452 (1992).). This approach, however, has not been successful in the United States. In American Booksellers Association, Inc. v. Hudnut (475 U.S. 1001 (1986)) the Supreme Court summarily affirmed the Seventh Circuit Court of Appeal's decision (771 F.2d 323 (7th Cir. 1985)) striking down an Indianapolis ordinance that defined pornography as discriminatory against women. "The ordinance discriminates on the ground of the content of the speech. . . . Speech treating women in the disapproved way – as submissive in matters sexual or as enjoying humiliation – is unlawful no matter how significant the literary, artistic, or political qualities of the work taken as a whole. The state may not ordain preferred viewpoints in this way. The Constitution forbids the state to declare one perspective right and silence opponents" (771 F.2d at 325).

Judge Easterbrook admitted that pornography is part of a socialization process that leads to women's secondary status, this was not significant enough to retreat from traditional First Amendment jurisprudence that answers improper speech with more speech, the so-called marketplace of ideas concept (771 F.2d at 330-331). While Judge Easterbrook defended the traditional framework for implementing the First Amendment as an instrument of social change and as a vehicle for the protection of minority instruments. Ulmschneider (1994, 218) argues that the Court's traditional "liberal, categorical approach to free expression rights with its individualistic, public sphere- oriented approach to gender equality" will continue to break down in cases that pit free expression against minority interests. Nevertheless, until courts recognize that breakdown jurisprudentially and create a new framework for analysis, structuring a legal argument in support of regulation, based upon the societal harm (inequality) that depicting women as victims in video and virtual gaming creates, will likewise be effectively limited by the First Amendment. Thus, the representational politics of gender of video games may promote an unethical culture in which girls and women face severe obstacles, but the claim that dangerous information is promoted through such avenues remains highly dubious.

Liability of Information Producers for Incorrect or Otherwise Dangerous Information

A number of cases have held that in general publishers of printed information are not responsible for the harm caused from that information even when that information is erroneous or other wise harmful. For a listing of cases in which publishers were not liable for erroneous information, please see Appendix 2.

The Lewin court observed that a publisher might have greater responsibility were the risk of harm is "plain and severe such as a book entitled *How to Make Your Parachutel"* (655 F. Supp. at 384). Based on this analysis and the result of the cases listed above, it would seem unlikely that there is anything inherently dangerous about playing a video game. There seems to be little factual analogy between the erroneous information or dangerous instructions (how-to-do-it) cases and the creation, production and sale of video games. It is true that the maker of the video game is

more like the author, instead of a mere publisher, of a incorrect or dangerous book, but there is no claim of error or miswritten game code. Rather, the harm is derived from the *playing* of a video game that is without error that is claimed to be dangerous or otherwise harmful in some way. Yet, one must take into account the subjectivity involved in game playing; Friedman (1999, np) acknowledges that the specificity of the personal feedback loop characteristic of games is what makes them the "quintessential software product." While games representing girls and women in ethically questionable ways contribute to a social climate of gendered politics, gamers are unique and contribute to the textuality of each game. We can not, as Vanderet rightly claims, create a society in which "we are only going to allow the distribution of films and movies that are not going to provoke, or may not provoke a response in some aberrant individuals...we simply can't predict what it is that's going to set off any particular individual." The claim of dangerous information then can not fall to the act between an individual and a stimulus.

Influence of Violence: Applying the Brandenberg Incitement Standard

The leading United States Supreme Court decision on incitement is Brandenburg v. Ohio (395 U.S. 15 (1973)) in which the Court created a two part test to determine when a publication or other act qualifies and incitement and its proscription is allowable by state or federal law. In Brandenburg the Court struck down a state criminal syndication statute when applied to a KKK rally as its provisions swept within its terms both mere advocacy as well as actual incitement to imminent lawless action. Advocating lawlessness in the abstract is not sufficient; it would be protected under the First Amendment. In order to pass the Brandenburg standard the speech must 1) pose and immediate danger of lawless activity and 2) intend or at least be likely to produce a lawless action. The Crump (1994, 13) "camouflaged incitement" test might make for a different case if in Brandenburg the KKK leader would have turned to the most excitable listener named Duke and said, "Duke, what are you gonna do about that?" The Brandenburg "test recognizes a distinctions between mere advocacy and incitement to imminent lawless action" (Day, 1995, 78).

Short of actual imitation (discussed below), a number of attempts have made to link violence portrayed or advocated in media to subsequent harm. The claim is made that the media representation of violence instigated or incited the subsequent harm. In Zamora v. Columbia Broadcasting System (480 F. Supp. 199 (S.D. Fla. 1979)) the defendant tried unsuccessfully to argue his violent behavior was the result of desensitization due to the repeating viewing of violent television programming. In Zamora a general chastisement of violence on TV was forwarded. However, a judicially based normative enhancing legal remedy would seem far more effective if it were targeted at a specific game and producer and involved harm resulting from a specific incitement incident. In practical terms this might drive the cost of the recovery/settlement up and thus have a greater impact upon the industry to change their practices. The power of movie pictures to impact the audience is often at the root of suits against movie producers.

In Phillips v. Syufy Enterprises (20 Media Law Reporter 1199 (cal. Super. Ct 1992)) and Lewis v. Columbia Pictures Industry (23 Media Law Reporter 1052 (Cal. App. 1994)) the First Amendment and tort doctrines of duty and proximate cause bar recovery for by plaintiff injured at a showing of boys in Boyz 'n the Hood. Likewise in Bill v. City of San Francisco (187 Cal. Rptr. 625 (Cal. Ct. App. 1983)) the First Amendment bars suit against producers of "gang" movie Boulevard Nights when attendees shot and injured another spectator after movie let out. The court stated that the only attraction posed by the film was its general content, not specific acts of lawlessness by viewers, and to hold the creators responsible for more would have a chilling effect the future selection of film subject matter.

In Yakubowicz v. Paramount Pictures Corporation (536 N.E.2d 1067 (Mass. 1989)) the father of a sixteen year old boy knifed to death by a person who had just viewed the motion picture *The Warriors* claimed that the Paramount had "produced, distributed and advertised the film in such a way as to induce film viewers to commit violence in imitation of the violence in the film." (536 N.E.2d at 1068) The trial court disagreed and dismissed the suit and the Massachusetts Supreme Court affirmed concluding that Paramount die violate their duty because there was no advocacy or incitement of "unlawful activity on the part of the viewers" Id. at 1071. The court noted (citing Hess v. Indiana, 414 U.S. 105, 109 (1973)) that mere tendency towards violence is not enough to clear the Brandenburg standard.

One problem in applying the Brandenburg incitement test to media and gaming scenarios is that the connection between the impetus or motivation and the subsequent harm is residual. There is no "live" audience to incite. Though a stronger position might exist if in the movie or television resulted in lawlessness or harm that is committed during the

actual viewing, thus strengthening the temporal nexus. However there is a difference between imitating conduct and concluding that the speaker intended the act to be imitated or that such a result was likely to result from the viewing. Moreover, in the case of video or virtual reality play the intent is not to portray reality in a dramatic rendering (e.g., play, television program, or motion picture) nor that viewers should duplicate or imitate that rendering, the product is marketed and sold as a game.

The difficulty in applying Brandenburg is establishing that the actor/instigator intended the resulting harm or that it was a likely by-product of the original act. As result in music influence cases, suits have also been unsuccessful. These cases are instructive because the video game, a song or album may be played over and over again, approaching almost addictive conduct.
In Waller v. Ozzy Osbourne (958 F.2d 1084 (11th Cir. 1992), cert. denied, 506 U.S. 916 (1992)) and McCollum v. CBS, Inc. (249 Cal. Rptr. 187 (Cal. Ct. App. 1988)) plaintiffs were unsuccessful in their suits against harm allegedly caused by repeated listening to music of Ozzy Osbourne. Compare, Vance v. Judas Priest (No. 86-5844 (2nd Jud. Dist. Nev. Washoe County, Nev. filed August 20, 1986)) and Roberson v. Judas Priest (No. 86-3939 (2nd Jud. Dist. Nev. Washoe County, Nev. filed August 20, 1986)) in involving a double suicide that plaintiffs claim was instigated by the subliminal messages contained in certain Judas Priest lyrics. The difference in the Vance and Roberson cases is that some intent towards subsequent conduct is implicated in alleged insertion of subliminal messages. Whether similar claims could be made against video and virtual play gaming producers would be a question of fact, but if intimated would at least force such a case to go to trial.

One of the few cases to result in liability under Brandenburg is Weirum v. RKO (539 P.2d 36 (Cal. 1975)) in which a motorist was run off the road and killed. RKO radio station was conducting a scavenger hunt for one if its disc jockeys. The unintended, but arguably predictable result was that two teenage drivers' pursuit of the celebrity DJ ended in the death of another motorist whom they ran off the road. The contest was designed in the court's view to incite imminent lawlessness, i.e., the reckless driving which drove the victim off of the road. (539 P.2d at 39) Though the Weirum court never mentioned Brandenburg, subsequent courts have construed it to be a classic incitement case because of the live broadcast in which listeners/drivers were encouraged to participate. Demonstration suits also fail under Brandenburg for a similar reason: there is no encouragement upon the audience to try-it-at-home. In Walt Disney Productions, Inc. v. Shannon (276 S.E.2d 580 (Ga. 1981)) for example the First Amendment barred suit against Disney by the parents of boy who was blinded while he attempted to duplicate sound effects demonstration involving a BB and a balloon.

According to Quinlin and Persels (1994, 434) the First Amendment must continue to bar these suits or the court system would in essence "sanction a system of de facto censorship." Placing Brandenburg and Hess together a media producer would not be liable until 1) the particular conduct at issue was a lawless act, 2) the defendant directly advocated the unlawful act, 3) the speech went beyond mere advocacy and instead amounted to incitement, which was directed to imminent action. Crump (1994, 46-69) proposes a model that involves a case-by-case balancing approach adopting eight evidentiary factors based Brandenburg and its progeny: the speech itself, pattern, context, predictability and actual occurrence of harm, knowledge, alternative means, disclaimers, and the inherent value of the speech.

Eroding the Line Between Gaming and Reality: the Dungeons and Dragons Case.

Watters v. TSR, Inc. (904 F.2d 378 (6th Cir. 1990)) involved a wrongful death action unsuccessful against producer of role-playing game *Dungeons and Dragons*. The plaintiff was the mother of a teenager who committed suicide after becoming so deeply absorbed in the game that, she claimed, he "lost control of his own independent will ad was driven to self-destruction." (904 F.2d at 380) In Watters the court affirmed the trial court's summery judgement in favor of TSR against a plaintiff-mother whose son committed suicide. The court based its decision on the lack of foreseeable harm and the future burden liability would place on similar defendants. The court reasoned that since the victim's his own mother did not suspect any dangerous behavior was looming, it would be unreasonable to "suppose that it was foreseeable to defendant TSR. (904 F.2d at 381) To allow such cases to proceed to jury "would be to stretch the concepts of foreseeability and ordinary care to lengths that would deprive them of all normal meaning" (904 F.2d at 381).

Other cases involving the alleged effect of repeated playing of Dungeons and Dragons have also been unsuccessful. In State v. Molitor, 729 S.W.2d 551 (Mo. Ct. App. 1987) defendant tied up and strangled a young women claiming he was desensitized by playing *Dungeons and Dragons*. The court was unresponsive to his "dungeons and dragons made-me-do-it defense." In other such as Pulling v. TSR

Hobbies (Final Order, No. L-68-84, Cir. Ct., Hanover County, Virginia, 1984, Record Number 850026 (Va. 1985)) courts have concluded that there was no logical connection between the harm actually committed and the harm portrayed in the game. Likewise in People v. Ventiquattro (527 N.Y.S.2d 187 (App. Div. 1988)) the court determined that the *Dungeons and Dragons* game or play booklet lacked references to handguns, i.e., the weapon used as opposed to the pseudo mythical-medieval weapons the players of the game use.

Other video games have satisfied this flaw, the violence portrayed in the game is transferable into subsequent imitation. Hamilton (1995) discusses possible liability arising from *Mortal Kombat* and other video games and even recent television shows such as *Power Rangers*. A game called *Mortal Combat* (by Sega of America, Inc.) lets the player control a figure that vanquishes his or her adversary with bloody graphics that include ripping out the opponent's spinal cord. Sega also makes *Night Trap* that features masked and hooded figures that violently subdue scantily-clad women and drain their blood with devices that constrict women's necks. According to Crump (1994, 32) "[t]hese games are not mere descriptions of violence; they involve the player in the interactive experience of highly realistic violence and often in the actual causing of simulated violence." In one case, a state criminal judge held that repeated exposure to *Mortal Kombat* caused a teenager to confuse reality with fantasy in the stabbing death of a classmate (Judge Rules Insanity in Teen Stabbing Case, 1994). Even if the harm portrayed in the game were actually imitated (overcoming the deficiency of the gaming *Dungeon's and Dragons* cases) these cases would still be flawed (Dee, 1987). Based upon the other (non-video game) cases reviewed it is unlikely that the cases would go to trial as there is no advocacy of the violence in the content of the games.

Imitation of Dangerous Scenarios

Several cases have addressed squarely the issue of imitation of dangerous or violent conduct. The cases testify to the influence that media can have upon its consumers. The important question is whether that influence should be legally recognized. Guinlan and Persels (1994) conclude that tort liability cannot be imposed on communicative industries. Case law supports their position. In Olivia N. v. National Broadcasting Company (178 Cal. Rptr. 888 (Cal. App. 1981)) the court held that the First Amendment (incitement standard) barred recovery in a sexual assault suit. The incident allegedly arose out of the rape by perpetrator whose actions were prompted by imitation an assault scene using a toilet plunger in the made for TV movie *Born Innocent*. Likewise in Herceg v. Huslter Magazine, Inc. (814 F.2d 1017 (5th Cir. 1987), cert. denied, 485 U.S. 959 (1988)) the Fifth Circuit concluded that the First Amendment bars recovery by a minor who allegedly hanged himself after reading an article in the magazine regarding auto-erotic asphyxiation. The magazine repeatedly warned of the dangers of this practice throughout the text of the article. Under the Brandenburg test the plaintiff would have to show that auto-erotic asphyxiation is a lawless act, that Hustler advocated the act, and went beyond advocacy and incited the victim and the incitement was directed to imminent action. (814 F.2d at 1022) Also missing was the underlying purpose of Brandenburg standard: concern over crowd control. Herceg v. Hustler Magazine, Inc. 814 F.2d at 1023; and Day, 1995, 83) The harm was perpetrated in both cases upon an individual. In another hanging case the court denied of recovery for minor who allegedly hanged himself while attempting to imitate stunt seen on an episode of the Johnny Carson Show, dropping through a trap door with a rope around your neck. (DeFlippo v. National Broadcasting Company, 446 A.2d 1036 (R.I. 1982)) Another imitated stunt was the subject of litigation in Sakon v. Pepsico (553 So. 2d 163 (Fla. 1989)). Again no liability was placed upon the advertisers for injury suffered when viewers attempted to duplicate a stunt involving jumping over a lake with a bicycle as portrayed in a television commercial.

In one of the more recent and noteworthy dangerous imitation scenarios, death resulted from the attempt to duplicate a scene in the motion picture *The Program*. The Disney-Touchstone Pictures film showed a group of teenagers lying down along a highway dividing line in an updated version of the traditional chicken scene from the James Dean classic *Rebel Without a Cause*. When Michael Shingledecker attempted the same stunt he was run over and killed and a companion seriously injured in Pennsylvania and another youth injured in New Jersey (Disney Plans to Omit Film Scene After Teen-Ager Dies Imitating It). The producers later decided to remove the scene from the movie. In another tragedy, a mother claimed that the MTV cartoon *Beavis and Butthead* prompted her five-year-old son to start a fire that took the life of her toddler daughter (MTV Cartoon Blamed).

In assessing the liability of game producers several observations can be made when gaming is compared to the imitation cases. First, it may be that the players of virtual and video games may be somehow removed from the impact of the actual viewing of a live feature film. However it may be more real than watching a cartoon (the *Beavis and Butthead* case). It might also

be suggested that the passive viewing of a motion picture prompts the imitation as an outlet or response to the viewing. Legally it might be argued that game playing is actually less like reality, though it may engage more human senses than the a motion picture, and therefore recovery under this theory would be less likely. Whereas in a motion picture viewers can see the images of real people engaging in dangerous or other harmful acts, video or computer animation, no matter how technically advanced, is still animation or at best, simulation.

Policy Questions and Implications?

Would the imposition of warning notices or ranking systems be one alternative? Congress has introduced legislation for the rating of video games a number of years ago (1994) and the result was the "voluntary" Industry Rating Council. Currently, the Entertainment Software Rating Board is the prominent rating agency, and claims to be "an independent board that has, with the support of the industry, developed a standardized rating system for interactive entertainment software products" (www.esrb.org). While many areas are indeed addressed by the ESRB's ratings, the ones necessary to call attention to such inequitable and unethical characteristics and qualities as sexism, violence against women, degradation of women (as in the game "Super Metroid," in which players were rewarded for excelling by forcing female characters to strip down to their underwear (Jenkins, 273), or equitable representation in the form of female characters or roles are simply absent.

On another level, in December 1998, Senators Joseph Lieberman (D-Connecticut) and Herb Kohl (D-Wisconsin) concluded from their annual report card on video games (produced through the National Institute on Media and the Family--a very conservative think tank) that ratings were insufficient, and asked, "How many more brutal killings must be committed by kids barely old enough to shave before we confront this connection?" The Winter court declined to impose a requirement upon publishers that either warn it readership that its publications may contain errors or that its publications should not be relied upon: "We will not introduce a duty we have just rejected remaining it a "mere" warning label" (938 F.2d at 1037-1038).

Conclusion: Chickens, Eggs, and Blame

If one believes as we do that information and artifacts of culture such as video games should contribute to the public good, it is imperative to rectify the current means through which girls and women are represented, positioned, and addressed by and through video games. We do not support such measures as censorship, nor violation of freedom of speech or expression. Instead, the surrounding climate which allows blame to fall on such games as *Doom, Mortal Kombat*, or music of Korn or Marilyn Manson must be addressed. We concur with Yasmin Kafai who notes that "...we need play environments that support children's versatility in expressing themselves--environments open to the unbounded limits of their imagination rather than confined by boundaries of gendered stereotypes" (110). Moreover, attention needs to be drawn to video games, computer culture, and such technologies as the Internet in meaningful ways--ways that analyze and seek to understand all that is going on manifestly and latently. We must begin to understand the politics of entertainment, edutainment, or whatever pithy phrase we choose to use. We can not continue to leave girls out of the video and computer industry merely because they are a profit-less market. We can't continue to target them with games they do not like, nor should we penalize them for not liking "boys' games." Why they don't like so many of the existing games is a social statement. They are being left out on every meaningful level. We must change the ways in which girls and women are represented in and by games; we need to address them through different voices and perspectives. As Brunner and Bennett (1998, 59) assert,

> technologies can now be easily designed to embrace different ways of knowing, inviting diverse learners to express and develop multiple points of view. Technologies are now capable of richly supporting three ingredients that make for a kind of learning that is inviting to all students, particularly girls: exploration, interpretation, and communication. The power lies in being able to build one's own meanings, and debate and discuss one's idea's with others.

In terms of dangerous information and the current climate of violence and blame, again, the issue of gender is being overlooked. Politicians, researchers, and the like are scrambling to find the links between virtual violence and real violence. They continue to ignore the politics of gender in which these games exist and are played. Are our children playing *Doom* and *Resident Evil* because mom and dad aren't speaking to them? Or, do the screams and gun shots from the games drown out the real sounds of violence coming from the next room? Maybe the dark fantasies of the games are more optimistic than our children's dark realities, unfortunately.

Law suits are an easy way out, and we mean no disrespect to the families of victims of the various shootings across the country. Changing the cultural climate to one where are children are safe, a mutual respect and dignity for each other is common among our children, where boys and girls, men and women treat each other as ends in themselves, is requisite. Let's work on changing the inequity and unethical conditions of our human relationships before we censor or ban every piece of entertainment coming at us.

Post Script

Our next piece in this series of work expands the ethics of gaming in the areas presented early on. We encourage your comments and ideas. Know of a good game? We'd love to play

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Appendix 1

Applying Existing Precedent on Media Liability to Video and Virtual Gaming

Legal Claim	Case	Legal Result
Theory of general societal harm forwarded Stossen ordinance	American Booksellers Association v. Hudnut, 475 U.S. 10001 (1986), aff'g 771 F. 2d 323 (7th Cir. 1985).	societal harm does not outweigh First Amendment right to send and receive information
Erroneous Information	Winters v. G.P. Putnam's Sons 938 F.2d 1033 (9th Cir. 1991).	Sega is an author but no error in the video game itself was alleged
Brandenburg Incitement	Brandenburg v. Ohio, 395 U.S. 15 (1973).	the violence that might result from imitation is not immediate or acted out in conjunction with the playing of the video game
Music influence cases	Vance v. Judas Priest, No. 86-5844, and Roberson v. Judas Priest, No. 98-3939 (2nd Jud. Dist. Nev. Washoe County, Nev. filed August 20, 1986).	while repeated playing of game is similar to repeated listening, there is no claim of ulterior motive, i.e., subliminal messages embedded in the game
Dungeons and Drangons	Watters v. TSR, Inc., 904 F.2d 378 (6th Cir. 1990).	playing of the game is not intended to be real or an imitation of reality, in cases thus far no actor has imitated the game in causing the harm

Appendix 2

Winter v. G.P. Putam's Sons, 938 F.2d 1033 (9th Cir. 1991) (Encyclopedia of Mushrooms);
Alm v. Nostrand Reinhold Co., 134 Ill. App. 716, 480 N.E. 2d 1263 (1985) (The Making of Tools);
Lewin v. McCreight, 655 F. Supp. 282 E.D. Mich. 1987) (The Complete Metalsmith);
Jones v. Lippincott Co., 694 F. Supp. 1216 (D. Md. 1988) (Handbook of Nursing);
Libertelli v. Hoffman-LaRoche, 7 Media Law Reporter 1734 (S.D.N.Y. 1981) (Physician's Desk Reference);
Smith v. Linn, 587 A.2d 309 (Pa. 1991) (Last Chance Diet);
Roman v. New York, 110 Misc. 2d 799, 442 N.Y.S. 2d 944 (Super. Ct. 1981) (birth-control pamphlet from Planned Parenthood);
Demuth Development Corp. Merkt Co., 432 F. Supp. 990 (E.D.N.Y. 1977) (Encyclopedia of Chemicals and Drugs);
Walter v. Buer, 439 N.Y.S. 2d 821 (Sup. Ct. 1981) (Discovering Science textbook);
Cardozo v. True, 342 So. 2d 1053 (Ga. 1981) (Trade Winds Cookery);
Birmingham v. Fodor's Travel Publications, Inc., 833 P.2d 70 (Haw. 1992) (Fodors's Hawaii 1988);
Mark v. Zulli, No. CV 075386 (Cal. Cuper. Ct. October 7, 1994) and David v. Jackson, No. 540624 (Cal Super. Ct. September 8, 1994) (unpublished opinions discussed in News Notes, 22 Media Law Reporter No. 42 (November 1, 1994) and Barden v. HarperCollins Publishers, Inc., 863 F. Supp. 41 (D. Mass. 1994) (The Courage to Heal and The Courage to Heal Workbook).
Gutter v. Dow Jones, Inc., 490 N.E.2d 898 (Ohio 1992) (Wall Street Journal); and First Equity Corp. v. Standard & Poor's Corp., 869 F.2d 175 (2d Cir. 1989) (Corporation Records). Contrast the result in Gale v. Value Line, Inc., 640 F. Supp. 967 (D.R.I. 1986) (Value Line Convertibles).

Appendix 3: ESRB Rating System Categories (From www.esrb.org)

Look for these ratings on the front of the package and, for more information, look for content descriptors on the back of the package.

Early Childhood

Titles rated "Early Childhood (EC)" have content suitable for children ages three and older and do not contain any material that parents would find inappropriate.

Kids to Adults

Titles rated "Kids to Adult (K-A)" have content suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language.

Everyone

As of January 1, 1998, the new "Everyone" designation will replace the "Kids to Adults" rating. Titles rated "Everyone (E)" have content suitable for persons ages six and older. These titles will appeal to people of many ages and tastes. They may contain minimal violence, some comic mischief (for example, slapstick comedy), or some crude language.

Teen

Titles rated "Teen (T)" have content suitable for persons ages 13 and older. Titles in this category may contain violent content, mild or strong language, and/or suggestive themes.

Mature

Titles rated "Mature (M)" have content suitable for persons ages 17 and older. These products may include more intense violence or language than products in the Teen category. In addition, these titles may also include mature sexual themes.

Appendix 3, cont'd.

Adults Only

Titles rated "Adults Only (AO)" have content suitable only for adults. These products may include graphic depictions of sex and/or violence. Adults Only products are not intended to be sold or rented to persons under the age of 18.

Rating Pending

Product has been submitted to the ESRB and is awaiting final rating.

Content Descriptors

When consumers look on the back of a package, they may see any of the following phrases that further describe the product's content.

VIOLENCE

MILD ANIMATED VIOLENCE
Contains scenes involving characters/animated/pixelated characters in the depiction of unsafe or hazardous acts or violent situations.

MILD REALISTIC VIOLENCE
Contains scenes involving characters in the depiction of unsafe or hazardous acts or violent situations in realistic or photographic detail.

COMIC MISCHIEF
Scenes depicting activities that have been characterized as slapstick or gross vulgar humor.

ANIMATED VIOLENCE
Contains depictions of aggressive conflict involving cartoon/animated/pixilated characters.

REALISTIC VIOLENCE
Contains realistic or photographic-like depictions of body parts.

ANIMATED BLOOD AND GORE
Animated/pixilated or cartoon-like depictions of mutilation or dismemberment of body parts.

REALISTIC BLOOD AND GORE
Representations of blood and/or gore in realistic or photographic-like detail.

ANIMATED BLOOD
Animated/pixilated or cartoon-like depictions of blood.

REALISTIC BLOOD
Representations of blood in a realistic or photographic-like detail.

LANGUAGE

MILD LANGUAGE
Product contains the use of the word like "damn".

STRONG LANGUAGE
Commonly referenced four-letter words to include anatomical references.

SEXUAL CONTENT

Appendix 3, cont'd.

SUGGESTIVE THEMES
Mild provocative references or material.

MATURE SEXUAL THEMES
Contains provocative material: including depiction of the human body either animated or photographic-like formats.

STRONG SEXUAL CONTENT
Graphic depiction of sexual behavior and/or the human form (i.e. frontal nudity) in either animated or photographic-like detail.

EARLY CHILDHOOD

SOME ADULT ASSISTANCE MAY BE NEEDED

READING SKILLS

FINE MOTOR SKILLS

HIGHER LEVEL THINKING SKILLS

OTHER DESCRIPTORS

GAMING
The depiction of betting-like behavior.

USE OF TOBACCO AND ALCOHOL
Product contains images of the use of tobacco and/or alcohol in a manner which condones or glorifies their use.

USE OF DRUGS
Product contains images of the use of drugs in a manner which condones or glorifies their use.

INFORMATIONAL
Overall content provides data, facts, resource information, reference materials or instructional text.

REFERENCES

Alm v. Nostrand Reinhold Co., 134 Ill. App. 716, 480 N.E. 2d 1263 (1985).

American Booksellers Association, Inc. v. Hudnut, 475 U.S. 1001 (1986), aff'g 771 F.2d 323 (7th Cir. 1985).

Avedon, Carol 1994. Nudes Prudes and Attitudes: Pornography and Censorship. Cheltenham : New Clarion Press.

Barden v. HarperCollins Publishers, Inc., 863 F. Supp. 41 (D. Mass. 1994).

Bill v. City of San Francisco, 187 Cal. Rptr. 625 (Cal. Ct. App. 1983).

Birmingham v. Fodor's Travel Publications, Inc., 833 P.2d 70 (Haw. 1992).

Susan Borreson, Austin Firm Shoots Down Movie-Made-Me-Do-It Cases, Texas Lawyer, July 6, 1998, at 1.

Brandenburg v. Ohio, 395 U.S. 15 (1973).

Braun v. Soldier of Fortune Magazine, (968 F.2d 1110 (11th Cir. 1992).

Brey, Philip. 1998. The Ethics of Representation and Action in Virtual Reality. Paper presented at....

Butler v. Queen, 1 S.C.R. 452 (1992).

Byers v. Edmondson, 712 So. 2d 681 (La. App. 1998).

Cardozo v. True, 342 So. 2d 1053 (Ga. 1981).

Cassell, Justine and Jenkins, Henry. (Eds.) 1999. From Barbie to Mortal Kombat: Gender and Computer Games. Cambridge: MIT Press.

Joel Cooper and Diane Mackie, Video Games and Aggression in Children, 16 Journal of Applied Social Psychology 726 (1986).

David Crump, Camouflaged Incitement: Freedom of Speech, Communicative Torts, and the Borderland of the Brandenburg Test, 29 Georgia Law Review 1 (1994).

David v. Jackson, No. 540624 (Cal Super. Ct. September 8, 1994) (unpublished opinions discussed in News Notes, 22 Media Law Reporter No. 42 (November 1, 1994).

Terri R. Day, Publications that Incite, Solicit, or Instruct: Publisher Responsibility or Caveat Emptor?, 36 Santa Clara Law Review 73, 92 (1995).

Juliet L. Dee, From "Pure Speech" to Dial-A-Porn: Negligence, First Amendment Law and the Hierarchy of Protected Speech, Communications and the Law, December, 1991, 27-73, 35.

Juliet L. Dee, Media Accountability for Real-Life Violence: A Case of Negligence or Free Speech? 37 Journal of Communication 106 (Spring 1987).

DeFlippo v. National Broadcasting Company, 446 A.2d 1036 (R.I. 1982).

Demuth Development Corp. Merkt Co., 432 F. Supp. 990 (E.D.N.Y. 1977).

Disney Plans to Omit Film Scene After Teen-Ager Dies Imitating It, The New York Times, October 20, 1993, at A21.

Eimann v. Soldier of Fortune Magazine, 880 F.2d 830 (5th Cir. 1989), cert. denied, 493 U.S. 1024 (1990).

First Equity Corp. v. Standard & Poor's Corp., 869 F.2d 175 (2d Cir. 1989).

Gale v. Value Line, Inc., 640 F. Supp. 967 (D.R.I. 1986).

John Gibaut, Deadly Advice Targeted: Decision Allows Suit Against Publisher of Murder Manual, 84 American Bar Association Journal 24 (1998).

de Grazia, Edward. 1992. Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius. New York: Random House.

Mike Guinlan and Jim Persels, It's Not My Fault, the Devil Made Me Do It: Attempting to Impose Tort Liability on Publishers, Producers, and Artists for Injuries Allegedly "Inspired" by Media Speech, 18 Southern Illinois University Law Journal 417 (1994).

Gutter v. Dow Jones, Inc., 490 N.E.2d 898 (Ohio 1992).

Matthew Hamilton, Graphic Violence in Computer and Video Games: Is Legislation the Answer?, 100 Dickinson Law Review 181 (1995).

Hanberry v. Hearst, 81 Cal. Rptr. 519 (Cal. Ct. App. 1969).

Herceg v. Huslter Magazine, Inc., 814 F.2d 1017 (5th Cir. 1987), cert. denied, 485 U.S. 959 (1988).

Hess v. Indiana, 414 U.S. 105, 109 (1973).

Jones v. Lippincott Co., 694 F. Supp. 1216 (D. Md. 1988).

Judge Rules Insanity in Teen Stabbing Case, Houston Chronicle, July 15, 1994, at a11

Lewin v. McCreight, 655 F. Supp. 282 E.D. Mich. 1987).

Lewis v. Columbia Pictures Industry, 23 Media Law Reporter 1052 (Cal. App. 1994).

Libertelli v. Hoffman-LaRoche, 7 Media Law Reporter 1734 (S.D.N.Y. 1981).

MacKinnon, Catherine A. 1993. Only Words. Cambridge: Harvard University Press.

Mark v. Zulli, No. CV 075386 (Cal. Cuper. Ct. October 7, 1994) (unpublished opinions discussed in News Notes, 22 Media Law Reporter No. 42 (November 1, 1994).

McCollum v. CBS, Inc., 249 Cal. Rptr. 187 (Cal. Ct. App. 1988).

Jonathan B. Mintz, Strict Liability for Commercial Intellect, 41 Catholic University Law Review 617 (1992).

MTV Cartoon Blamed, Newsday, October 9, 1993, at 8; and Transcript # 348-2, CNN, October 9, 1993.
Norwood v. Soldier of Fortune Magazine, 651 F. Supp. 1397 (W.D. Ark. 1987).

Pally, Marcia. 1994. Sex and Sensibility: Reflections on Forbidden Mirrors and the Will to Censor. Hopewell: Ecco Press.

Olivia N. v. National Broadcasting Company,178 Cal. Rptr. 888 (Cal. App. 1981).

People v. Ventiquattro, 527 N.Y.S.2d 187 (App. Div. 1988).

Phillips v. Syufy Enterprises, 20 Media Law Reporter 1199 (cal. Super. Ct 1992); and

Pulling v. TSR Hobbies, Final Order, No. L-68-84, Record Number 850026 (1984) (Cir. Ct. Hanover County, Va. 1985).

Rice v. Paladin Enterprises, 128 F.3d 233 (4th Cir. 1997), cert. denied, 118 S. Ct. 1515 (1998).

Roberson v. Judas Priest, No. 86-3939 (2nd Jud. Dist. Nev. Washoe County, Nev. filed August 20, 1986).

Roman v. New York, 110 Misc. 2d 799, 442 N.Y.S. 2d 944 (Super. Ct. 1981).

Sakon v. Pepsico, 553 So. 2d 163 (Fla. 1989).

Kevin Saunders, Media Self-Regulation of Depictions of Violence: A Last Opportunity, 47 Oklahoma Law Review 445 (1994).

Andrew B. Sims, Tort Liability for Physical Injuries Allegedly Resulting from Media Speech: A Comprehensive First Amendment Approach, 34 Arizona Law Review, 231, 235 (1992).

Smith v. Linn, 587 A.2d 309 (Pa. 1991).

State v. Molitor, 729 S.W.2d 551 (Mo. Ct. App. 1987).

Nadine Strossen, Hate Speech and Pronography: Do We Have to Choose Between Freedom of Speech and Equality?, 46 Case Western Reserve Law Review 449 (1996).

Georgia Wralstad Ulmschneider, The Supreme Court, The First Amendment, and Anti-Sex-Discrimination Legislation: Putting American Booksellers Association, Inc. v. Hudnut in Perspective, 32 Duquesne Law Review 187, (1994).

United States v. Barnett, 667 F.2d 835 (9th Cir. 1982).

Vance v. Judas Priest, No. 86-5844 (2nd Jud. Dist. Nev. Washoe County, Nev. filed August 20, 1986).

Lawrence Viele, Of Free Speech, Abortions and Dead Doctors, The Recorder, February 11, 1999.

Wallace, Jonathon and Mangan, Mark. 1997. Sex. Laws, and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution.

Waller v. Ozzy Osbourne, 958 F.2d 1084 (11th Cir. 1992), cert. denied, 506 U.S. 916 (1992).

Walt Disney Productions, Inc. v. Shannon, 276 S.E.2d 580, 582 note 2 (Ga. 1981).

Walter v. Buer, 439 N.Y.S. 2d 821 (Sup. Ct. 1981).

Walters v. Seventeen Magazine, 241 Cal. Rptr. 101 (Cal. Ct. App. 1987).

Watters v. TSR, Inc., 904 F.2d 378 (6th Cir. 1990).

Weirum v. RKO, 539 P.2d 36 Cal. 1975).

Elise M. Whitaker, Pornographer Liability for Physical Harms Caused by Obscenity and Child Pornography: A Tort Analysis, 27 Georgia Law Review 849 (1993).

Winter v. G.P. Putnam's Sons, 938 F.2d 1033 (9th Cir. 1991).

Christopher Wolf, Courts, Not Congress, Should Set Limits on Internet Content, Legal Times, February 15, 1999, at 25.

Yakubowicz v. Paramount Pictures Corporation, 536 N.E.2d 1067 (Mass. 1989).

Zamora v. Columbia Broadcasting System, 480 F. Supp. 199 (S.D. Fla. 1979).

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