Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 Entertainment Software Association Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission's Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities	CG Docket No. 10-213

PETITION OF THE ENTERTAINMENT SOFTWARE ASSOCIATION FOR PARTIAL EXTENSION OF WAIVER

Michael Warnecke
Chief Counsel, Tech Policy
Cory Fox
Senior Policy Counsel
ENTERTAINMENT SOFTWARE ASSOCIATION
575 7th Street NW, #300
Washington, D.C. 20004

Scott Blake Harris
S. Roberts Carter
Paul J. Caritj
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, D.C. 20036
(202) 730-1300

Counsel for the Entertainment Software Association

May 22, 2015

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY. 1

II. THE COMMISSION SHOULD PARTIALLY AND BRIEFLY EXTEND THE CURRENT WAIVER. 2

A. The Commission Should Grant a Modest Waiver Extension for Class III Video Game Software Used for the Primary Purpose of Game Play. 4

B. Class III Video Game Software Continues to Meet the Part 14 Waiver Requirements. 5

C. The Technical Challenges of Applying Existing Assistive Technologies to Video Games Support Continuation of the Waiver for Class III Software. 11

III. A WAIVER EXTENSION FOR CLASS III VIDEO GAME SOFTWARE SERVES THE PUBLIC INTEREST. 15

IV. THE COMMISSION SHOULD EXTEND THE WAIVER FOR A REASONABLE PERIOD OF TIME WITHOUT PREJUDICE TO FURTHER EXTENSIONS THAT SERVE THE PUBLIC INTEREST. 17

V. CONCLUSION. 18

EXHIBIT A: SAMPLE MARKETING MATERIALS

EXHIBIT B: DECLARATION OF MIKE PACIELLO

I. INTRODUCTION AND SUMMARY.

The members of the Entertainment Software Association ("ESA")[1] seek to deliver engaging and innovative video game experiences to all consumers, including individuals with disabilities. The Consumer and Governmental Affairs Bureau previously determined that waiving the FCC's accessibility rules for the Advanced Communications Services ("ACS") functions for video game industry products and services served this goal by allowing additional time for the development of accessibility technologies that would "benefit from and utilize the experience gained in making ACS accessible in other contexts," and to facilitate the development of new gaming systems and services with ACS functions, enabling those systems to compete with other video game products and services in the marketplace.[2] Because the "dynamism of the electronic software industry" presented the potential for ACS to assume a greater role in video game products and services, however, the Bureau granted an initial waiver for two years rather than the longer term sought by ESA.[3] As a result, the video game industry's waiver expires in October 2015.

The video game industry is seeking renewal of the waiver with respect to only one of the three previous waiver categories. This modest, requested waiver of 15 months would be solely for game software that is designed for the primary purpose of game play. To be clear, the industry does not seek renewal of the waiver as it relates to two of the three previous waiver categories: video game consoles and distribution platforms. Continuation of the waiver for the game software class is warranted because ACS still plays only a peripheral role in video game software, and

---

[1] The ESA is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish computer and video games for video game consoles, handheld devices, personal computers, and the Internet.

[2] *In re Implementation of Sections 716 & 717 of the Communications Act of 1934, As Enacted by the Twenty-First Century Communications & Video Accessibility Act of 2010*, Order, 27 FCC Rcd. 12,970, ¶ 36 (CGB 2012) ("Waiver Order").

[3] Waiver Order ¶¶ 37-41.

because of the continuing significant technical challenges in addressing accessibility issues and enabling a meaningful consumer experience in video game software. Furthermore, because of the difference between video games and other computer software, applying existing assistive technologies to the video game environment presents unique challenges. Therefore, pursuant to 47 U.S.C. § 617(h)(1) and 47 C.F.R. §§ 1.3 and 14.5, ESA respectfully requests a modest waiver extension for the single remaining waiver category—game software that is designed for the primary purpose of game play—until January 1, 2017. By extending the waiver to this limited class and for this limited time, the Commission will allow platform providers and video game publishers more time to continue to work collaboratively to develop solutions that can be applied across the industry.

II. THE COMMISSION SHOULD PARTIALLY AND BRIEFLY EXTEND THE CURRENT WAIVER.

Video game industry products and services are currently subject to a waiver of the ACS rules.[4] When the Bureau granted ESA's initial waiver request, the waiver covered three classes of products and services:

> **Class I:** Game consoles, both home and handheld, and their peripherals and integrated online networks, which are designed for multiple entertainment purposes but with a primary purpose of playing games.
>
> **Class II:** Game distribution and online game play services designed for the primary purpose of distributing online game software or enabling online game play across a network.
>
> **Class III:** Game software that is designed for the primary purpose of game play.[5]

The Bureau, however, granted this waiver for an initial period of two years rather than the longer period that ESA had requested.[6]

---

4 *See id.*

5 *Id.* ¶ 34.

6 *See id.* ¶ 40.

Importantly, this two-year waiver period did not reflect a finding that all video game ACS features could or should be made accessible for products introduced after October 8, 2015.[7] Rather, the Bureau limited the initial waiver to two years in large part because it concluded that the role of "ACS in online gaming systems" was expanding—at least relative to online gaming systems that historically had not featured ACS at all.[8] In particular, the Bureau cited the "increasing role that ACS [was] beginning to play in online gaming systems and services … both with respect to the ability to compete effectively, and with respect to engaging in communications that are unrelated to game play."[9]

As the Bureau explained, granting an initial waiver of only two years would enable it to monitor industry developments in order to allay concerns that "increasing applications [for gaming ACS] in the employment and educational contexts" could result in "gaming environments … increasingly tak[ing] on the attributes of a social network for which communication is essential" during the pendency of the waiver.[10] Accordingly, while the Bureau specifically contemplated that ESA might seek renewal of the waiver, it observed that, due to the "dynamism of the electronic software industry," "it may be necessary for ESA to define with greater specificity the classes of equipment and services under consideration at that time."[11]

With this observation in mind, ESA proposes that the Bureau extend the waiver only for the last class of video game industry products—ACS in video game software that is designed for the primary purpose of game play—and do so for a period of fewer than fifteen months. This

---

7 *See id*. ¶ 41.

8 *See id*. ¶ 36.

9 *Id*. ¶ 36.

10 *Id*. ¶ 39.

11 *Id*. ¶ 41.

limited waiver extension would allow the industry to work together to develop, and better leverage, platform-level assistive technology solutions, for example, for in-game ACS, maximizing the impact of the industry's accessibility efforts.

A. The Commission Should Grant a Modest Waiver Extension for Class III Video Game Software Used for the Primary Purpose of Game Play.

As the Bureau forecasted, the video game industry has rapidly evolved to incorporate technological advances designed to enhance interactive game play and entertainment. And it is likely to continue to do so. For example, since the Bureau granted the waiver, the three major home console manufacturers have each released new hardware that has enabled numerous innovations in game play. And these technologies have enabled new features to facilitate game play for individuals with disabilities. With respect to the ancillary ACS functions found in games, however, there has not yet been a sea change: the primary purpose of the video game industry's products and services remains game play, and not ACS, and the role of ACS as a complement to game play is no more significant today than it was in 2012.

Nevertheless, to best achieve its goal of improving gaming experiences for all of its customers, including individuals with disabilities, ESA proposes to limit its extension request only to the third class of video game industry products and services currently subject to waiver: game software that is used for the primary purpose of game play. Importantly, this means that new products in the currently remaining classes introduced after the existing waiver expires in October will be subject to the Part 14 rules.

A modest extension will enable publishers and platforms to continue jointly exploring novel accessibility solutions—including solutions that will facilitate access to ACS—in video game products and services. These solutions may arise from within the game industry as well as from assistive technology vendors. The additional time will encourage progress already being

made at the platform level (and which will no longer be subject to a waiver) to further propagate through the rest of the industry. For example, ESA anticipates that as platforms develop accessibility solutions for the ACS systems that they may offer, these features may be available for reuse by game publishers, and could help inform other solutions to publishers for in-game ACS.

B. Class III Video Game Software Continues to Meet the Part 14 Waiver Requirements.

The ACS rules contemplate that the Commission may waive the ACS obligations for multipurpose services and equipment that, while capable of accessing ACS, are designed for multiple purposes, and primarily for purposes other than using ACS.[12] In evaluating the "primary purpose" of the equipment or services, the Commission considers on a case-by-case basis whether the manufacturer designed the offering primarily to be used for ACS by the general public or for another primary reason, and whether the manufacturer or provider marketed the equipment or service primarily for its ACS functions.[13] In addition, the Commission may also consider the extent to which ACS supports another feature, purpose, or task, as well as the impact that removal of the ACS feature would have on the "primary purpose" of the equipment or service.[14] For class waivers, the Commission will also consider whether the services or equipment at issue "share common defining characteristics."[15]

---

[12] *See* 47 C.F.R. § 14.5(a)(1)(i)-(ii).

[13] *See* 47 C.F.R. § 14.5(a)(2)(i)-(ii); *see also In re Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 14,557, ¶¶ 185-186 (2011) ("ACS Report and Order").

[14] *See* ACS Report and Order ¶ 186.

[15] 47 C.F.R. § 14.5(b).

As the Bureau determined in the *Waiver Order*, each of the classes originally proposed by ESA met the Part 14 waiver requirements because they (1) "are defined with sufficient specificity and … share enough common defining characteristics to be granted class waivers," and (2) "are capable of accessing ACS and are designed for multiple purposes, but, at present, are designed primarily for the purpose of game play, which meets the [Part 14] waiver criteria …."[16] Class III plainly continues to satisfy those requirements.

First, video game software as a class is limited, and shares common defining characteristics. Game software means playable games on any hardware or online platform, including, but not limited to, dedicated game consoles, PCs, mobile devices, and the Internet (*e.g.*, browser-based games). This term also includes game applications that are built into operating system software. As ESA has previously explained, retailers, consumers, third-party metrics firms, and several federal agencies treat video game industry products and services as a clearly defined category separate from other forms of software, Internet services, entertainment media, and consumer electronics.[17] Limiting the waiver extension explicitly to game software that is designed for the primary purpose of game play provides even greater specificity regarding the software that would be subject to the modest waiver extension request.

Class III video game software also continues to be designed primarily for the purpose of game play, and not ACS. As the Bureau has explained, "[a]mong the factors used to determine whether ACS is a primary or co-primary use in gaming is the extent to which the ACS functionality is advertised, announced, or marketed to consumers as a reason for purchasing, installing,

---

[16] Waiver Order ¶¶ 34-35.

[17] *See* Petition of the Entertainment Software Association, CG Docket No. 10-213 at 10 (filed Mar. 21, 2012) ("ESA Waiver Petition").

downloading, or accessing the equipment or service."[18] In granting the waiver, the Bureau found that "[e]ven though there is a clear trend towards marketing the ACS features and functions of gaming equipment and services, currently, most of the marketing for these products and services emphasizes game playing."[19] This is certainly still the case today.

The video game industry offers gaming software in numerous genres, such as (1) action games that often focus on combat and reward quick reflexes and accuracy; (2) sports games that enable users to play against virtual opponents or other users; and (3) role-playing games that enable the user to take on the identity of a character in an alternate world and complete quests. As illustrated by materials included in Exhibit A, marketing for this software continues to emphasize game play rather than ACS functions.

Action games. For example, Call of Duty: Advanced Warfare, a popular first-person military-genre game recently released by Activision, supports voice chat on several platforms. However, the marketing website for this game focuses on a "new era" of combat game play that takes place in a fictional universe forty years in the future, and is enabled by imagined advances in equipment and technology.[20] Although the website describes the game's multiplayer mode, these marketing materials focus on features such as player movement, character customization, tools, and weapons, rather than chat functionality.[21]

Similarly, Battlefield Hardline, a popular first-person action game published by Electronic Arts ("EA"), includes voice chat features, but these features are almost completely ignored in the

---

[18] Waiver Order ¶ 35.

[19] *Id*.

[20] *See* Call of Duty: Advanced Warfare Game Home Page, ACTIVISION PUBLISHING, INC., https://www.callofduty.com/advancedwarfare/game (last visited May 20, 2015).

[21] *See* Call of Duty: Advanced Warfare Game Multiplayer Home Page, ACTIVISION PUBLISHING, INC., https://www.callofduty.com/advancedwarfare/mp (last visited May 20, 2015).

game's marketing materials. Instead, these materials focus on the fast paced action, innovative game mechanics, and unique storyline of the game. The game's packaging includes icons that indicate that it supports microphone or headset peripherals optionally, but does not highlight these features. [22]

Borderlands: The Handsome Collection ("Borderlands") is a shooter-style game published by Take 2 and available on several game consoles. Borderlands supports co-op game play with up to four players. It includes voice chat capability. However, that feature is not mentioned on the list of top features in the "Features" description appearing on the publisher's web site.[23] Instead, the features list focuses on exploring new worlds, split screen capability for multiplayer games, and access to various downloadable content from previous versions.

Finally, Super Smash Brothers, a game featuring numerous Nintendo characters whose objective is to knock the player's opponents out of the stage on which they are playing, is one of the highest-rated titles ever released on the Wii U—and the highest rated Wii U game to include ACS features.[24] Super Smash Brothers includes voice chat as a complement to its optional online-play mode. The games website highlights the game's expanded roster of playable characters, support for larger numbers of simultaneous players, and new game modes. It does not, however, highlight the availability of voice chat.[25]

---

[22] *See* Exhibit A at 10-13.

[23] *See* Exhibit A at 31, Borderlands: The Handsome Collection Game Info Page, GEARBOX SOFTWARE, LLC, http://borderlandsthegame.com/index.php/game/borderlands-the-handsome-collection#videos (last visited May 20, 2015).

[24] *See* All Nintendo Wii U Video Game Releases, METACRITIC, http://www.metacritic.com/browse/games/release-date/available/wii-u/metascore (last visited May 20, 2015) (ranking Wii U games by "Metascore" – an average of scores awarded by video game critics).

[25] *See* Exhibit A at 14, Super Smash Bros Game Home Page, NINTENDO, http://www.smashbros.com/us/wiiu/ (last visited May 20, 2015).

***Sports games*.** Madden NFL is a football simulation game enjoyed by millions of gamers. The current version is Madden NFL 15, and like many prior versions it includes in-game chat as a feature. However, that feature doesn't factor prominently into EA's advertising.[26] For example, the game's "Features" page emphasizes various game play elements, such as improved pass rush and tackling mechanics as well as better coverage logic.[27] It also emphasizes photorealistic visual elements, immersive camera angles, and enhanced broadcast play calling.[28] There is no mention, however, of chat on this page of top features. The game's pack-in artwork emphasizes similar game play features.[29] Aside from an indication that the game is multiplayer capable, in a table of technical features, there is no ad copy devoted to chat. This approach is consistent with other marketing materials released for the game.

EA's soccer simulation game FIFA 15 offers similar features, and similar marketing. While the game features include voice chat, its advertising materials focus on game play mechanics, improved visual fidelity, and features related to authentic reproduction of real soccer matches—such as accurate depictions of stadiums, accurate simulation of the soccer pitch itself, authentic crowd noise, and realistic player and ball mechanics. The "Features" section of FIFA 15 includes no mention of chat features.[30]

***Role-playing/MMO games*.** Diablo III, an action role-playing game published by Blizzard Entertainment, includes ACS features (text or voice chat, depending on the console or platform),

---

[26] *See* Madden NFL 15 Game Features Page, ELECTRONIC ARTS, INC., https://www.easports.com/madden-nfl/madden-nfl-15-features (last visited May 20, 2015).

[27] *See id*.

[28] *See id.*

[29] *See* Exhibit A at 5-8.

[30] *See* Exhibit A at 3, FIFA 15 Game Features Page, ELECTRONIC ARTS, INC., https://www.easports.com/fifa/features (last visited May 20, 2015).

but instead advertises features more closely related to core game play. The game's website invites players to defend humanity from demonic forces, and highlights the powers and weapons that players can use in this adventure. It also emphasizes that, on console versions of the game, players will be able to play with friends both online and locally—i.e., with friends who are physically in the same room, and using the same gaming console. It does not, however, tout the game's text- or voice-chat features.[31]

Similarly, The Elder Scrolls Online is a massively-multiplayer online roleplaying game published by Bethesda Softworks and ZeniMax Online Studios. Set in a fictional fantasy world, the game focuses on exploration, combat, and storytelling. The Elder Scrolls Online includes either text or voice chat—console and PC versions of the game differ. The game's advertising materials, however, do not emphasize either of these features. Instead, the game's website describes the game's unique storyline and touts the opportunity to explore its fictional world. The website details players' ability to develop a unique character with skills and equipment that suit the player's preferences and style of play, craft items, and take part in large-scale combat. And while the website does emphasize the opportunity to engage in these adventures with friends—as is natural, for a massively multiplayer online game—it does not emphasize the ability to communicate with other players in-game through text or voice chat.[32]

It is worth noting, moreover, that many gamers opt not to engage in communications for reasons unrelated to accessibility. For example, some prefer to enjoy the game in "story mode" (*i.e.*, work their way through the hero's narrative arc) undistracted by group conversations that

---

[31] *See* Exhibit A at 9, Diablo III Game Home Page, BLIZZARD ENTERTAINMENT, INC., http://us.battle.net/d3/en/console/ (last visited May 20, 2015).

[32] *See* Exhibit A at 2, The Elder Scrolls Online, ZENIMAX MEDIA, INC., http://www.elderscrollsonline.com/en-us/esotu (last visited May 20, 2015).

may slow down their pace but otherwise participating in the multiplayer experience. Many gamers put a premium on completing the game in the shortest time possible, to best their friends and other gamers. Others want to avoid random conversations with strangers. Still others may prefer not to obtain and use the necessary peripheral device (*e.g.*, headset with mic).

In short, Class III video game software continues to be designed primarily for the purpose of game play, and not for providing ACS.

C. The Technical Challenges of Applying Existing Assistive Technologies to Video Games Support Continuation of the Waiver for Class III Software.

The video game industry has made progress in improving video game accessibility over the past two years. However, the industry has also encountered a number of challenges that have slowed development of accessibility solutions and limited the transferability of assistive technologies to video games from other ACS environments. For this reason, the industry has not yet been able "to benefit from and utilize the experience gained in making ACS accessible in other contexts," in the manner that the Bureau had hoped.[33]

Video games present dramatic technical challenges and a unique—and difficult—environment in which to deliver accessibility solutions. For example, it remains technically challenging to develop accessible solutions for ACS in an in-game environment given the often fast-paced nature of the experience and the number of gamers simultaneously involved in a possible chat session. In addition, and critically, video games have not typically been a focus of the assistive technology industry, which has expended effort on other areas deemed a higher social priority—such as education and employment—and on applications whose core purpose is communication.[34]

---

[33] Waiver Order ¶ 36.

[34] *See* Declaration of Mike Paciello, attached as Exhibit B, at ¶ 6.

As set forth in greater detail in the accompanying declaration of assistive technology expert Mike Paciello, video games are, from a technical perspective, fundamentally unlike most other types of computer software.[35] Video game industry dynamics require developers to constantly push the limits of computer graphics technologies, as consumers demand greater and greater visual artistry in games. Consumers expect a level of visual fidelity that often requires video games to draw and redraw millions of polygons on the screen at a rate of approximately 30 frames per second.[36] Indeed, these pressures have spawned an entire industry focusing on specialized computer graphics hardware, which is included in video game consoles and commonly installed in PCs used for gaming.[37] This specialized hardware is complemented by specialized software application program interfaces ("APIs"), such as DirectX and OpenGL, which are able to make efficient use of this specialized hardware.[38]

The fact that video games make use of these specialized hardware and software environments means that accessibility solutions for games (whether first-party or third party) cannot simply re-use accessibility technologies developed for other environments. On-screen elements designed for other environments often cannot be displayed alongside in-game graphics without a dramatic performance penalty due to fundamental differences in the technologies used to render these visual elements on the screen.[39] Differences in display technologies also often mean that on-screen text cannot be accessed readily by general-purpose assistive technologies such as screen-readers.[40] Similarly, today's speech-to-text technologies are not capable of transcribing

---

35 *See generally id.*

36 *Id.* ¶ 5(b).

37 *See id.*

38 *See id.*

39 *See id.* ¶ 5(c).

40 *See id.* ¶ 5(d).

the speech of multiple speakers interacting with each other in real-time, without significant latency and recognition error rate. This makes them especially impractical for transcription in the multiplayer video game context, which typically features fast paced action and multiple speakers.

These technical challenges are made even more difficult to resolve by structural marketplace challenges. Largely due to the rapid advances in graphics-rendering technologies described above, video games have an especially short product life cycle compared with software whose core purpose is facilitating communications.[41] This means that the limited pool of developers with expertise in assistive technologies often focus on developing accessibility solutions in the employment and education contexts, as well as for core communications applications, rather than on markets such as video games.[42]

Another complicating factor is that there are different implementations of chat within the game industry. Some games use text chat, others use voice chat. Additionally, even within a single game platform, there may be variance in how in-game chat is handled. Some publishers may use their own custom software and network while others may rely upon backend services provided by the platform. The best accessibility solution for a particular game may depend on the genre of the game, the on-screen layout of the game, or other game-by-game factors. In short, there is no one solution that can be rapidly deployed to address chat accessibility across the broad spectrum of games.

In addition to offering more stable technological environments, assistive technology solution providers regard education, employment, and communication applications as more important than gaming.[43] To be sure, ESA understands the importance of accessible leisure-time

---

[41] *Id.* ¶ 5(e).

[42] *Id.*

[43] *See id.* ¶ 6.

activities more than most. But assistive technology developers choose where to invest their limited resources. Faced with the social importance of education and employment, and the comparatively more hospitable business and technical environments presented by those markets, makers of the third party assistive technology typically have prioritized the development of comprehensive accessibility solutions for these markets over markets such as video games.[44]

The video game industry is taking steps to improve this dynamic. Progress on game accessibility will result from first-party solutions, cooperation with publishers, and development of third-party assistive technologies. Although the video game industry cannot control third parties' efforts, it hopes that working collaboratively to implement strategies that include accessibility features in consoles and distribution platforms—which can then be leveraged within the games themselves—will also make video game consoles a more attractive target for development by the accessibility technology industry. New platform and console-level ACS and accessibility features may allow assistive technology developers to reduce the resources necessary to support a large number of games by leveraging these features. But the significant technical challenges as well as the unique demands of the video game experience have presented special challenges that have slowed the development of accessibility solutions and game-specific assistive technologies, and have limited the transferability of assistive technologies from other environments.

[44] *See id.* ¶¶ 6-7.

III. A WAIVER EXTENSION FOR CLASS III VIDEO GAME SOFTWARE SERVES THE PUBLIC INTEREST.

A short and discrete extension of the waiver of the ACS rules for Class III video game software satisfies the requirement that a waiver must serve the public interest.[45] When it granted the video game industry's initial waiver request, the Bureau recognized the video game industry's "interest in rolling out innovative games that are currently or are about to go into development."[46] Similarly, the Bureau explained that the waiver will "allow manufacturers of new online gaming … services that have ACS to compete with other video game products …."[47] This is still the case today, as the industry strives to leverage more recent progress on accessibility, including ACS, across a broader spectrum of the industry's products and services.

Equally importantly, a waiver extension will enable game publishers and platforms to continue exploring novel solutions at both the platform and game level. We recognize that it is a shared responsibility across the industry. Because platform-level ACS features may be available for reuse by game developers or help inform possible solutions for game developers to use for in-game ACS, improved accessibility of console and platform ACS features could enable ACS-related accessibility improvements in games themselves, and thus assist publishers in addressing their own ACS compliance obligations. A cooperative approach focused on leveraging platforms has the additional advantage of being a more attractive entry point for vendors of assistive technology. The greater economies of scale associated with game consoles, relative to any particular game title, may spur further innovation in assistive technologies targeted to the industry.

---

45 *See* Waiver Order ¶ 36 (citing ACS Report and Order, 26 FCC Rcd. at 14,637, ¶ 188).

46 Waiver Order ¶ 36.

47 *Id*.

In addition, and not insignificantly, a waiver extension would allow the industry to work in parallel to continue to eliminate the accessibility barriers that matter most to gamers: barriers to game play. As Steven Spohn, Chief Operating Officer for the AbleGamers Foundation, has explained, for many gamers with disabilities, "the main concern" is to be able to play the game itself.[48] Consistent with this goal, the video game industry has made progress in improving game play accessibility, and intends to expand on these efforts. Indeed, at the time that ESA made its initial waiver request, fewer than fifty games had documented accessibility features.[49] Today, the International Game Developers Association's Game Accessibility Special Interest Group reports that this number is over 350.[50]

Many of today's games include accessibility features that were rare or non-existent just a few years ago.[51] Console manufacturers, such as Sony, have also released widely lauded firmware upgrades to improve accessibility at the console level for both game play and console ACS features.[52] For example, a recent PlayStation 4 update includes a screen-reader for messages

---

[48] Mark C. Barlet and Steve D. Spohn, *Includification: A Practical Guide to Game Accessibility*, at 39 (2012), http://www.includification.com/AbleGamers_Includification.pdf (emphasis added) ("Includification").

[49] *See Building a Manifesto for Game Accessibility*, International Game Developers Association, Game Accessibility Special Interest Group, at 26 (2015).

[50] *Id*.

[51] Indeed, one of the most anticipated titles of 2014, Bayonetta 2, was lauded for providing "a near perfect example of game accessibility." The 2014 AbleGamers' Accessible Mainstream Game of the Year: Bayonetta 2, THE ABLEGAMERS CHARITY, http://www.ablegamers.com/ablegamers-news/ablegamers-2014-accessible-mainstream-game-of-the-year-award-2 (last visited May 20, 2015). *See also* World of Warcraft, New Colorblind Support in Patch 6.1, BLIZZARD ENTERTAINMENT, INC., http://us.battle.net/wow/en/blog/17964863/new-colorblind-support-in-patch-61-2-16-2015 (last visited May 20, 2015); Massive Battlefield 3 update goes live June 4-5, ELECTRONIC ARTS, INC., http://blogs.battlefield.com/2012/05/bf3-june-update-announce/ (last visited May 20, 2015).

[52] *See* John Koller, PS4 System Update 2.50 Available Tomorrow, Features Detailed, SONY COMPUTER ENTERTAINMENT AMERICA LLC, http://blog.us.playstation.com/2015/03/25/ps4-system-update-2-50-available-tomorrow-features-detailed/ (last visited May 20, 2015). In addition, DAGERS, "the leading game journalism site for disabled gamers," concluded that "the Wii U is very impressive from the standpoint of accessibility." Disability Hardware Review, Wii U, DAGERS, http://dagersystem.com/index.php/reviews/hardware-reveiws/118-hardware-review-wii-u (last visited May 20, 2015). And Microsoft's Xbox One offers a motion-sensing peripheral called Kinect that provides "great benefits" for individuals with limited range of motion.

received through the PlayStation 4's text-chat feature and console menus, as well as the ability to adjust the size and contrast of on-screen text.[53] To be sure, however, the industry recognizes that there is opportunity for improvement in this area. Extension of the ACS waiver will enable the industry to focus on designing, developing, and implementing innovative accessibility solutions across the board.

IV. THE COMMISSION SHOULD EXTEND THE WAIVER FOR A REASONABLE PERIOD OF TIME WITHOUT PREJUDICE TO FURTHER EXTENSIONS THAT SERVE THE PUBLIC INTEREST.

As noted above, the Bureau granted a time-limited initial waiver of two years in large part due to the potential of the role of ACS functions in video game products and services to change rapidly due to the "dynamism of the electronic software industry."[54] ESA agrees that time-limited waivers can be an appropriate and useful tool to enable the Commission to monitor industry changes.[55] Accordingly, ESA seeks at this time only to extend the waiver for Class III until January 1, 2017—an extension of fewer than fifteen months. As with the initial waiver, this renewal period should be without prejudice to additional waiver extensions that likewise serve the public interest.[56]

Extending the waiver period only until January 1, 2017, will enable the Commission to confirm that ACS remains an ancillary feature to core game play as the industry develops new products and services, and substantial enhancements to existing offerings. Yet this limited

---

Disability Hardware Impressions, Xbox One, DAGERS, http://dagersystem.com/index.php/reviews/hardware-reveiws/414-disability-hardware-impressions-xbox-one (last visited May 20, 2015).

53 *See* John Koller, PS4 System Update 2.50 Available Tomorrow, Features Detailed, SONY COMPUTER ENTERTAINMENT AMERICA LLC, http://blog.us.playstation.com/2015/03/25/ps4-system-update-2-50-available-tomorrow-features-detailed/ (last visited May 20, 2015).

54 Waiver Order ¶¶ 39, 41.

55 *See* ESA Waiver Petition at 21.

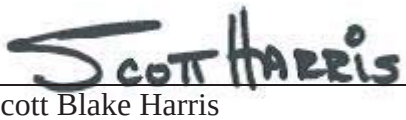
56 *See* Waiver Order ¶ 41.

extension will enable the industry to explore creative solutions customized for their games. Together, these efforts may be leveraged with the work of platform manufacturers to enable improvements in the accessibility of ACS features in video games.

V. CONCLUSION.

The considerations that merited the grant of the initial ESA waiver for video game industry products and services are still present today. A limited extension of the existing waiver will enable the industry to continue to focus its resources on providing non-primary ACS functionality in its game software and leveraging console and platform-level accessibility solutions while exploring game-specific solutions. Accordingly, ESA respectfully requests that the Commission extend the waiver for game software that is designed for the primary purpose of game play until January 1, 2017, and without prejudice to granting additional waiver extensions that the Commission finds to be in the public interest.

Respectfully submitted,



Scott Blake Harris
S. Roberts Carter
Paul J. Caritj
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, D.C. 20036
(202) 730-1300

Counsel for the Entertainment Software Association

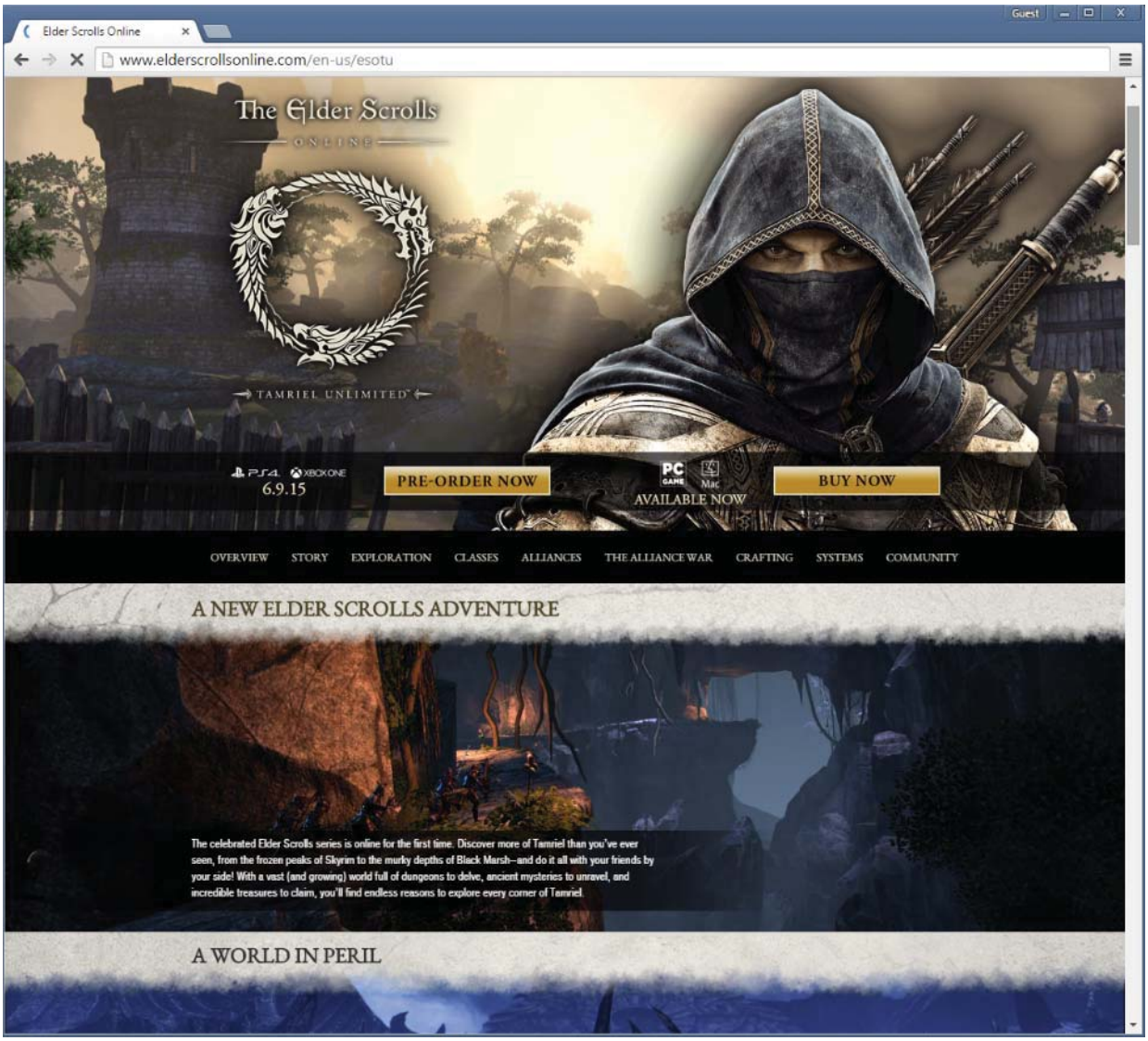
Michael Warnecke
Chief Counsel, Tech Policy
Cory Fox
Senior Policy Counsel
ENTERTAINMENT SOFTWARE ASSOCIATION
575 7th Street NW, #300
Washington, D.C. 20004

May 22, 2015

Exhibit A

Exhibit A-1

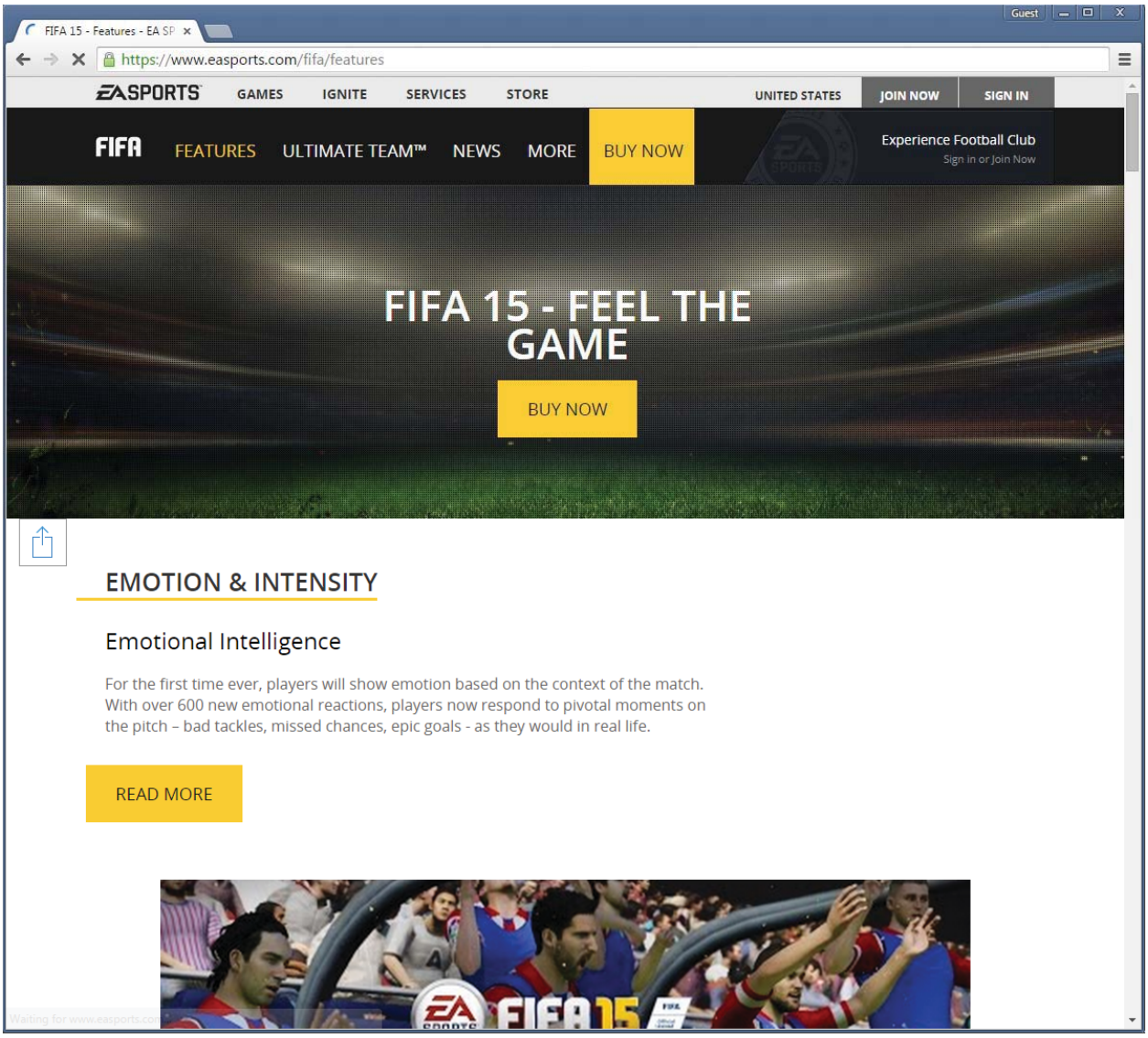
Screenshot of The Elder Scrolls Online Website
Available at http://www.elderscrollsonline.com/en-us/esotu



In this screen capture, the largest text reads “The Elder Scrolls Online: Tamriel Unlimited.” Below that are options to pre-order the game for PS4 and Xbox One, or to buy the game now for PC and Mac. Various other pages within the website are listed underneath: “Overview, Story, Exploration, Classes, Alliances, The Alliance War, Crafting, Settings, Community.” Further down the page, set on top of an in-game scene, is text describing the storyline for the game. The largest image on the advertisement is of a hooded figure with arrows and a sword on his back. The words “A New Elder Scrolls Adventure, A World in Peril” appear above and below the in-game scene.

Exhibit A-2

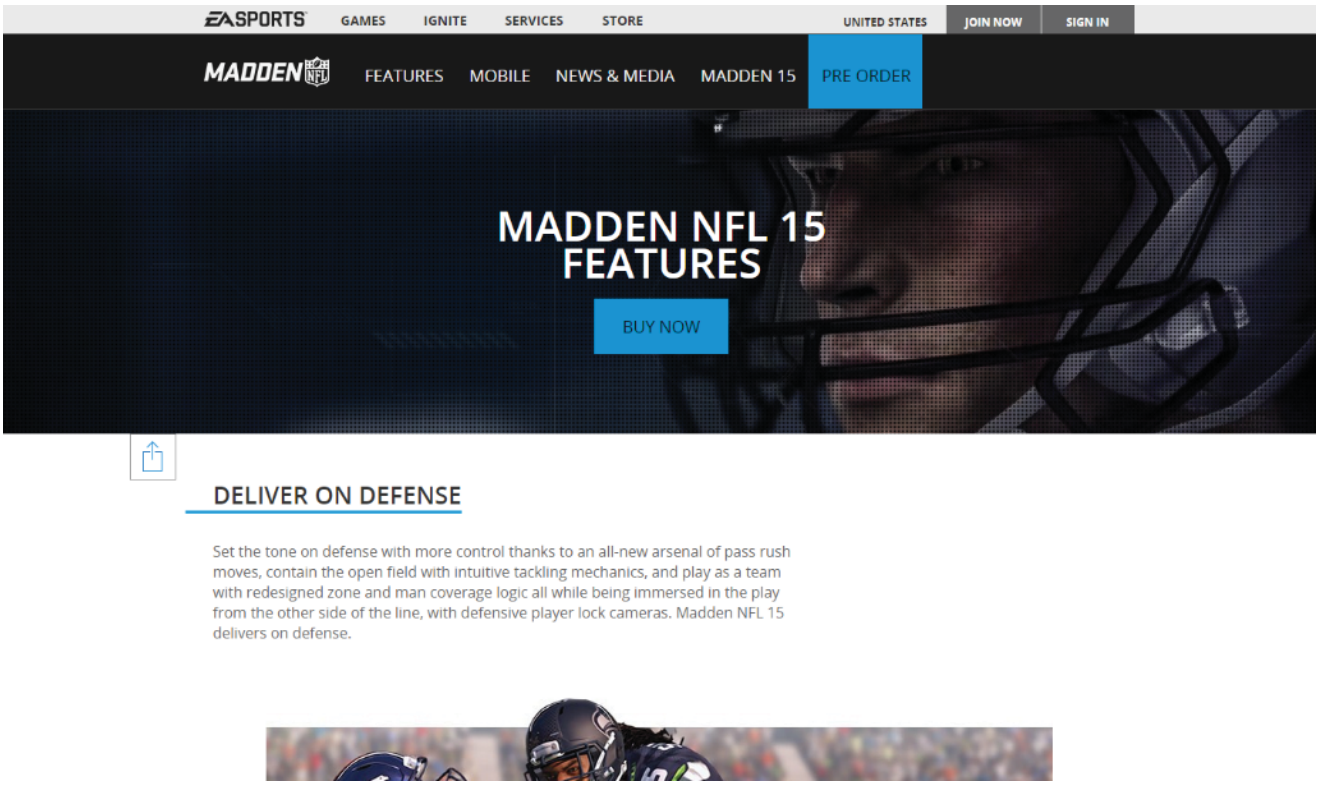
Screenshot of FIFA 15 Website, Features Page
Available at https://www.easports.com/fifa/features



This screen capture of the FIFA 15 website has a large picture of an empty soccer field with the phrase “FIFA 15 – Feel the Game” written and an option to “Buy Now” below it. This screen highlights “Emotion & Intensity,” and reads “For the first time ever, players will show emotion based on the context of the match. With over 600 new emotional reactions, players now respond to pivotal moments on the pitch—bad tackles, missed chances, epic goals—as they would in real life.”

Exhibit A-3

Screenshot of Madden NFL 15 Website, Features Page
Available at https://www.easports.com/madden-nfl/madden-nfl-15-features



This screen capture of the Madden NFL 15 website shows the face of a football player, on top of which appear the words “Madden NFL 15 Features” and a “buy now” button. Below the image appears text describing some of the game’s features: “Deliver on defense: Set the tone on defense with more control thanks to an all-new arsenal of pass rush moves, contain the open field with intuitive tackling mechanics, and play as a team with redesigned zone and man coverage logic all while being immersed in the play from the other side of the line, with defensive player lock cameras. Madden NFL 15 delivers on defense.”

Exhibit A-4

Madden NFL 15 Box Art (Xbox One)

The front of the box for "Madden NFL 15: Ultimate Edition" for Xbox One shows an image of a football player in action. There is an ESRB rating of "E" for everyone, with a note below that that "Online interactions are not rated by ESRB," and an NFLPA logo. The box also has a logo for Xbox One, EA Sports, and a banner which includes the text, "up to $40 added value," and "ultimate edition."

Exhibit A-4 Cont.

Madden NFL 15 Box Art (Xbox One)

IT'S MADDEN SEASON

Transform into your rival's worst nightmare with a new breed of defense built to challenge the best offenses in the NFL. A new arsenal of pass rush moves, improved coverage logic, and immersive new camera angles make defense exciting and fun to play. Call plays with confidence thanks to an all-new crowd-sourced recommendation engine built from millions of online games. Add in NFL Films inspired presentation and it's not just football, it's Madden Season!

DELIVER ON D

An all-new tackling system puts defense in your control.

ALL-NEW BROADCAST PRESENTATION

Dynamic pregame and halftime shows, broadcast graphics and all-new camera angles deliver the sights and sounds of Sunday.

facebook.com/EASPORTSMaddenNFL

easports.com/madden-nfl twitter.com/EAMaddenNFL

	Xbox One	Xbox Live		Xbox One	Xbox Live
Players	1-4	2	Kinect® voice	optional	
Co-op	2	2	Xbox SmartGlass™	optional	

For use only with Xbox One™ systems. Game disc and up to 20 GB storage required. Additional storage, hardware, and Xbox Live® may be required for setup, some updates and features, including retention of some gameplay settings and information. See xbox.com/xboxone/gettingstarted. Storage requirements subject to change. Unauthorized copying, reverse engineering, transmission, public performance, rental, pay for play, or circumvention of copy protection is strictly prohibited.

Xbox Live System Requirements: Broadband internet (ISP fees apply) and Microsoft® account required. In supported games, paid subscription required for online multiplayer. Features and system requirements vary by country and over time. Not available in all countries, see xbox.com/live/countries. Subject to Terms of Use at xbox.com/live/termsofuse. See xbox.com/live for full details.

Electronic Arts Inc. 209 Redwood Shores Parkway, Redwood City, CA 94065.

ACCEPTANCE OF PRODUCT END USER LICENSE AGREEMENT (EULA) REQUIRED TO PLAY. INTERNET CONNECTION AND ORIGIN ACCOUNT REQUIRED TO ACCESS ONLINE FEATURES. YOU MUST BE 13+ TO ACCESS ONLINE FEATURES. EA ONLINE PRIVACY AND COOKIE POLICY AND TERMS OF SERVICE AVAILABLE AT www.ea.com. EULAS AND ADDITIONAL DISCLOSURES AVAILABLE AT www.ea.com/1/product-eulas. EA MAY RETIRE ONLINE FEATURES AFTER 30 DAYS NOTICE POSTED ON www.ea.com/1/service-updates. INCLUDES SOFTWARE THAT COLLECTS DATA ONLINE TO PROVIDE IN GAME ADVERTISING.

© 2014 Electronic Arts Inc. EA, EA SPORTS and the EA SPORTS logo are trademarks of Electronic Arts Inc. The mark 'John Madden' and the name, likeness and other attributes of John Madden reproduced on this product are trademarks or other intellectual property of Red Bear, Inc. or John Madden, are subject to license to Electronic Arts Inc., and may not be otherwise used in whole or in part without the prior written consent of Red Bear or John Madden. All rights reserved. Officially Licensed Product of NFL PLAYERS INC. and NFLPLAYERS.COM. All other trademarks are the property of their respective owners. 7330801602

WARNING Read inside the case for information about photosensitive seizures and other important safety and health information.

EVERYONE ESRB Search for more detailed rating summaries at esrb.org

0 14633 73308 2

The back of the box for "Madden NFL 15: Ultimate Edition" for Xbox One for shows another picture of a football player, along with two smaller game play screen captures. The words "It's Madden Season" are followed by a short paragraph advertising the new features in the game, including special camera angles and new pass rush moves. System requirements, including optional support for Kinect voice, and legal notices are listed in fine print alongside the "E" for everyone logo, and the various company logos and health information.

Exhibit A-5

Madden NFL 15 Box Art (PlayStation 4)

The front of the box for "Madden NFL 15: Ultimate Edition" for PlayStation 4 shows a football player in action, along with the EA Sports logo in the middle. There is an ESRB rating of "E" for everyone, a note that "Online interactions are not rated by ESRB," as well as logos for the PlayStation 4 and the NFLPA.

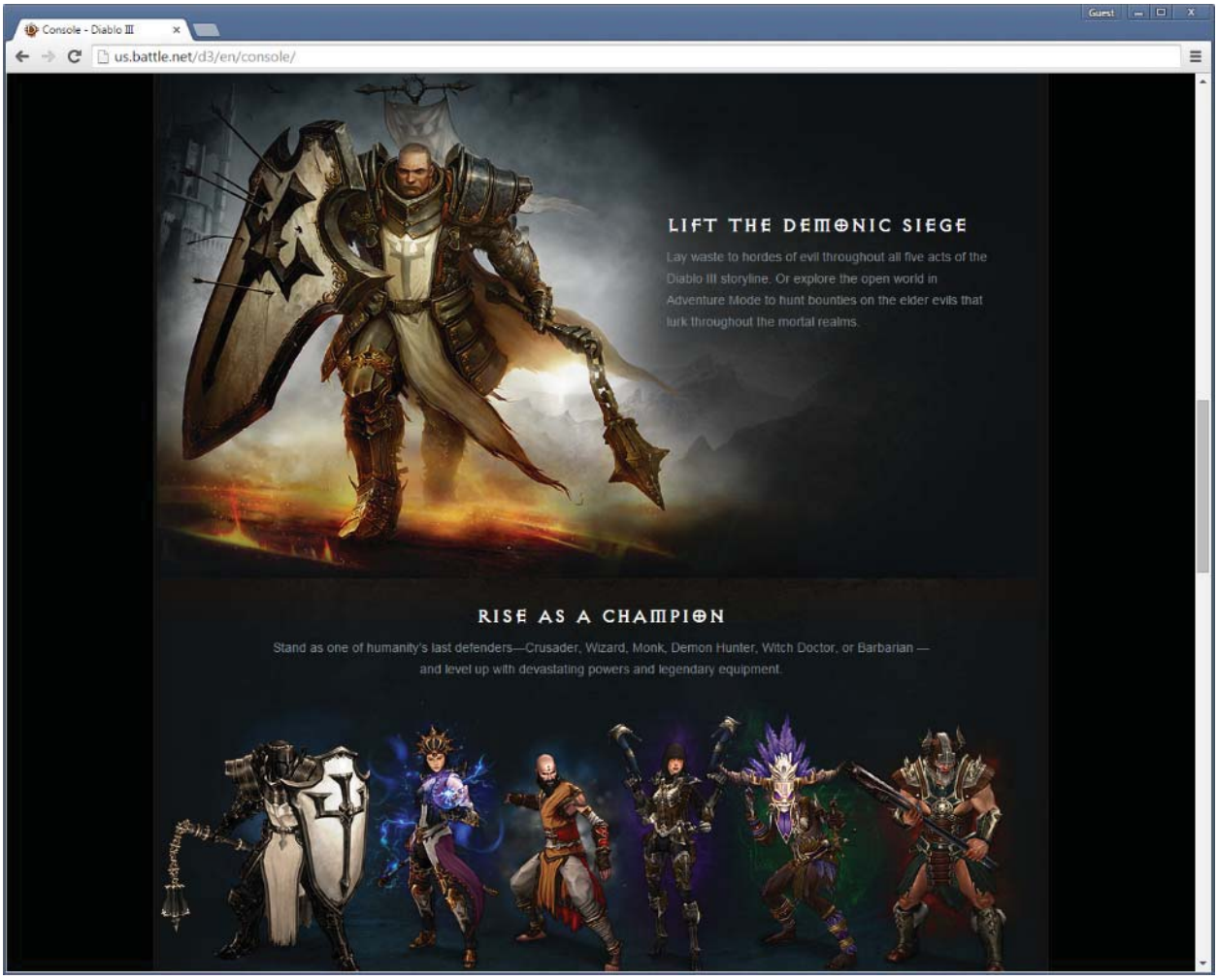
Exhibit A-5 Cont.

Madden NFL 15 Box Art (PlayStation 4)

The back of the Madden NFL 15 Box for PlayStation 4 shows another picture of a football player, along with two smaller game play screen captures. The words "It's Madden Season" are followed by a short paragraph advertising the new features in the game, including special camera angles and new pass rush moves. In addition, information on a new tackling system (beneath the words "Deliver on D"), as well as an all-new broadcast-style presentation, is provided. System requirements and legal notices are listed in fine print alongside the "E" for everyone logo, and the various company logos and health information.

Exhibit A-6

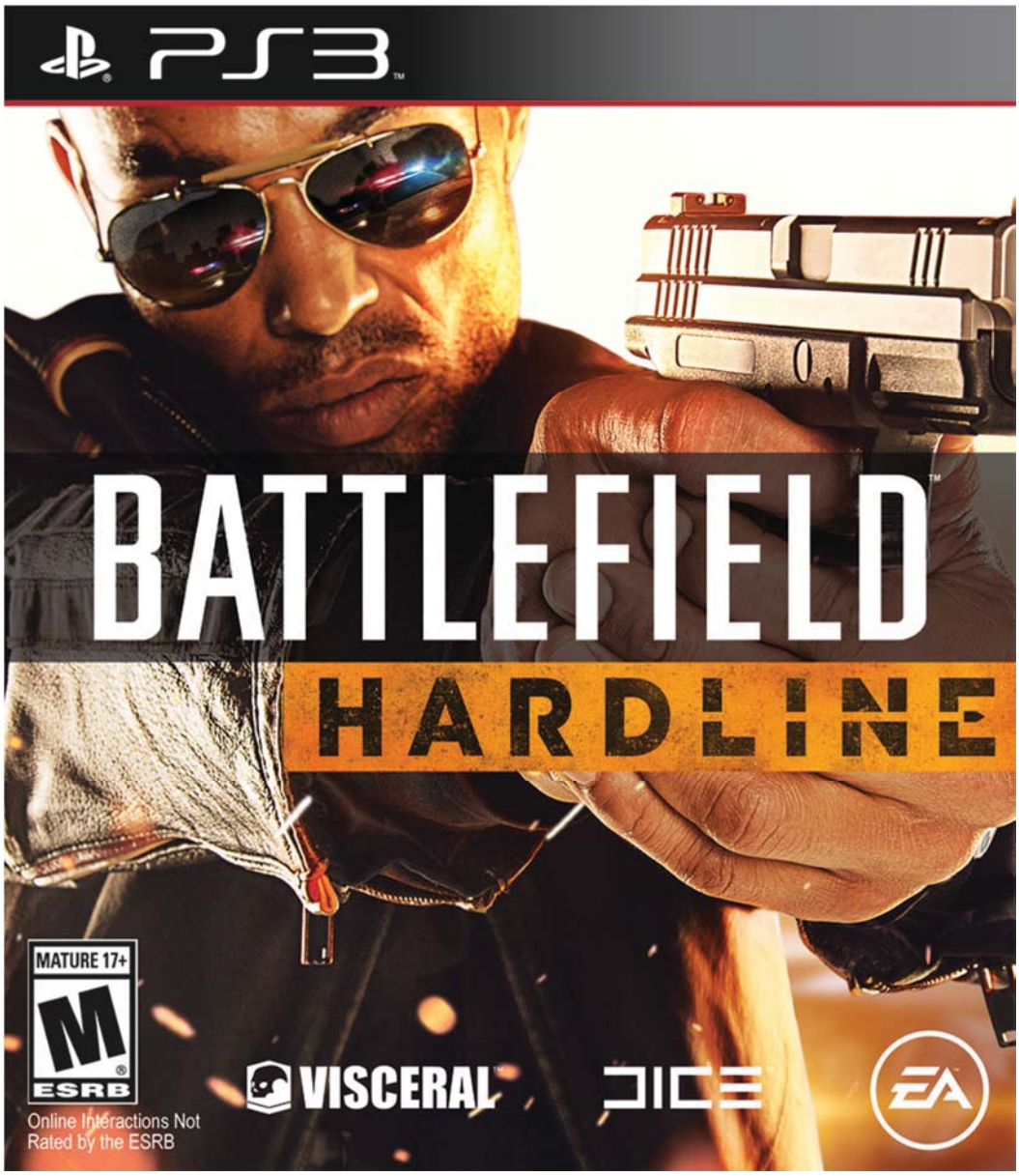
Screenshot of the Diablo III Website
Available at http://us.battle.net/d3/en/console/



This screen capture of the Diablo III website shows a large picture of one of the characters, a man in full medieval-style armor with a shield and weapon, as well as a smaller picture of six various characters in the game. The large text reads “Lift the Demonic Siege” and “Rise as a Champion.” The website advertises the different types of characters that can be played in the game.

Exhibit A-7

Battlefield Hardline Box Art (PlayStation 3)



The front of the box for "Battlefield Hardline" for PlayStation 3 shows a man aiming to shoot a gun. The ESRB logo rating this game "M" for mature is shown, with the phrase "Online Interactions Not Rated by the ESRB," below it. Logos also appear on the box for the PlayStation 3, EA Sports, Visceral Games, and DICE.

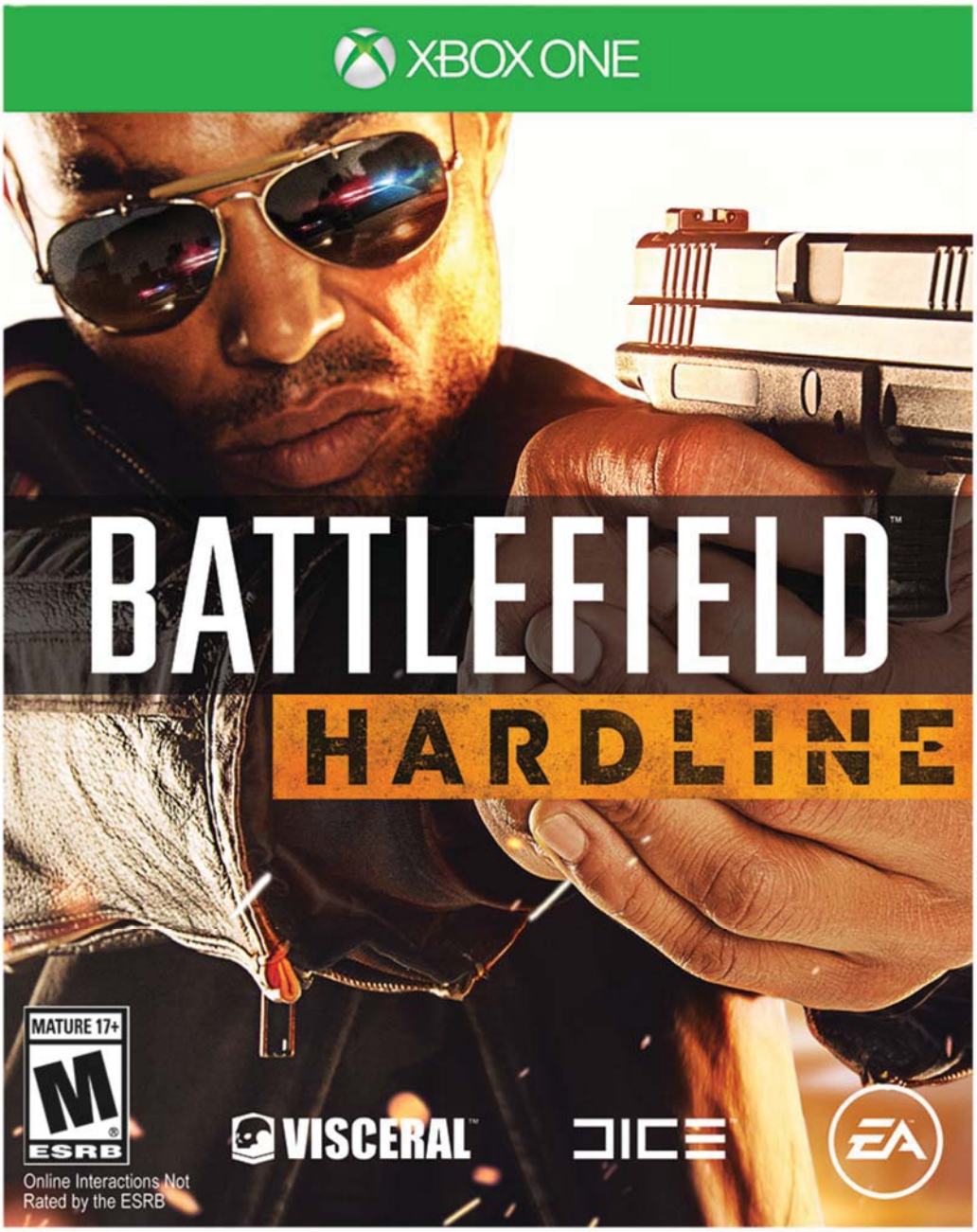
Exhibit A-7 Cont.

Battlefield Hardline Box Art (PlayStation 3)

The back of the Battlefield Hardline Box for PlayStation 3 shows three game play screen captures. Large text on the top reads "Get a piece of the action," as well as a quote by GamesBeat stating, "It's gripping, and it gets your heart going." Additional text reads, "A visceral story on both sides of the law" and "the fastest battlefield to date." The box lists technical features—including support for a headset—health warnings, and how many players can participate in the game. ESRB's rating of "M" for mature is show alongside the description "Blood and Gore, Intense Violence, Strong Language, Use of Drugs."

Exhibit A-8

Battlefield Hardline Box Art (XBox One)



The front of the box for “Battlefield Hardline” for Xbox One shows a man aiming to shoot a gun. The ESRB logo rating this game “M” for mature is shown, with the phrase “Online Interactions Not Rated by the ESRB,” below it. Logos also appear on the box for the Xbox One, EA Sports, Visceral Games, and DICE.

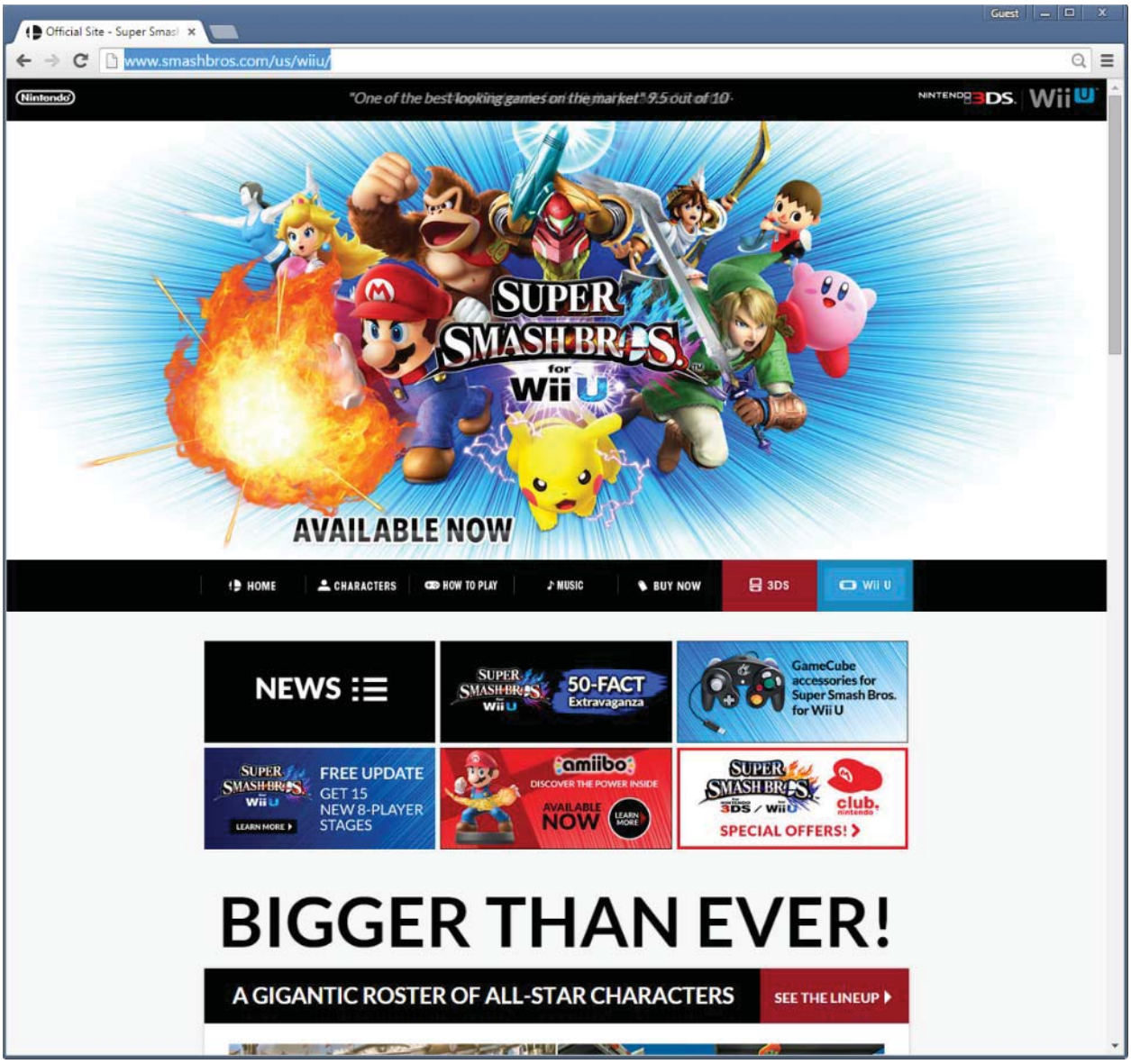
Exhibit A-8 Cont.

Battlefield Hardline Box Art (XBox One)

The back of the Battlefield Hardline Box for Xbox One shows three game play screen captures. Large text on the top reads "Get a Piece of the Action," as well as a quote by GamesBeat stating, "It's gripping, and it gets your heart going." Additional text reads, "A visceral story on both sides of the law" and "the fastest battlefield to date." Fine print lists system requirements—including optional support for a microphone—health warnings, and how many players can participate in the game. ESRB's rating of "M" for mature is show alongside the description "Blood and Gore; Intense Violence; Strong Language; Use of Drugs."

Exhibit A-9

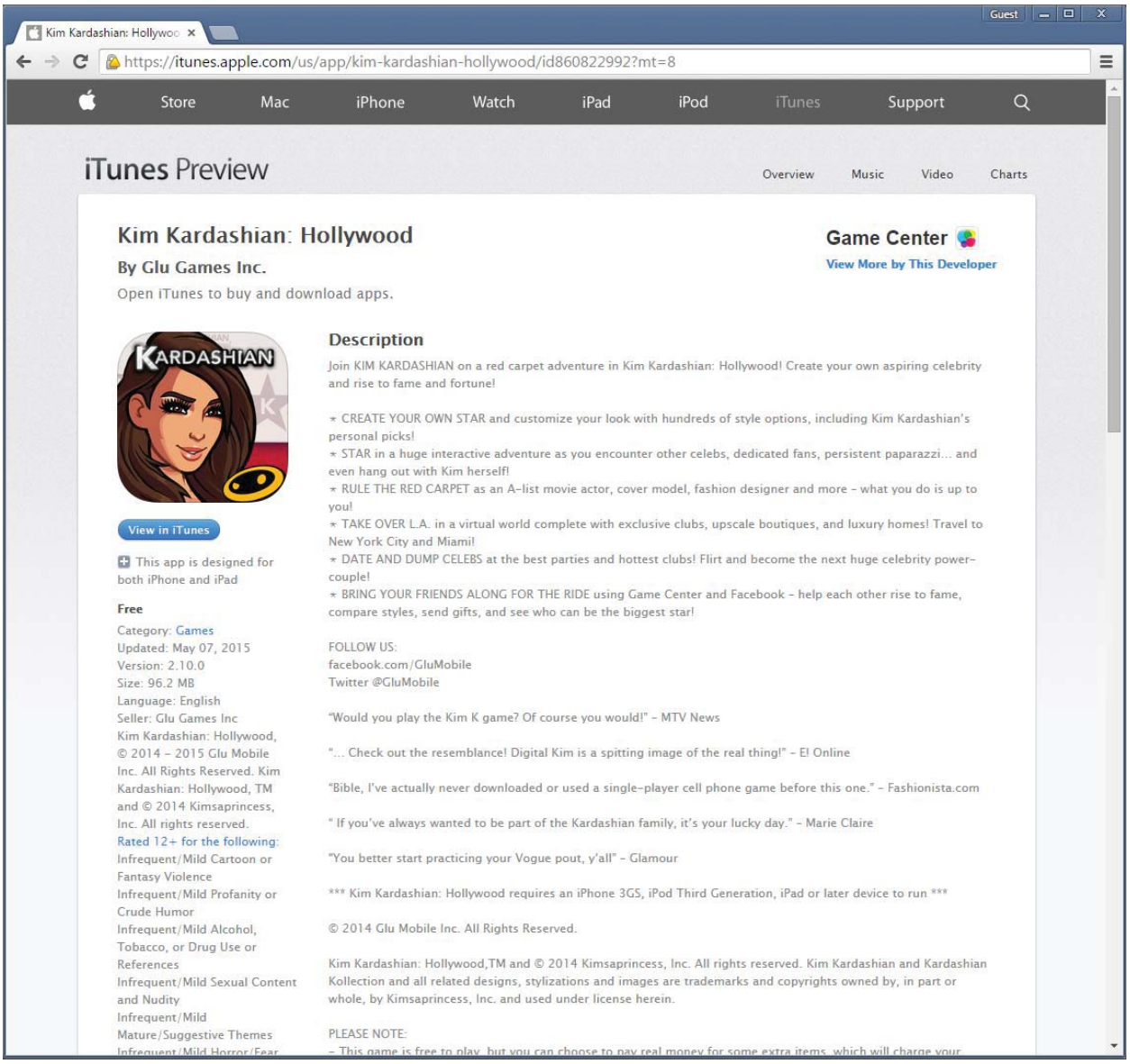
Screenshot of the Super Smash Brothers, Wii U Website
Available at http://www.smashbros.com/us/wiiu/



This screen capture of the Super Smash Brothers website includes a picture of Nintendo characters behind the text "Super Smash Bros for Wii U." The various links below the picture lead to GameCube accessories, special offers, free updates, and other news regarding the game. The ad also includes the text "Bigger than ever!" and "A gigantic roster of all-star characters."

Exhibit A-10

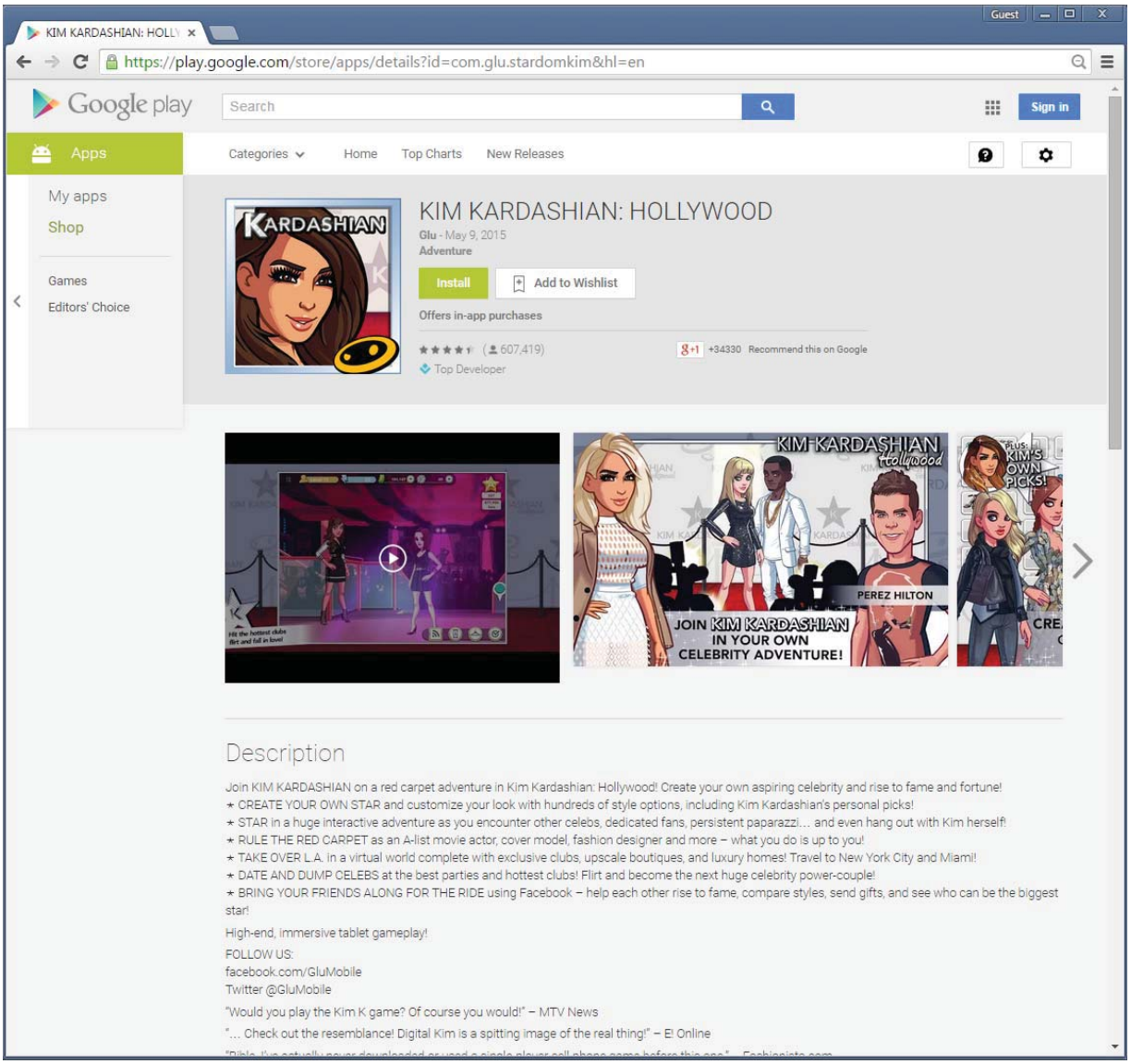
Screenshot of Kim Kardashian: Hollywood in the Apple iTunes Store
Available at https://itunes.apple.com/us/app/kim-kardashian-hollywood/id860822992?mt=8



This screen capture from the Apple iTunes store has a small picture of the face of a cartoon woman, with the text "Kardashian" over her head. The small print explains the technical information of the game, as well as a description of things you can do within the game. The Game Center logo is in the upper right-hand corner.

Exhibit A-11

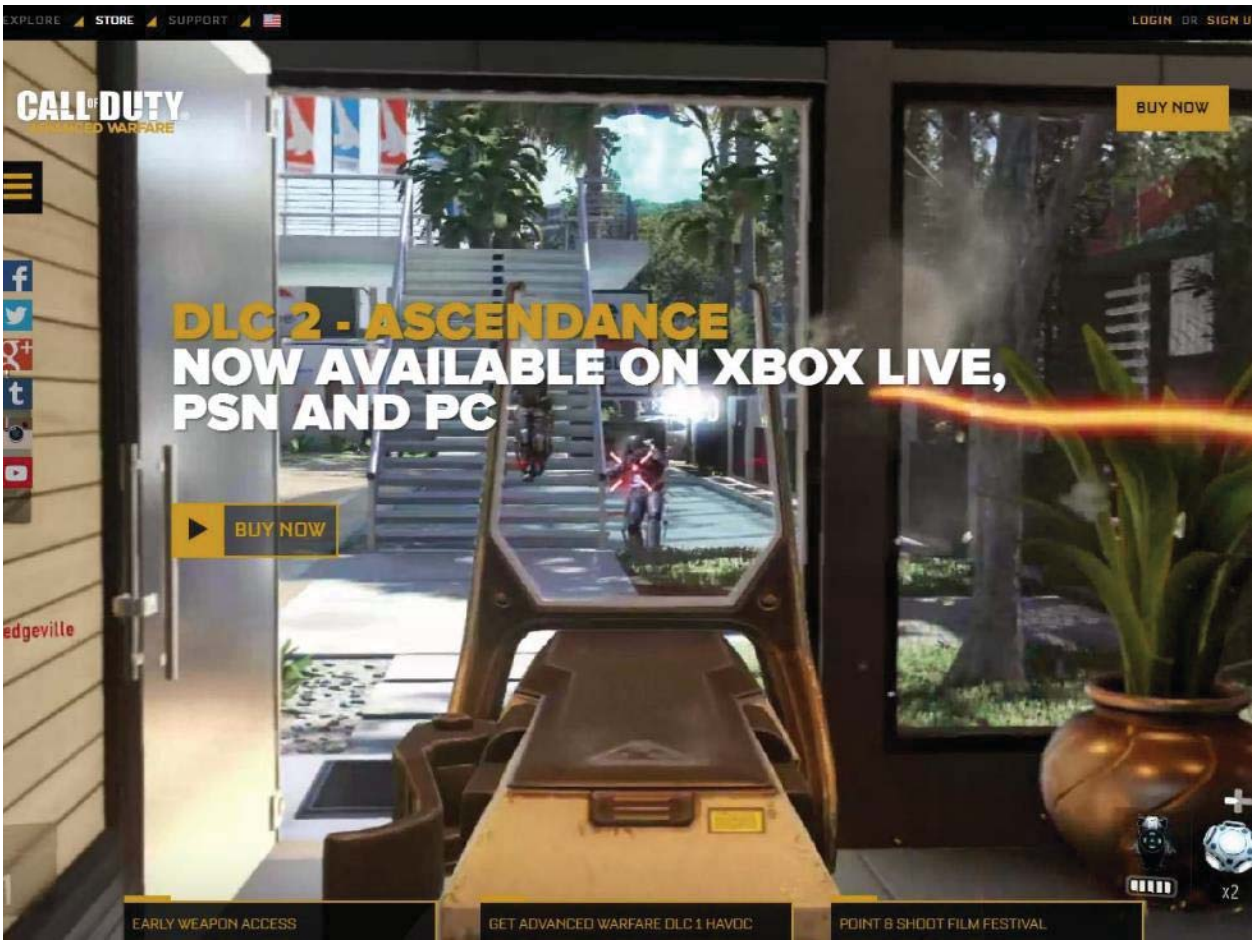
Screenshot of Kim Kardashian: Hollywood in the Google Play Store
Available at https://play.google.com/store/apps/details?id=com.glu.stardomkim&hl=en



This screen capture from the Google Play store has a small picture of the face of a cartoon woman, with the text "Kardashian" over her head, as well as two other smaller screen captures of the game. The small print has a written description of things you can do in the game, as well as links to the various social media pages and quotes like "Would you play the Kim K game? Of course you would!" by MTV News.

Exhibit A-12

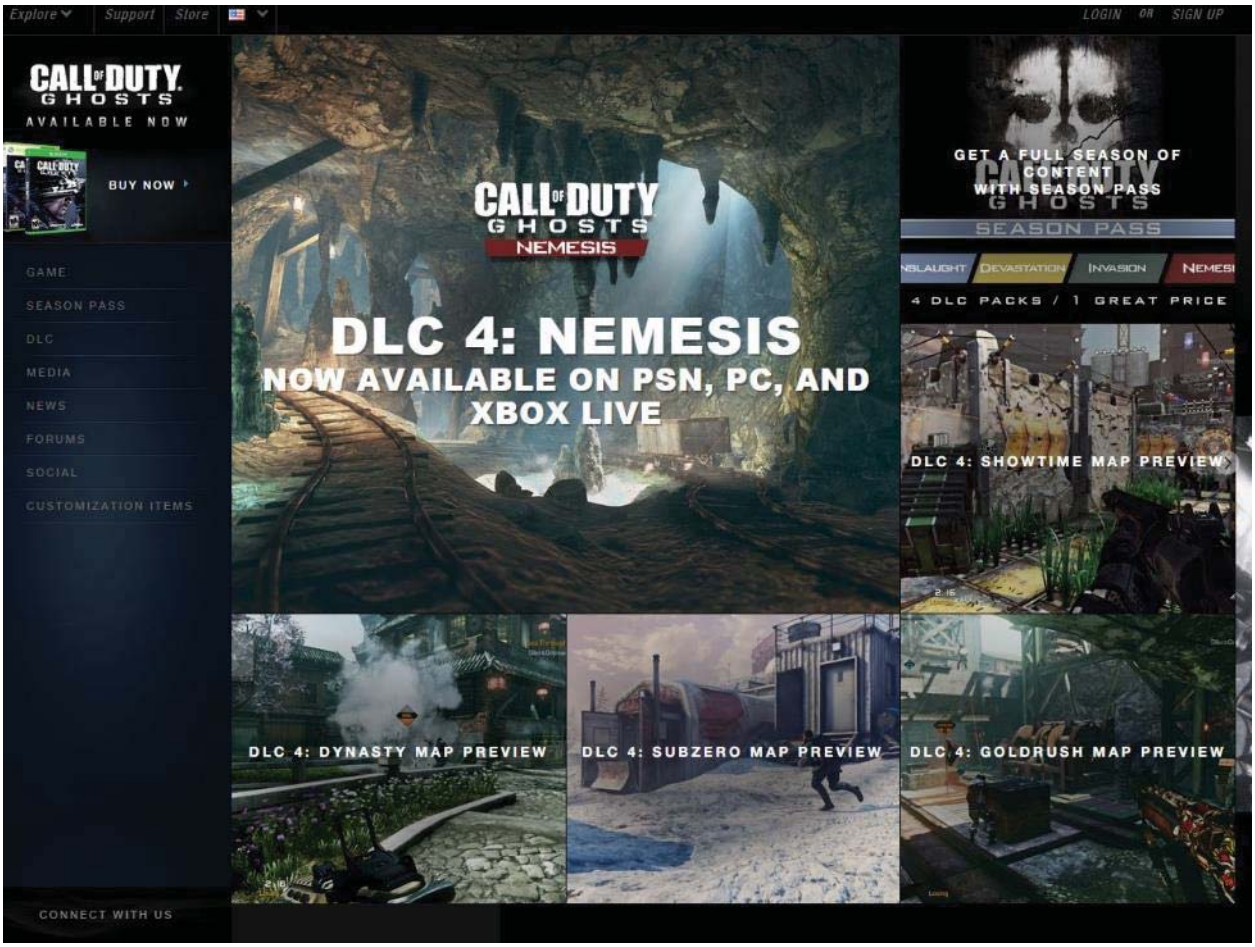
Screenshot of the Call of Duty: Advanced Warfare Website
Available at https://www.callofduty.com/advancedwarfare



This screen shot of the Call of Duty: Advanced Warfare website reads: "DLC 2 – Ascendance: Now Available on Xbox Live, PSN and PC" in large text over a screen shot of the game. There is an option to "Buy Now' and buttons labeled "Early Weapon Access," "Get Advanced Warfare DLC 1 Havoc," and "Point & Shoot Film Festival," appear at the bottom of the page.

Exhibit A-13

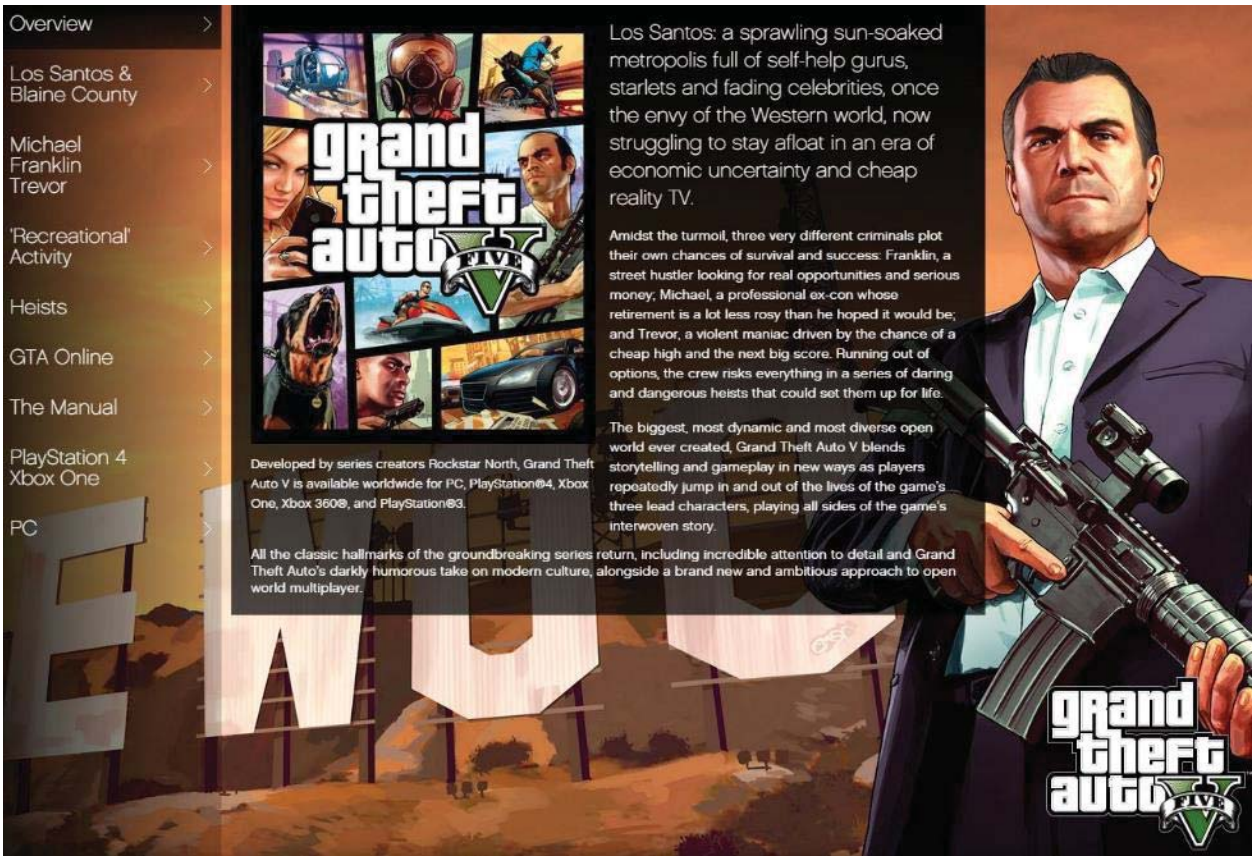
Screenshot of the Call of Duty: Ghosts Website
Available at https://www.callofduty.com/ghosts



This screenshot of the Call of Duty: Ghosts website has “DLC 4: Nemesis: Now available on PSN, PC, and Xbox Live” written in large text, with four screen shots of gameplay on various game maps. There is a link to buy the game, as well as links labeled “game,” “season pass,” “DLC,” “media,” “news,” “forums,” “social,” and “customization items.” The website also has a link to “Get a full season of content with season pass.”

Exhibit A-14

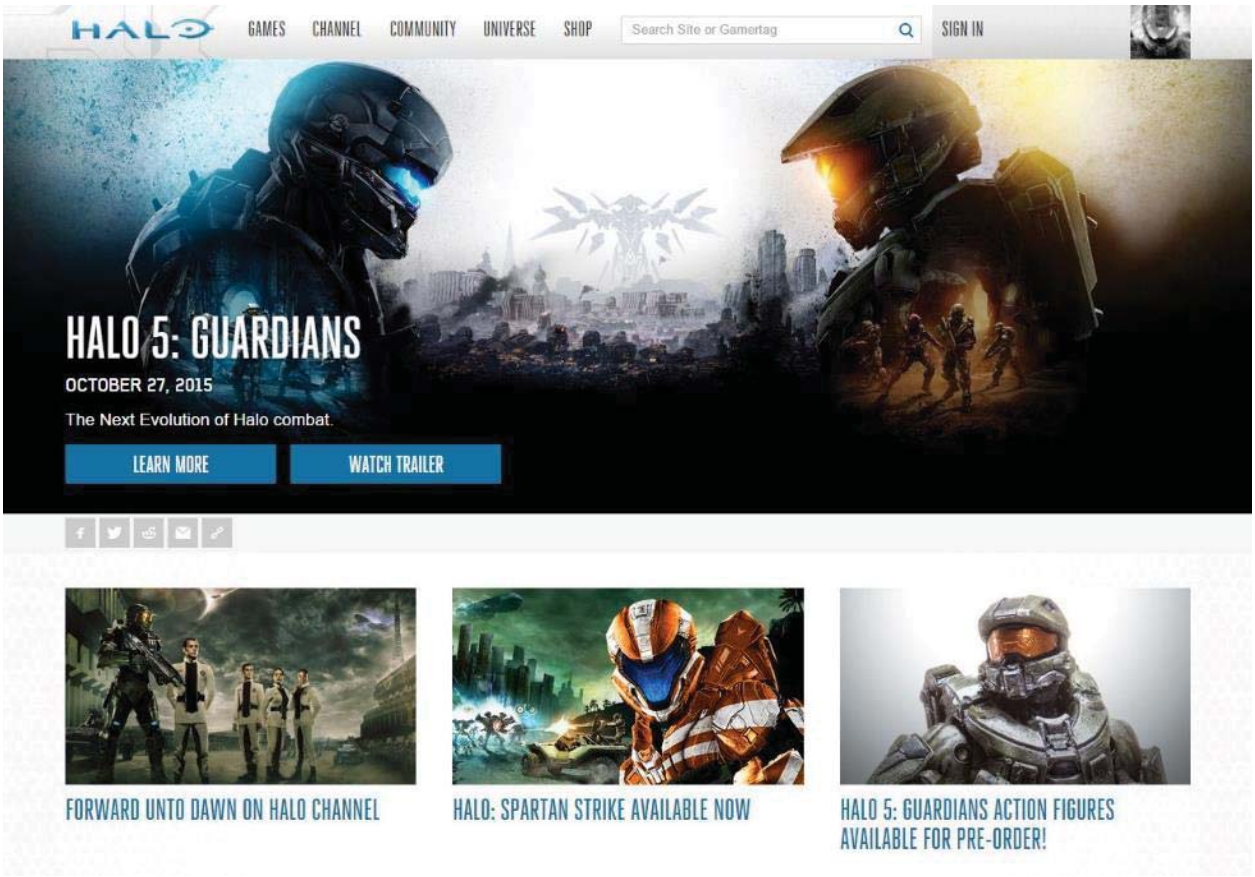
Screenshot of the Grand Theft Auto 5 Website
Available at http://www.rockstargames.com/V/



This screen capture of the Grand Theft Auto 5 website includes a picture of the box cover with game title “Grand Theft Auto,” as well as a description of the story line for the game. There are links on the side of the screen for other website pages, including “GTA Online” and “The Manual.” The website’s background is a visual of man in a suit with an assault rifle standing before a sign similar to the famous Hollywood sign. Part of the storyline is written , “Los Santos: a sprawling sun-soaked metropolis full of self-help gurus, starlets and fading celebrities, once the envy of the Western world, now struggling to stay afloat in an era of economic uncertainty and cheap reality TV.” More detail regarding the game’s plot is also provided in smaller type.

Exhibit A-15

Screenshot of the Halo 5: Guardians Website
Available at https://www.halowaypoint.com/en-us



This screen capture of the Halo 5: Guardians website shows the main character of the game with the date of release in small font and the phrase “The Next Evolution of Halo Combat.” There are three links to “Learn More” and “Watch Trailer” as well as links to watch the show “Forward Unto Dawn,” learn about the game “Halo: Spartan Strike,” and pre-order the action figures, each beneath a related picture.

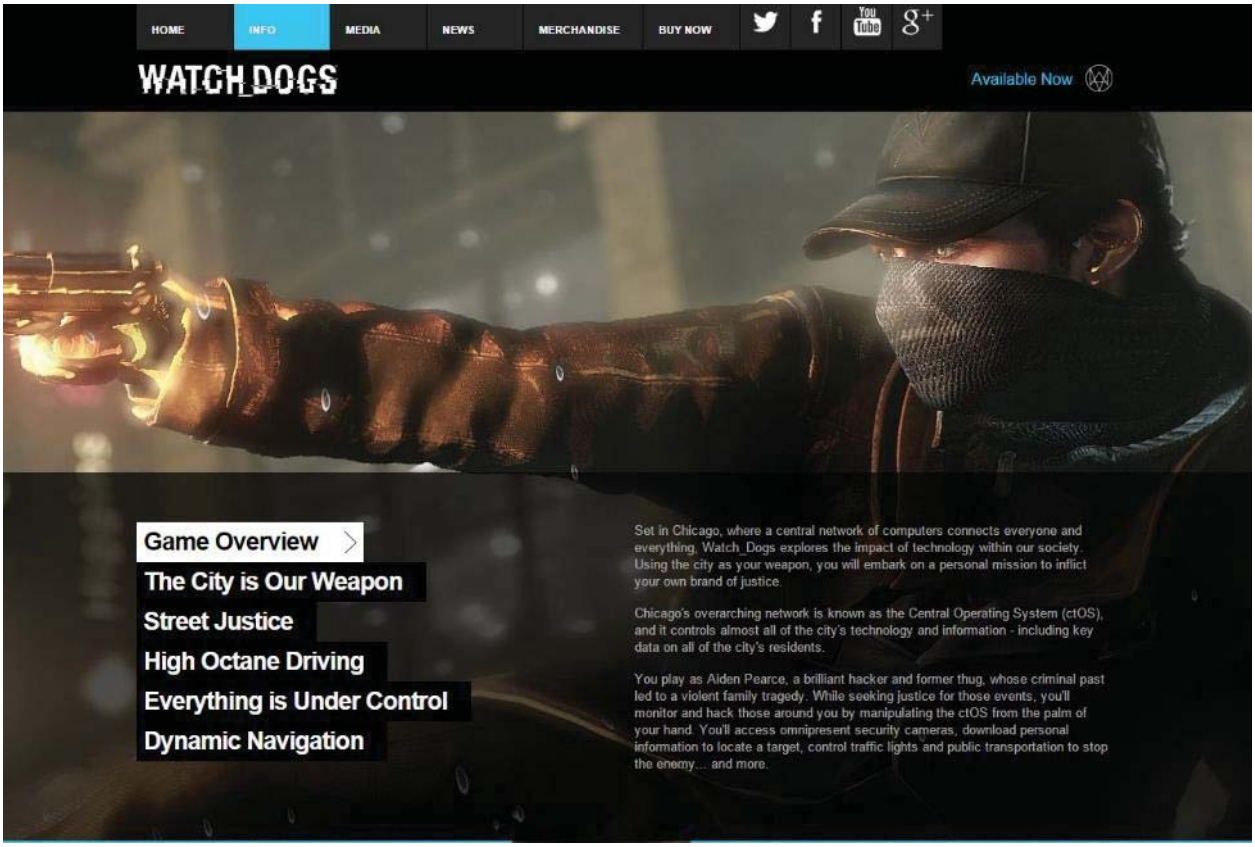
Exhibit A-16

Screenshot of the NBA 2K15 Website
Available at https://www.2k.com/games/nba-2k15

This screen capture the NBA 2K15 website highlights Kevin Durant's involvement with NBA 2K15. A rating of "E" for everyone by ESRB is included with a description of "Mild Lyrics." It also includes a picture of the game's box art, a small description of the game with release dates, and a screenshot of a tweet by Kevin Durant reading: "2 life goals in the same day! So grateful. #YourTimeHasCome #MVP #NBA2K15."

Exhibit A-17

Screenshot of the Watch Dogs Website
Available at http://watchdogs.ubi.com/watchdogs/en-us/home/



This screen capture of the Watch Dogs website has a picture of a man aiming to fire a gun, along with links to other sections of the website. The website also includes buttons to read detailed descriptions of various game features. The button labeled “Game Overview” is active and, next to it, appears a brief description of the storyline for the game of Watch Dogs.

Exhibit A-18

DriveClub Sell Sheet[1] (PlayStation 4)

The front of the sell sheet for "DriveClub" for PlayStation 4 shows a car racing on a street, with Driveclub's logo in front. A rating of "E" for everyone by ESRB is included on the front and a small logo for Evolution Studios. It also lists the game's release date, as well as the pricing and UPC number.

[1] Sell sheets are marketing materials given to retailers and other marketing partners to guide their promotion of a game.

Exhibit A-18 Cont.

DriveClub Sell Sheet (PlayStation 4)

PS4

AVAILABLE: October 7, 2014 MSRP: $59.99 ($49.99 PS Plus) PART #: 10014 UPC: 7-11719-10014-0 GENRE: Racing

DRIVECLUB

Drive Together, Win Together

DRIVECLUB™ is all about you and your friends. It's about teamwork; it's about everyone fighting for one another and earning rewards together in a Club – and more importantly, it's about sharing in the sheer thrill of every race.

KEY TAKEAWAYS

- **Join A Club –** Join an existing club or create your own with up to 5 other drivers. Everything your club teammates do helps you and everything you do helps them and the club.
- **Take on Challenges –** Constant and varied challenges keep the game feeling fresh and unique, offering pick-up-and-play gaming experience to suit every player's lifestyle.
- **My DRIVECLUB Partner App –** Stay connected 24/7 to the world of DRIVECLUB. Free on iOS & Android devices, racers can keep pace with teammates' progress, watch live races, customize their vehicles' looks, issue racing challenges and more.
- **The World's Coolest Cars –** Hand picked for their power and beauty, meticulously recreated with an incredible level of detail, both inside and out.

FEATURES

1 Player offline
Co-op: 6 players per club
Up to 12 players online

1080P
HD video output
480P | 720P | 1080i | 1080P

PlayStation®Plus Edition

DRIVECLUB PlayStation Plus Edition

10 CARS (5 UNLOCKABLE)
1 LOCATION
11 TRACKS
3 of 50 TOUR EVENTS

ALL 50 CARS
ALL 5 LOCATIONS
ALL 55 TRACKS
ALL 50 TOUR EVENTS

7 11719 10014 0

http://us.playstation.com/ps4/games/drive-club-ps4.html
www.us.playstation.com

evolution studios
Blu-ray Disc
SONY

©2013 Sony Computer Entertainment Europe. "DRIVECLUB" and "DRIVECLUB" logo are trademarks of Sony Computer Entertainment America LLC. Developed by Evolution Studios. The Sony Computer Entertainment logo is a registered trademark of Sony Corporation. "PlayStation" and the "PS" Family logo are registered trademarks and "PS4" is a trademark of Sony Computer Entertainment Inc.

The back of the Driveclub sell sheet for PlayStation 4 shows four different in-game views of cars, with the text "Drive Together, Win Together." Other text on the page lists "Key Takeaways" of the game and has the logos for Blu-ray, Evolution Studios, and Sony Computer Entertainment. The "features" section lists the number of players for each game setting, as well as the supported video output resolutions. The release date, price info, and other information, are listed at the top in small text.

Exhibit A-19

Killzone Shadow Fall Sell Sheet (PlayStation 4)

The front of the sell sheet for Killzone: Shadow Fall for PlayStation 4 shows a portion of a woman's face above a character standing with a futuristic gun. An ESRB rating of "M" for mature is shown, with a description reading "Blood; Intense Violence; Strong Language." The game's release date, the price, the UPC number, and other information are at the top of the sheet in small font, alongside the PlayStation 4 logo.

Exhibit A-19 Cont.

Killzone Shadow Fall Sell Sheet (PlayStation 4)

PS4

AVAILABLE: November 15, 2013 MSRP: $59.99 PART #: 10008 UPC: 7-11719-10008-9 GENRE: First Person Shooter

KILLZONE
SHADOW FALL

What will you sacrifice for peace?

As Shadow Marshal Lucas Kellan, keeping the fragile peace across the vast wall dividing your home world comes at great cost. When tensions between the Vektans and the Helghast once more boil over into open conflict, the line separating right from wrong begins to crumble, forcing you to decide the type of hero you really are.

KEY TAKEAWAYS

- **A new breed of hero, a new vision of Killzone:** As Shadow Marshal Lucas Kellan, you represent Vekta's finest, tasked with maintaining the fragile peace between bitter enemies.
- **A true next generation showpiece:** With breathtaking scale and a robust feature set all realized at an incredible fidelity, Killzone Shadow Fall is a true showcase for the impressive power of the PS4™ system.
- **An expansive and futuristic arsenal:** Chief amongst Kellan's elite arsenal is the OWL, a highly versatile combat drone, dramatically augmenting your abilities and offering a host of new tactical options.

FEATURES

1 Player offline
2–8 players online

1080P
HD video output
480P | 720P | 1080i | 1080P

7 11719 10008 9

www.killzone.com
www.us.playstation.com

Blu-ray Disc

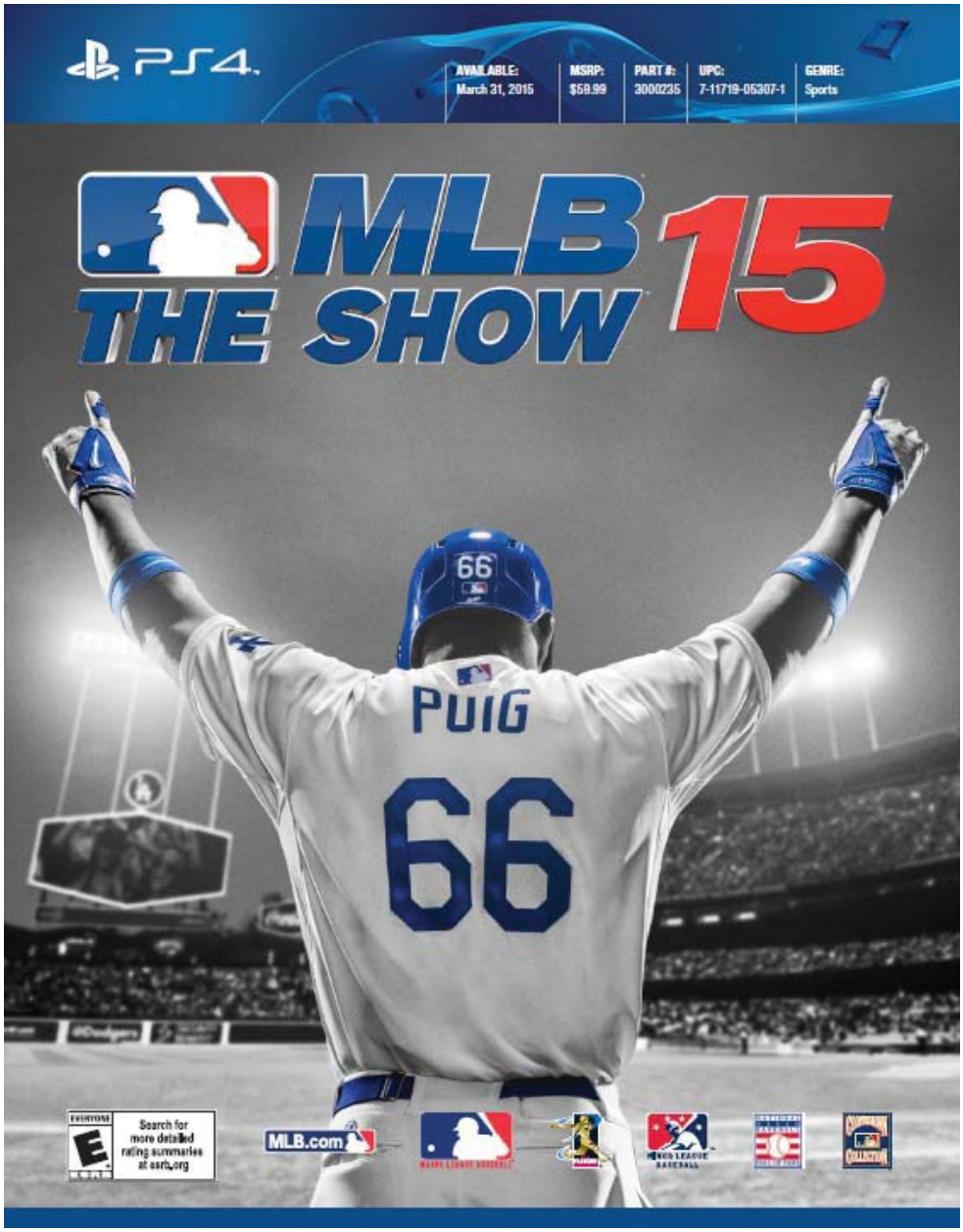
SONY

©2013 Sony Computer Entertainment Europe. Killzone is a trademark of Sony Computer Entertainment Europe. Killzone Shadow Fall is a trademark of Sony Computer Entertainment America LLC. Developed by Guerrilla. The Sony Computer Entertainment logo is a registered trademark of Sony Corporation. "PlayStation" and the "PS" Family logo are registered trademarks and "PS4" is a trademark of Sony Computer Entertainment Inc.

The back of the Killzone: Shadow Fall sell sheet for PlayStation 4 shows four different screen captures from the game, with the text "What will you sacrifice for peace?" Other text on the page lists "Key Takeaways" of the game, the logos for Blu-ray, Sony Computer Entertainment, the number of supported players, as well as the supported video output resolutions.

Exhibit A-20

MLB 15: The Show Sell Sheet (PlayStation 4)



The front of the sell sheet for MLB 15 The Show for PlayStation 4 shows the back of Los Angeles Dodgers baseball player Yasiel Puig with his arms raised, an ESRB rating of “E” for everyone, and various small logos of baseball-related organizations. It also lists the game’s release date, the price, the UPC number, and other information at the top of the sheet in small font, alongside the PlayStation 4 logo.

Exhibit A-20 Cont.

MLB 15: The Show Sell Sheet (PlayStation 4)

PS4

AVAILABLE: March 31, 2015 MSRP: $59.99 PART #: 3000235 UPC: 7-11719-05307-1 GENRE: Sports

MLB 15 THE SHOW

Baseball is better than ever in MLB 15 The Show.

The highest-rated sports game over the last nine years*, MLB 15 The Show continues to prove Baseball is Better with licensed equipment, year-to-year saves, and a refreshed Franchise mode.

KEY TAKEAWAYS

The 10th edition of the franchise, MLB 15 The Show is a more immersive and exciting baseball experience than ever before with substantial improvements to both gameplay and graphics.

MLB 15 The Show boasts the most gameplay improvements in franchise history, with notable advancements to physics, AI, and control accuracy & responsiveness to name just a few. Visuals are similarly enriched, with revamped lighting, material rendering, and more. Baseball looks better than ever in its second year on the PlayStation 4 system.

Additional new features include:

- **Year-to-Year Saves** – MLB 14 The Show users will be able to continue their Franchise and Road to the Show progress in MLB 15 The Show.
- **Universal Rewards** – Simply playing the game earns Stubs that can be spent on licensed equipment, Road to The Show improvements, and virtual baseball cards.
- **Licensed Equipment** – For the first time ever, partnerships from various brands will bring accurate bats, gloves, cleats, and batting gloves to the game.
- **Legends** – Introducing 30 Iconic MLB Alumni into the virtual player card pool that span over every baseball era over the last 70 years.

FEATURES

1 – 4 Offline
2 – 8 Online

1080P
HD video output
480P | 720P | 1080i | 1080P

www.TheShowNation.com
www.facebook.com/mlbtheshow
www.playstation.com

7 11719 05307 1

MLB.com

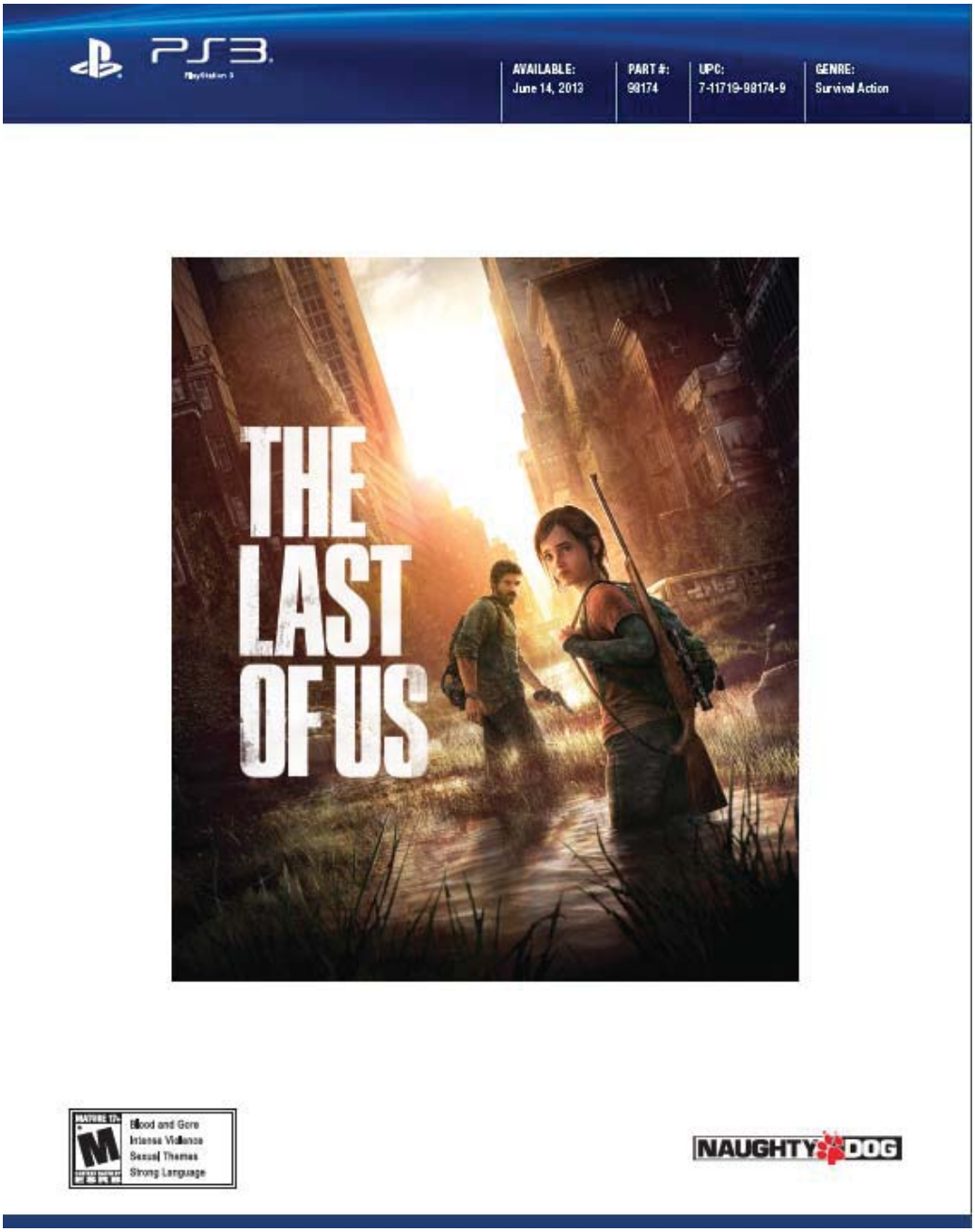
SONY

*Average Metacritic.com score from 2006-2014
Major League Baseball and Minor League Baseball trademarks and copyrights are used with permission of Major League Baseball Properties, Inc., and MLB Advanced Media, L.P., as applicable. Visit MLB.com and MLB.com. Officially licensed product of MLBPA-MLBPA trademarks and copyrighted works, including the MLBPA logo, and other intellectual property rights are owned and/or held by MLBPA and may not be used without MLBPA's written consent. Visit www.MLBPLAYERS.com, the Players Choice on the web. The Baseball Hall of Fame and Museum trademarks and copyrights are used with permission of the National Baseball Hall of Fame and Museum, Inc., as applicable. Visit the official website of the Hall of Fame at BaseballHall.org. © 2014 Sony Computer Entertainment America LLC. Blu-ray Disc™, Blu-ray™, and the logos are trademarks of the Blu-ray Disc Association. The Sony Computer Entertainment logo is a registered trademark of Sony Corporation. "PlayStation", the "PS" Family logo and "DUALSHOCK" are registered trademarks and "PS3" and "PS4" are trademarks of Sony Computer Entertainment Inc.

The back of the sell sheet for MLB 15 The Show for PlayStation 4 reads: “Baseball is better than ever in MLB 15 The Show.” Below that, a short passage reads: “The highest-rated sports game over the last nine years, MLB 15 The Show continues to prove baseball is better with licensed equipment, year-to-year saves, and a refreshed Franchise mode.” Other text on the page lists “Key Takeaways” of the game, which describe new advancements in the game, features, and the logos for Sony Computer Entertainment and several baseball organizations. It also lists the number of supported players, as well as the supported video output resolutions.

Exhibit A-21

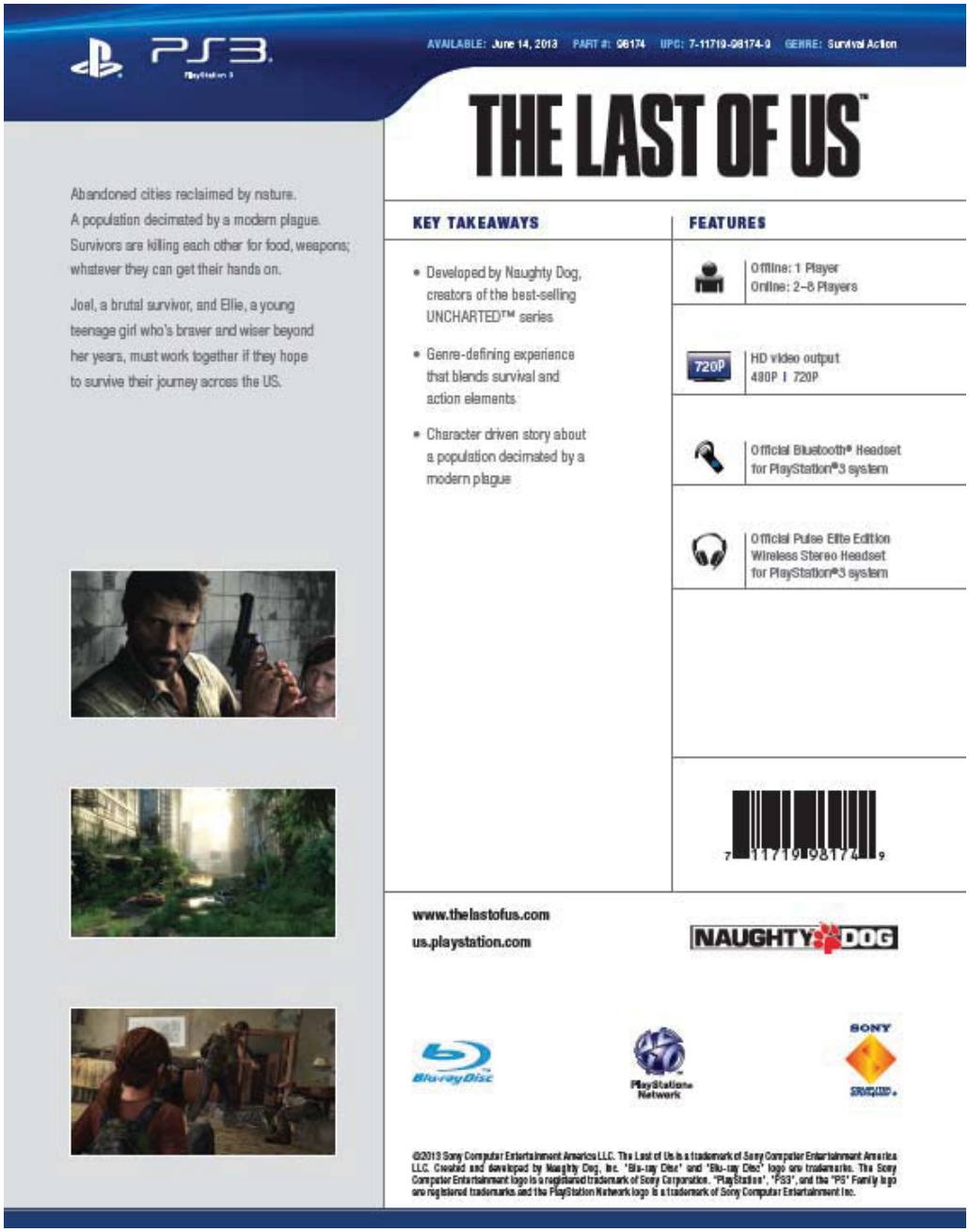
The Last of Us Sell Sheet (PlayStation 3)



The front of the sell sheet for “The Last of Us” for PlayStation 3 shows a man and a girl looking back, while standing in a swamp. An ESRB rating of “M” for mature with a description of “Blood and Gore; Intense Violence; Sexual Themes; Strong Language” appears as well as a small logo for the company Naughty Dog. It also lists the game’s release date, the price, the UPC number, and other information at the top of the sheet in small font, alongside the PlayStation 4 logo.

Exhibit A-21 Cont.

The Last of Us Sell Sheet (PlayStation 3)



PS3

AVAILABLE: June 14, 2013 PART #: 98174 UPC: 7-11719-98174-9 GENRE: Survival Action

THE LAST OF US™

Abandoned cities reclaimed by nature. A population decimated by a modern plague. Survivors are killing each other for food, weapons; whatever they can get their hands on.

Joel, a brutal survivor, and Ellie, a young teenage girl who's braver and wiser beyond her years, must work together if they hope to survive their journey across the US.

KEY TAKEAWAYS

- Developed by Naughty Dog, creators of the best-selling UNCHARTED™ series
- Genre-defining experience that blends survival and action elements
- Character driven story about a population decimated by a modern plague

FEATURES

Offline: 1 Player
Online: 2–8 Players

720P HD video output 480P | 720P

Official Bluetooth® Headset for PlayStation®3 system

Official Pulse Elite Edition Wireless Stereo Headset for PlayStation®3 system

7 11719 98174 9

www.thelastofus.com
us.playstation.com

NAUGHTY DOG

Blu-ray Disc

PlayStation Network

SONY

©2013 Sony Computer Entertainment America LLC. The Last of Us is a trademark of Sony Computer Entertainment America LLC. Created and developed by Naughty Dog, Inc. "Blu-ray Disc" and "Blu-ray Disc" logo are trademarks. The Sony Computer Entertainment logo is a registered trademark of Sony Corporation. "PlayStation", "PS3", and the "PS" Family logo are registered trademarks and the PlayStation Network logo is a trademark of Sony Computer Entertainment Inc.

The back of "The Last of Us" sell sheet for PlayStation 3 has three small screen captures of moments in the game, as well as text that lists "Key Takeaways" of the game. The sheet also includes logos for Blu-ray, the PlayStation Network, and Sony Computer Entertainment as well as the number of supported players, supported video output resolutions, and supported peripheral devices including headsets.

Exhibit A-22

Screenshot of the Borderlands: The Handsome Collection Website
Available at http://borderlandsthegame.com/index.php/game/borderlands-the-handsome-collection#videos

This screen capture of the "Borderlands: The Handsome Collection" website gives information about the game, including the release date and game info with new advancements like four-player split screen. The "Features" list includes seven bullet points with information about sharing saved games across platforms, new high definition graphics, and Internet account requirements.

Exhibit B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 Entertainment Software Association Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission's Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities	CG Docket No. 10-213

DECLARATION OF MIKE PACIELLO

1. My name is Mike Paciello. I am a founding partner of The Paciello Group, an accessibility agency specializing in accessibility and usability testing, as well as support and training for the technical implementation of accessibility solutions to the computer software industry. I have been active in the accessibility industry for more than thirty years.
2. As well as founding The Paciello Group, I was the co-chair of the United States Federal Access Board's Telecommunication and Electronic and Information Technology Advisory Committee and am co-founder of the International Committee for Accessible Document Design. I also wrote the first book on web accessibility and usability, Web Accessibility for People with Disabilities, and was invited by the United Nations to speak at the Global Initiative for Inclusion Information and Communication Technologies.

3. I have reviewed the Entertainment Software Association's petition for an extension of its existing waiver of the Commission's accessibility rules for Advanced Communications Services ("ACS").
4. I am an expert in user interface design, user experience and usability practices and methods involving individuals with disabilities, as well as interoperability between emerging technologies, including advanced communication services, and assistive technologies.
5. The technical constraints facing developers of video games are substantially different, and often more restrictive, than those facing developers of other products that include features used for communications. These technical restrictions necessarily limit the transfer of existing assistive technologies from other product categories to video games.
    a. Game developers, unlike developers of other types of software and products with communications systems, typically must focus on high end, photo-realistic graphics, which require substantial computing and memory resources to render in a fast-paced and fluid manner. Out of necessity, developers must make tradeoffs in software design to ensure that this performance can be met in a cost-effective manner.
    b. Consumers demand a high level of visual fidelity in games, particularly for console and PC games. With the advent of new game platforms, such as mobile devices, high-fidelity graphics have become even more important to the success of console and PC games as a key differentiator from mobile. A quick frame rate also is important given the fast-paced nature of many game genres, such a shooters and racing games. For example, it's fairly common for an action game to

re-draw a scene comprising millions of polygons at a rate of at least 30 frames per second, which is faster than a typical movie theater projector. Often, game developers must make substantial compromises against their ideal game design and visuals to ensure that a video game will run at a sufficiently high frame rate under the constraints of that platform. Achieving this necessary level of performance requires highly specialized software design, including the use of specialized rendering libraries such as DirectX and OpenGL, and efficient allocation of CPU, GPU (Graphics Processing Unit), and memory resources. In fact, these demands have spurred the growth of a vibrant, freestanding GPU industry, which manufactures the specialized hardware needed to achieve the desired levels of performance and graphical quality.

c. Accessibility features embedded in PC and mobile operating systems ("OS") are not typically designed to be used within the specialized video game environment. These OS accessibility features are often incompatible with video game programming techniques or, if they can be incorporated, severely diminish performance. For example, screen readers used on PCs may not work well with computer games, which often are optimized for a full screen experience.

d. Neither the hardware nor the software of dedicated game platforms are optimized for features such as text-to-speech or speech-to-text in a live chat environment. While communication amongst gamers is an aspect of game play, its importance is variable from game to game and, in any event, is subordinate to the more demanding technical constraints of the visual elements. Anything that requires additional processor time or memory may potentially undercut speed and visual

quality. This explains why OS-level accessibility features are not always made available in games.

e. Largely due to the rapid advances in graphics-rendering technologies described above, video games have an especially short product life cycle compared with software whose core purpose is facilitating communications. This means that the limited pool of developers with expertise in assistive technologies often focus on developing accessibility solutions in the employment and education contexts, as well as core communications, rather than on markets such as video games.

6. In addition to core information and communications technology applications, assistive technology developers' focus has been on areas such as education and employment rather than in entertainment. Long-standing inequalities in educational attainment and economic opportunities for people with disabilities made these two issues obvious choices for policy attention. These choices were embedded in key legislative initiatives that bear on the drive for accessible technologies, such as the Individuals with Disabilities Education Act (IDEA; 1975) and the Americans with Disabilities Act (ADA; 1990). Although neither law focused on accessible mainstream technology, as technology became more and more essential to success in social participation, ADA- and IDEA-based programs began to emphasize assistive technologies. The human services infrastructure responded to these laws in kind.

7. For example, special educators and vocational rehabilitation counselors received training and support for adding assistive technologies into their work environments. This led assistive technology providers to focus their efforts there as well. They created hardware and software products for the general purpose computers used in those environments,

embodying a wide range of the features needed by people with disabilities to read, write, exchange work-related information, etc. Little attention was paid to entertainment except as an adjunct to learning, such as in elementary school-level educational software.

8. Importantly, however, there was not, and is not now, a corresponding cadre of trained professionals providing functional support for people with disabilities to meet their entertainment needs. By and large, assistive technology makers have focused their attention on other areas. The evolving concept of universal design in ICT—built-in accessibility in place of dependence on assistive technology—can be dated back only to the mid-1990s. It was first included in Section 255 of the Telecom Act (1996) by requiring telecom manufacturers to first consider building accessibility features into their products, and only rely on assistive technologies if built-in accessibility was not "readily achievable." Of course, the products covered by Section 255 were conventional telecommunications systems, such as phones, fax machines, and voice mail systems, not anything in the sphere of video games.
9. In sum, there are practical, compelling reasons why assistive technologies from other product categories have not transferred to video games.

I, Mike Paciello, declare under penalty of perjury that the foregoing declaration is true and correct. Executed on May 22, 2015.

Mike Paciello