

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

In the Matter of

Implementation of the Child Safe Viewing Act;
Examination of Parental Control Technologies
for Video or Audio Programming

MB Docket No. 09-26

REPLY COMMENTS OF MICROSOFT CORP.

Microsoft Corp. takes this opportunity to address two issues raised in the comments filed in the above-captioned proceeding. First, the vast majority of commenters have addressed programming comparable to that provided by broadcast television, underscoring that this proceeding should focus on the technologies available to parents to control access to traditional television programming. Second, as described in its opening comments, Microsoft takes very seriously the goal of protecting children from content their parents deem inappropriate.¹ In that spirit, Microsoft seeks to clarify Common Sense Media’s description of certain Xbox functionalities.

As Microsoft has explained, the Commission should limit its inquiry under the Child Safe Viewing Act (“CSVA”) to programming that is comparable to that provided by a broadcast television station rather than any other content that potentially could be displayed on a video screen.² The record confirms that this is the appropriate scope for the Commission’s report. Numerous commenters ranging from concerned parents, to video programmers and distributors, to public interest groups, to technology companies

¹ See generally Comments of Microsoft Corp. (filed April 16, 2009) (“Microsoft Comments”).

² See *id.* at 3-4 .

have addressed content that falls squarely under the Commission’s definition of “video programming.”³ In addition, many groups explicitly have urged the Commission not to expand its inquiry beyond this definition.⁴ Finally, the record makes clear that parents have substantial tools at their disposal to control how their families access video programming, and that solutions will continue to emerge as technologies evolve.⁵

Microsoft writes briefly in reply, however, to clarify Common Sense Media’s discussion of certain online features the Xbox 360 enables.⁶ Specifically, while Common Sense Media correctly observes that the Entertainment Software Ratings Board (“ESRB”) does not rate certain facets of the online video gaming experience, this does not mean that the underlying ESRB rated video game is no longer subject to the Family Settings options available for the Xbox 360. In fact, the Xbox 360 provides a robust set of tools specifically designed to ensure that parents are able to address the concerns cited by Common Sense Media.

First, Common Sense Media is simply mistaken when it suggests that a game’s ESRB rating “no longer applies if a user downloads a modification.”⁷ Users can download and apply updates to games on the Xbox 360 console through the Xbox LIVE

³ See 47 U.S.C. § 522(20) (defining video programming to mean “programming provided by, or generally considered comparable to programming provided by, a television broadcast station”).

⁴ See, e.g., Individual Comments of the Center for Democracy and Technology at 4; Joint Comments of Industry and Public Interest Groups at 13-14; Comments of the Digital Media Association at 2-3; Comments of the Entertainment Software Association at 3-5; Comments of Google, Inc. at 9-11; Comments of Adam Thierer, Progress and Freedom Foundation at 147 (“PFF Comments”).

⁵ See, e.g., Comments of AT&T Inc. at 5-9; Comments of Comcast Corp. at 2-10; Comments of the Consumer Electronics Association at 7-13; Comments of Cox Communications, Inc. at 5-7; Comments of Dish Network LLC at 4-7; Comments of DIRECTV, Inc. at 2-11; Supplemental Comments of the National Cable and Telecommunications Association at 7-11; PFF Comments at 16-48; Comments of TiVo, Inc. at 2-4; Comments of the United States Telecom Association at 5-6; Comments of Verizon and Verizon Wireless at 4-6.

⁶ See Comments of Common Sense Media at 5 (“Common Sense Media Comments”).

⁷ *Id.*

service (which typically contain bug fixes or minor enhancements to the game that do not alter the content in significant ways), or by downloading larger “Add-ons”, which provide access to additional levels, features, or other new game content. However, *none of these downloads affect the rating of the original underlying game*, which parents can continue to use to determine whether to allow access to the game. Indeed, when Add-on content is similar to or is an extension of the base game (map packs, new vehicles, etc.), Add-ons inherit the rating of the base game. When Add-ons contain more substantial new content, they are subject to their own ESRB ratings which allow parents to assess whether the downloadable content is appropriate for their families.

For example, if a parent uses the Xbox 360 Family Settings to block games with a “Teen” rating, the Xbox 360 will continue to restrict access to those games even after those games receive an update through Xbox LIVE, and even if the user subsequently downloads a game Add-on. This is the case regardless of whether the new content has been independently rated by ESRB, or whether it inherits the same rating as the base game. Additionally, while Xbox currently has no Add-on content that is rated higher than a base game, the Family Settings are powerful enough to handle that scenario as well. Thus, if Family Settings were set to block “Teen” rated games and a child tried to download a “Teen” rated Add-on for an “E (Everyone)” rated game, the system would not allow the download without specific parental permission.

Second, the Xbox 360 Family Settings provide parents with the option to prohibit downloads of Add-ons and other game content, either by blocking Premium (for purchase) content or by blocking Xbox LIVE access all together. All downloadable

game content, either Premium or free, is subject to the Xbox 360's Family Settings.⁸ While Common Sense Media speculates that users can obtain unauthorized game Add-ons for which ESRB ratings would not apply,⁹ this is simply not possible based on the way Xbox 360 and Xbox LIVE are designed. Add-ons and updates for Xbox 360 games are available exclusively through the Xbox LIVE service, which permits only authorized updates and other downloads to be provided to users. Although a technically sophisticated end user might illegally modify an Xbox console to load unauthorized modifications, accessing the Xbox LIVE service with a modified Xbox console is strictly prohibited under Xbox LIVE's Terms of Use.¹⁰ Microsoft employs security tools to detect modified Xboxes, and permanently bans these illegally modified consoles from accessing Xbox LIVE.

Finally, Common Sense Media's objection that ESRB ratings do not apply when the user "utilizes the game's online functions to play other networked users" is of no moment.¹¹ Although a child's real-time interaction with other human beings through Xbox LIVE cannot be rated before it occurs, this also would be true of the child's telephone calls or face-to-face conversations with schoolmates. In other words, interaction with others is not "programming" of any sort, let alone the television programming that is properly the scope of the CSVA. Nevertheless, even in this case, parents have the ability to restrict their families' online communications and interactions

⁸ See Xbox 360: Family Settings, Xbox LIVE Content with Xbox 360, <http://www.xbox.com/en-US/support/familysettings/live/xbox360/preNXE/familysettings-content.htm>. Microsoft continues to evaluate and update the Xbox 360 Family Settings as new forms of content and new experiences are made available to ensure parents have tools for managing their children's gaming experience.

⁹ Common Sense Media Comments at 5.

¹⁰ Modifying the Xbox console to gain unauthorized access to content would also violate the Digital Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.*

¹¹ See Common Sense Media Comments at 5 and n.3.

on the Xbox 360 to a specific group of people, or to block online communications and interactions entirely.¹² These features also enable parents to block access to any user-created content that might be available during online play (for example, decorations on a car in a racing game created by a user with tools provided in the game).

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Microsoft has implemented policies and technological capabilities specifically designed to empower parents and other adults to restrict access to content they deem inappropriate. Microsoft supports Congress's intent to limit the FCC's review of video programming under the Child Safe Viewing Act to programming comparable to television broadcast programming. However, even for video games and video game players – which Congress clearly chose not to include in the CSVA – Microsoft provides robust and easy-to-use tools that enable parents to determine the level of access that is suitable for their families.

Respectfully submitted,

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¹² See Microsoft Comments at 5-7.