

Free to Play: Free Speech and Government Regulation of Video Games

“We’ve got a man down!” The sweat drips off the marine’s forehead as he rushes to his comrade’s side to pull the wounded soldier to safety while his allies suppress the enemy with cover fire. He carries the wounded soldier to the chopper that is airlifting the rest of his team to safety. The marine breathes a sigh of relief, puts down his controller, and pats himself on the back for a job well done. This account was a dramatic retelling of the Second Battle of Fallujah as an interactive experience or “video game” depicting the dark side of war entitled *Six Days in Fallujah*. The heroic members of the 3rd Battalion 1st Marines Core fought in this chaotic battle for their country with honor and returned to share their tales. Due to the sensitive nature of this recent conflict, the thirty year old ethical controversy of video game regulation by the government to shield controversial content from the public began anew. Ever since *Mortal Kombat*’s gruesome depictions of fatalities brought video games violence to the public eye thirty years prior, the effects of violent and controversial content on gamers has been a tense issue with opinions from both sides. Regardless of one’s opinions however, games are an expressive art form and regulations would impede the visions of all those associated with the video game industry by restricting content, stifling creativity, and jeopardize game makers ability to push boundaries. Though video games can contain explicitly violent or controversial content, it is on the whole unethical for a government to impose regulation of such games based on their content because this would infringe on the freedom of speech.

Though there is data that shows that violent video games can cause aggressive behavior, there are scant real world examples of violence associated with video games. Professors Graziano and Sheese ran a psychological experiment to examine how violent video games affect individuals' decisions to behave cooperatively and competitively. Their results showed violent

video games can promote exploitative behavior in social interactions. Although their data strengthened the popular belief that violent video games can cause violent behavior, critics have few concrete examples to reference *actual* violent behaviors. Cases such as the tragic Columbine shooting, when the two teenage shooters were "rumored" to be influenced by the mature Grand Theft Auto, are few and far between.

As video games continue to appear more frequently in popular culture, very few cases of violent crimes that have taken place actually state that the aggressors were influenced by violent video games. According to critics, data that should show a positive correlation between the increasing sales of violent games and violent crimes in the United States, actually has an inverse relationship. Granted there could be other reasons not associated with video game sales for a decrease in crime, but the fact remains that violent crime is still decreasing and not increasing as research data implies it should be. Without more recent or tangible examples, data for the sake of data are merely meaningless numbers without supporting evidence. It is unethical to make sweeping legislations to the general populace based on research that has few examples and cannot relate to society as a whole. Therefore, common sense dictates that those who understand video games must teach others to separate real violence towards humans from virtual violence towards fictitious characters; it should not fall to politicians or non gamers to dictate what is appropriate for content in video games.

The government violates the First Amendment and the right to free speech if they regulate the sales of video games. For a medium to not be protected under the First Amendment, it must fail the Supreme Court's Miller Test. To fail the test, said material must be considered obscene by the general public, depict sexual conduct, or the medium *as a whole* lacks any serious literary or artistic value. In the Schwarzenegger v. Entertainment Merchants Associations

Supreme Court Case, California argued that video games contain obscene material that violate the Miller Test and therefore should be regulated by the government. Though some games contain depictions of violence, California's claim on video games is a blanket statement and video games *as a whole* do not all contain violent material. Games are an interactive experience where players struggle towards a goal, violence being one of the ways to initiate this struggle. Violence in video games is merely one of the many tools for game designers to create games, with the majority of them not containing graphic violence (Costikyan). In fact, five percent of the 1,638 games made in 2010 reviewed by the Entertainment Software Ratings Board were given a Mature rating (seventeen or older) versus the fifty five percent of games that were rated Everyone (six or older) and considered appropriate for all audiences (McElroy). It is unethical to regulate all video games since a minority of Mature violent games exists and regulation would minimize the artistic value of video games.

Furthermore, video games contain artistic value in that they entertain the general public and can convey complex emotional themes to the player. Unlike passive forms of entertainment such as books, video games are a unique merger of science and art that no other medium can deliver. An entire audience is the driving force of these experiences because they take the center stage and interact with characters, stories, or puzzles in an innovative way. Video games are an expression of game designers, programmers, and other industry ideas in digital form and therefore fit the criteria of artistic expression as defined in the Miller Test. The California lawyer knew little to nothing about video games and assumed them mere play things, a bias that continues to influence proposed regulations to this date.

Government video game regulation can create biased laws that favor groups who know little about the video game industry, focus only on the controversial or violent content, and

disregard the rest of the game. When researching data about video games in relation to violence, academic sources are found to contain varying amounts of political biases. In his research paper, *Blazing Angels or Resident Evil? Can Violent Video Games Be a Force for Good*, Professor Ferguson identifies these biases as moral panic which influences certain members of society to impose their belief system to the general populace by using fear to impose the status quo. This resulting fear causes psychological research on violent video games, where any evidence that is contrary to the status quo is disregarded.

Those who are ignorant about video games fear what they do not understand, and use multimedia containing misinformation to sway the public in their favor. For instance, the conservative news outlet, Fox News, degraded the critically acclaimed role-playing game *Mass Effect* as a “sex simulator” and implied the focus of the game was for players to “engage in sexual activity.” Fox completely ignored the rest of the content of the thirty hour long game, focused on the two minute sex scene, and disregarded the character development that brought that intimate (and optional) scene to take place. When asked if she had ever played *Mass Effect*, the “psychological expert” being questioned responded with a condescending and demeaning *no* as if it would be insane to play the game before passing judgment on it. It is unethical to make unfounded accusations and regulate anything that one does not fully understand. Those that do not *play* games should not be allowed to *regulate* games.

As the case for *Six Days in Fallujah* shows, if people who regulate games do not understand them, ignorant decisions that can cripple this entertainment sector will arise. The video game industry is not only artistic and entertaining, but is a thriving multi-billion dollar industry with thousands of employees across the country. With an industry this expansive, it is only ethical to ensure fair treatment of those involved. The public outcry against *Six Days in*

Fallujah frightened the publisher Konami to run from controversy and deny the creativity of the Atomic Games development team. Instead of being greeted as heroes when they returned from the horrors of war, the marines were met with the scorn and disdain of misled Americans insulting them for trying to express their struggles in a mere video game. After fighting for their country, the soldiers returning from Iraq deserved better and it was unjust to punish them for wanting to convey their experiences to the general populace.

Six Days in Fallujah was developed to bring the emotional struggle of what the 3rd Battalion endured in a major battle of the Iraq War. The experience was (or rather could have been) an examination of their struggle that could have appealed and informed a larger demographic than traditional forms of passive media for our time. However, Konami gave into moral panic and ran before the team was able to convey their daring project. It is unjust to use fear to motivate any type of decision and if cases of publishers fleeing from controversy continue, the video game industry could face the wrath of a government motivated by a fearful, ignorant, and dangerous public. If unfair regulation appears as a result of moral panic by bureaucrats who have little understanding of games or are motivated by their own political agenda and video games containing any violence are regulated, a large domino effect that would cause an industry to collapse would begin. Therefore, it should fall to the people who understand and play games to regulate them to prevent further weakening of innovative ideas in the industry.

Regulating video games weakens the industry by leading to compromises of game quality and expressions. Video games are constantly judged not because of their content, but merely because they have the word “game” attached to the end. They are perceived as lacking any social or artistic merit. This is untrue as a video game, like any other form of entertainment, has the ability to convey deep and complex emotions that can move people the same way a book or film

can. Atomic Games' *Six Days in Fallujah* was not published by Konami because the content was perceived as controversial and made people uncomfortable. Art as a medium is *supposed* to challenge peoples' perceptions, make them question why they think a certain way, remove the facts of a situation, and finally invoke pure emotions. When Konami withdrew their support, every argument volleyed at the game became legitimized because Konami lacked the courage to stand up to moral panic. Thus the once meaningful game is deemed just a toy and the industry grew weaker as a result (Extra Credits).

The game industry will not evolve if those frightened by moral panic invoke the government to pursue the beliefs of the ignorant to have their way and diminish games true potential to interact with human emotions. Critics are correct that violence for the sake of violence in games is unfounded. Games with violence should be an immersive and well crafted experiences which keep players entertained and continue to push the envelope in terms of artistic expression. Atomic Games, the 3rd Marine Core, and every single video game developer, designer, or programmer deserves a chance to express themselves in the chosen medium they feel can convey entertainment, story, and art that captures these emotions at their core. It is unjust to stop the freedom of speech that all of these hardworking and talented individuals possess simply because a small portion of their art is tough for others to wrestle with. Gamers should enjoy their unalienable right and must be free to play whatever they wish and continue to game on for generations to come.

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