

Game Over For California Law Prohibiting The Sale Of Violent Video Games to Minors

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VIDEO GAMES & INTERACTIVE MEDIA ALERT

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Today, in [Brown \(formerly Schwarzenegger\) v. Entertainment Merchants Association](#), the U.S. Supreme Court affirmed that California's violent video game statute is unconstitutional.

Writing on behalf of a majority of justices, Justice Scalia made clear that video games are protected speech and entitled to First Amendment protection. The California statute prevented the sale of "violent video games" to minors without parental consent. Enforcement of the law had been enjoined by the Federal District Court, which decision was affirmed by the Ninth Circuit.

In the Supreme Court decision – which is a clear win for the video game industry – the Court held that, because the California law placed restrictions on protected speech, the law would have to serve a compelling government interest and be narrowly written to serve that interest. Justice Scalia applied the full First Amendment analysis and noted that no compelling government purpose had been demonstrated and that the law was simultaneously "seriously underinclusive" and "vastly overinclusive". By underinclusive, he meant that the law addressed only violent video games (and not other media such as films and cartoons), and also allowed minors to have access to the supposedly harmful material with parental consent. By overinclusive, he meant that the law would apply to all minors whether or not a parent believed the material is harmful.

In a concurring opinion with Chief Justice Roberts, Justice Alito was not as quick to reach the broader constitutional issues. Instead, he found that the law's definition of "violent video game" was impermissibly vague, eliminating the need for the broader holding supported by the majority.

While most industry experts expected the Court to strike down the California statute, many feared the Court would adopt the narrower view favored by Justice Alito and Chief Justice Roberts, which could have invited more statutory tinkering by the legislature in California and other states considering similar laws.

So, even though a majority of the Court believes that "[r]eading Dante is unquestionably more cultured and intellectually edifying than playing Mortal Kombat", any jurisdiction now wishing to enact similar legislation must do so in the face of a Supreme Court decision placing video games squarely in the category of protected speech.