

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on HCR224/HR160
CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND
MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.

REP. CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: April 3, 2019

Room Number: 325

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** There is emerging researching that video game loot boxes may be
3 linked to gambling behaviors, and that loot boxes and gambling may lead to increases in problem
4 gambling amongst gamers (Zendle 2018).

5 The Department of Health is willing to provide subject-matter expertise to a working group to
6 explore policy solutions to exploitive practices in digital video games.

7 However, the department recommends that the Legislative Reference Bureau or Office of the
8 Legislative Auditor be designated as chair of the working group, due to the apparent lack of
9 experience or expertise in the executive branch.

10 Thank you for the opportunity to testify.

11



**Testimony to the House Committee on Judiciary
Wednesday, April 3, 2019 at 2:00 P.M.
Conference Room 325, State Capitol**

**RE: HOUSE CONCURRENT RESOLUTION 224, CONVENING A DIGITAL GAMING ADVISORY
GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING
INDUSTRY.**

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HCR 224, which seeks to create a digital gaming advisory group to examine and make recommendations related to the business practices of the computer and video game industry.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

While we appreciate the concerns in the area of video game loot boxes, we believe that the active engagement of the video game industry, the reaction of the global marketplace to address consumer concerns, and a recent announcement by the Federal Trade Commission (FTC) dismisses the urgent need for state action and expenditure of state resources at this time.

On February 22, 2019, it was announced that the FTC has committed to holding a public workshop on loot boxes later this year. As the nation's preeminent consumer protection agency, the FTC has a strong track record of investigating complex consumer protection issues, often involving emerging tech issues, through multi-stakeholder public workshops. This public workshop will provide an excellent opportunity for a full vetting of the public policy considerations raised by these resolutions with a wide range of participants. All stakeholders, including those from Hawaii, will be afforded an opportunity to participate in the FTC's workshop on loot boxes, either through written comments and/or participation in panel discussions, to share their important views.

The video game industry today is the largest sector of the entertainment business in the United States with \$43 billion in sales in 2018. This an industry that is creating new, highly-



Chamber *of* Commerce HAWAII

The Voice of Business

educated, highly-compensated jobs around world. Stakeholders in Hawaii should look ways to support the progress of new industries and sectors, and continue to create a positive environment for the high-tech industry. The opportunity to be involved in the video game industry provides a unique opportunity, especially through public-private investments through schools which includes the University of Hawaii and Hawaii Pacific University.

For the reasons above, we respectfully request that this resolution be held and appreciate the opportunity to share our concerns.



**Written Testimony of
Tom Foulkes, Vice President
Entertainment Software Association
Presented for the Record to
House Committee on Judiciary
April 3, 2019**

Chair Persons Lee and San Buenaventura and members of the Committee on Judiciary:

On behalf of the Entertainment Software Association (ESA) and its members,¹ thank you for the opportunity to submit testimony on House Concurrent Resolution 224, which seeks to create a digital gaming advisory group to examine and make recommendations related to the business practices of the computer and video game industry.

The ESA is the U.S. trade association representing the publishers of computer and video games played on consoles, personal computers, mobile devices, and the internet. We welcome the opportunity to speak with members of the committee today about our dynamic industry. We produce the most compelling interactive entertainment for consumers, but we only succeed if we provide our audiences with fun and rewarding experiences. Players of video games are vocal about what they love or hate about games, which is why our companies are constantly adjusting their approach in response. This marketplace feedback ensures that publishers remain keenly responsive to consumer needs.

ESA appreciates the sponsor's concerns in this area, but be assured that video game publishers take these issues seriously, which is why the ESA and its member companies remain actively engaged in this ongoing conversation with parents and players. In fact, later this year, the Federal Trade Commission (FTC) will hold a workshop on loot boxes. As the nation's preeminent consumer protection agency, the FTC has a strong track record of investigating complex consumer protection issues, often involving emerging tech issues, through multi-stakeholder public workshops. The FTC's workshops typically feature a broad spectrum of stakeholders and viewpoints, from industry to consumers and from advocacy organizations to academia. These views are submitted not only through the live workshop but also through written comments that are filed and maintained on the public record.²

¹ESA members include: 505 Games; Activision Blizzard, Inc.; Bandai Namco Entertainment Inc.; Bethesda Softworks, Capcom USA, Inc.; Deep Silver; Disney Interactive Studios, Inc.; Electronic Arts; Epic Games, Inc.; Focus Home Interactive; Gearbox Publishing; GungHo Online Entertainment American, Inc.; Intellivision Entertainment; Kalypso; Konami Digital Entertainment; Legends of Learning; Magic Leap; Marvelous USA, Inc.; Microsoft Corporation; Natsume Inc.; NCSoft; Nexon America, Inc.; Nintendo of America Inc.; NVIDIA; Outright Games; Phosphor Studios; Rebellion; Riot Games; Sega of America; SixFoot; Sony Computer Entertainment of America; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tencent, Inc.; THQ Nordic; Triseum; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc.; and Wizards of the Coast.

² In 2010, for example, the Commission hosted a public workshop to examine potential updates to the Children's Online Privacy Protection Act ("COPPA") and Rule, enacted by the Commission in 2000 to govern the collection, use, and dissemination of personal information of children under 13.^[1] The workshop featured children's advocacy and parent organizations, tech companies, and academics all discussing a wide range of issues in the children's privacy arena. This workshop laid the groundwork for significant updates to the regulation as well as key consumer and business educational efforts around children's privacy.

This public workshop will provide an excellent opportunity for a full vetting of the public policy considerations raised by these resolutions with a wide range of participants. All stakeholders, including those from Hawaii, will be afforded an opportunity to participate in the FTC's workshop on loot boxes, either through written comments and/or participation in panel discussions, to share their important views.

For this reason, among others, ESA opposes passage of these resolutions. We believe that the proposed digital gaming advisory group here in Hawaii would be duplicative of the more comprehensive FTC workshop.

We also respectfully disagree with the false and misleading ways in which these resolutions mischaracterize our industry's practices by using questionable scientific claims as well as misstatements on current policy developments regarding loot boxes around the world.

We believe it is important to clarify some misconceptions about loot boxes, which have been found in games for over 10 years. Loot boxes are optional features in some games and can be purchased or earned through game play. It is not necessary or required for players to purchase loot boxes to advance within a game. Loot boxes are neither gambling nor exploitive of consumers. With a loot box, a player does not place a wager that may be returned or increased. Rather, the player spends a set amount to acquire a limited number of virtual items. There may be an element of surprise in what the player receives, but the player always gets items of value within the game.

Critically, these virtual items cannot be removed from the game or cashed out under the applicable legal terms. In fact, where publishers find unauthorized trading of virtual items via unauthorized secondary marketplaces, they take a variety of steps to prevent that activity, including: imposing temporary suspensions, banishing the bad actors from the game and disabling access to their accounts, and other mitigation tactics to ensure a fair and even playing field within the game environment.

The international picture is considerably more complex than outlined within HCR 224, which focused on just three countries. It is important to note that these countries are outliers in this global conversation, and rarely would the United States look to China or any other country as setting a desired standard of consumer protection. Several other international bodies, including regulators in the UK, France, Australia, Ireland, and Germany, have investigated this issue and have either declared that loot boxes are not gambling or have declined to limit their use. Most recently, the Australian government ruled that no further inquiry into "gaming micro-transactions for chance-based items" was warranted.

Against this backdrop, the industry continues to work to provide consumers a great game experience. That includes providing them with helpful pre-purchase information. For example, in addition to any disclosures individual publishers may make, the industry's Entertainment Software Rating Board (ESRB) has taken steps to help ensure that consumers are better informed about the presence of loot boxes in certain video games. The ESRB, which provides age rating categories and content descriptors for games, also assigns an "In-Game Purchases" label to physical (*e.g.*, boxed) video game products as well as online and mobile games. These categorizations are placed on games with in-game offers to purchase digital goods with real world currency, including but not limited to, bonus levels, skins,

surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins, and other forms of in-game currency, subscriptions, season passes, and upgrades (e.g., to disable ads).

Research by the ESRB has consistently shown that parents' primary concern is on spending amounts, not the surprise element. In addition to categorization, the ESRB has launched ParentalTools.org, an easy-to-use, one-stop resource for parents, which includes helpful features such as step-by-step guides for using parental controls (e.g., the ability to set spending limits on the child account). The major game console makers also individually provide extensive videos and guides on their parental controls.

In light of these considerations—particularly the FTC's announcement to begin a workshop later this year—we respectfully urge members of the Committee on Judiciary to vote against further consideration of this resolution, and encourage interested stakeholders to participate in the Federal Trade Commission's upcoming workshop on loot boxes.

Thank you.



LATE

**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
April 3, 2019**

Re: HCR 224 CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.

Good afternoon Chairperson Lee and members of the House Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) as founded in 1901 and is a statewide, not for profit trade organization committed to the growth and development of the retail industry in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We are in opposition to HCR 224 Convening A Digital Gaming Advisory Group To Assess And Monitor Predatory Practices In The Digital Gaming Industry. This resolution calls for an advisory group lead by the Attorney General, the Chairs of the House and Senate Consumer Protection and Judiciary Committees, the Executive Director of Consumer Protection, Director of Health or their designees, and any others invited by the working group's Chair to examine, assess, and monitor predatory or exploitive practices in digital games and to make recommendations.

We question the expertise of this advisory group with regards to the intricacies of digital gaming and what the software and gaming industry has been doing to address this matter. We also wonder why this suggested advisory group participants are instead not being encouraged to participate in the upcoming Federal Trade Commission's upcoming workshop on loot boxes.

The video game industry has been a long time partner of the retail industry here in Hawaii and throughout the United States. Through the industry's self-regulatory body, the Entertainment Software Ratings Board (ESRB), they work with retailers to provide consumers with information about the ratings and content of video games to support store policy regarding the sale of M (Mature) rated games.

In November 2005, the ESRB Retail Council (ERC) was voluntarily established to facilitate regular communication and input for consideration on matters of common interest to U.S. computer and video game retailers and the ESRB. Chief among these interests is to ensure that ERC members support ratings education and store policy enforcement programs.

Retailers and game publishers take these issues seriously, and the ESA and its member companies remain actively engaged in the current conversation around in-game mechanics such as "loot boxes" with parents and players. For example, the ESRB took steps last year help ensure that consumers are better informed about the presence of loot boxes in certain video games. In addition to age rating categories and content descriptors, the ESRB now also assigns an "In-Game Purchases" label to physical (e.g., boxed) that appear on games sold at retailers throughout Hawaii. **The In-Game Purchases label is assigned to games with in-game offers to purchase digital goods with real world currency**, including but not limited to, bonus levels, skins, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins and other forms of in-game currency, subscriptions, season passes, and upgrades (e.g., to disable ads).

The ESRB expanded the use of this important disclosure to physical games, from downloadable and mobile games, in February 2018 following extensive research and discussion with parents to assess general awareness and understanding as well as concerns about loot boxes. Their research indicated very low awareness and comprehension of what a loot box is among parents. **Moreover, that research revealed that upon explanation of what a loot box is, parents' primary concern is not the surprise aspect but rather the spending of money.**

In conjunction with the new labeling, the ESRB launched **ParentalTools.org, an easy-to-use one-stop resource for parents.** This website includes: a video featuring the new "In-Game Purchases" notice; links to step-by-step guides for setting parental controls to help parents manage which games their children play, how long they play, how much they spend and other settings; information on how to set up a child account – so that parents receive notification whenever a purchase is made; and a link to other parent resources.

While members of the Hawaii Retail Merchants understand and appreciate the concerns of the sponsor, we don't believe it is necessary or a valuable use of resources to create a digital gaming advisory group at this time. In addition to the negative perception such an action would create for the small, but growing video game industry here in Hawaii, not to mention the broader tech community, but its **efforts are unnecessary in light of the recent announcement by the Federal Trade Commission (FTC) to hold a public work shop later this year.**

In light of these considerations—particularly the **FTC's announcement to begin a workshop later this year we urge you to hold this matter and instead encourage interested stakeholders to participate in the Federal Trade Commission's upcoming workshop on loot boxes.**

Mahalo again for this opportunity to testify.

HAWAII YOUTH SERVICES NETWORK

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Rick Collins, President

Judith F. Clark, Executive Director

Bay Clinic

Big Brothers Big Sisters of Hawaii

Bobby Benson Center

Child and Family Service

Coalition for a Drug Free Hawaii

Collins Consulting, LLC

Domestic Violence Action Center

EPIC, Inc.

Family Programs Hawaii

Family Support Hawaii

Friends of the Children of West Hawaii

Hale Kipa, Inc.

Hale 'Opio Kauai, Inc.

Hawaii Children's Action Network

Hawaii Health & Harm

Reduction Center

Hawaii Student Television

Ho'ola Na Pua

Kahi Mohala

Kokua Kalihi Valley

Maui Youth and Family Services

Na Pu'uwai Molokai Native

Hawaiian Health Care Systems

P.A.R.E.N.T.S., Inc.

Parents and Children Together (PACT)

PHOCUSED

PFLAG – Kona Big Island

Planned Parenthood of the

Great Northwest and Hawaiian Islands

Residential Youth Services & Empowerment (RYSE)

Salvation Army Family

Intervention Services

Sex Abuse Treatment Center

Susannah Wesley Community Center

The Catalyst Group

April 3, 2019

Representative Chris Lee, Chair
And members of the Committee on Judiciary

LATE

TESTIMONY IN SUPPORT OF HCR 224/HR 199 CONVENING A DIGITAL GAMING ADVISORY GROUP TO ASSESS AND MONITOR PREDATORY PRACTICES IN THE DIGITAL GAMING INDUSTRY.

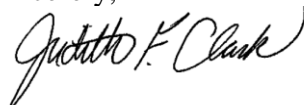
Hawaii Youth Services Network (HYSN), a statewide coalition of youth-serving organizations, supports HCR 224/HR199 Convening a Digital Gaming Advisory Group to Assess and Monitor Predatory Practices in the Digital Gaming Industry.

Video games that contain variable-reward mechanisms (called loot boxes) are widely and easily available to consumers. Children and youth who play these games are introduced to the thrills of gambling at an age when their brains are not fully developed. They are vulnerable to developing behavioral addiction to gambling, and do not have the maturity and knowledge to recognize the risks they encounter. Parents and other responsible adults are often unaware of these features in the games their children are using.

It is important to review and consider the potential risks of these games and consider regulation to protect consumers.

Thank you for this opportunity to testify.

Sincerely,



Judith F. Clark, MPH
Executive Director



LATE

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COMMITTEE ON JUDICIARY

Wednesday, April 3, 2019, 2:00 p.m., Room 325

HCR224 RELATING TO A DIGITAL GAMING ADVISORY GROUP

TESTIMONY

Susan Dursin, Legislative Committee, League of Women Voters of Hawaii

Chair Lee, Vice-Chair San Buenaventura and Committee Members:

The League of Women Voters of Hawaii supports HCR224, which establishes an advisory group to assess and monitor predatory practices in the digital gaming industry.

For many years, the League of Women Voters of Hawaii has opposed legalized gambling in the belief that government should not fund its activities out of programs that bring social ills to many of its people. At the same time, the League is always in favor of well-grounded study and sound decision-making.

HCR224 acknowledges the growing access to digital gambling and the increasing threat of psychological manipulation to participants, especially the young. With evidence of harmful effects emerging at an ever-growing rate, Hawaii needs to examine the evidence in a measured way and make recommendations as to the best methods of dealing with this threat to public health.

The structure of the advisory group, with the Attorney General as chair and inclusion of Consumer Protection, Judiciary, and Health, all speak to the seriousness of the endeavor.

The timeline appears to allow a thorough but not hurried approach, with reporting due before each of the next two legislative sessions. Both legislators and the public can look forward to committee findings.

Please support HCR224.

Thank you for the opportunity to submit testimony.

HCR-224

Submitted on: 4/1/2019 3:57:44 PM

Testimony for JUD on 4/3/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

STRONGLY support!!!

LATE

HCR-224

Submitted on: 4/2/2019 8:14:20 PM

Testimony for JUD on 4/3/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward White	Individual	Support	Yes

Comments:

Aloha to the members of the legislature. I am submitting testimony on behalf of myself, as a resident of Honolulu, a life-long gamer, and a student of the practices described in this bill.

I wish to submit my support for HCR224, which creates a Hawaii Digital Gaming Advisory Group to monitor and evaluate video game business practices for predatory and exploitative mechanisms.

My support stems from the increasing use of predatory practices in digital micro-transactions, particularly lootboxes, which use variable reward operant conditioning that is known to induce addiction through experiments and in practice in slot machines. Furthermore, there is evidence of large publishers seeking to use the power of game systems to coerce consumers into additional purchases, such as the recording of the EA CEO describing to investors how moments of frustration are channeled into additional purchases. Though widespread backlash and previous efforts on the part of this legislative body have caused the game industry to be more cautious about certain community redlines (lootboxes have been curtailed, and are only cosmetic), game developers nonetheless continue employing ongoing revenue schemes that often use powerful and potentially abusive psychological mechanisms designed to induce excess spending, such as the tokenization of money via "premium currency" or designing storefronts/price lists in ways that require spending extra money to get an item, both of which are present in 2019's surprise hit Apex Legends.

The last time this issue was raised, I supported potential government intervention as I expected it would cause the gaming industry to self-regulate, lest the government end up doing the ESRB's job for them. While this has proven to be true, in my view, a large portion of the gaming industry remains hostile to consumers--especially some of the largest and most influential companies. Today, I continue to support ongoing scrutiny of commercial practices in gaming in hopes of fostering a healthier relationship between studio and customer, whether mediated by the government or not. The Digital Gaming Advisory Group creates a means of maintaining ongoing pressure on the video games industry to maintain ethical business practices.

This is particularly important given the scale of video games today, and the speed with which they change. As the ESA itself points out, the video game industry now dwarfs

the movie industry in terms of size and influence. Modern video games have access to our pockets, living rooms, and wallets in ways most other industries could only dream of. That additional power should come with additional responsibilities to the consumer, which the ESA and ESRB are shirking.

The issues at play are nuanced, and the ability for game developers to patch and change games after launch means the methods of ongoing monetization may change, for better or worse. Last time this issue was raised, the problem was lootboxes and variable reward operant conditioning. Today, it may be the tokenization of money and obscuring the real cost of digital items in a way that induces excess spending. It seems reasonable to have a panel of experts who can provide ongoing evaluation of these companies until a set of best practices can be negotiated and established. As such, I support the creation of a body to evaluate these issues and present their findings to the legislature.

Mahalo for your time and consideration.

LATE

Chair Chris Lee, Vice Chair Joy A. San Buenaventura and members of the Judiciary Committee,

As a mother of a 14-year old "gamer" who looks like a telemarketer with his headset while playing video games when he should be doing his homework, I **STRONGLY SUPPORT** HCR 224 / HR 199. I have personally experienced the stress of looking at my credit card statement and realizing that I was charged over \$400 for gaming products. When I scolded my son, he replied that he "didn't know what he was doing." *This is the point.* Naturally, young people do not know what they are doing. And game product companies know this and prey on them.

As a Licensed Clinical Social Worker, I have seen how young children become addicted to all kinds of things (made so easily accessible to them) as their intellectual and emotional capacities are still developing. I can also attest to the fact that many of the parents whom I counseled have shared similar concerns. Most of these parents are low-income and economically vulnerable. Every \$100 spent on "V-bucks" (if you are familiar with the game Fortnite) is \$100 less for them to use towards needed housing and groceries.

Convening a Digital Gaming Advisory Group would protect the health of our youth- the next generation- as well as their hard-working parents.

Thank you for the opportunity to provide testimony.

Christy MacPherson

**TESTIMONY OF THE WILLIAM G. GIESE III.
IN REGARD TO HCR224
BEFORE THE
HOUSE COMMITTEE ON JUDICIARY
ON
WEDNESDAY, APRIL 3 2019**



Chair Lee, Vice Chair San Buenaventura, and members of the joint committees, my name is Will Giese and I am testifying as a private citizen on this resolution.

I AM IN STRONG SUPPORT OF HCR224. This House Concurrent Resolution convenes a digital gaming advisory group to assess and monitor predatory practices in the digital gaming industry.

As a lifelong gamer I believe it is important to hold the industries, businesses, and organizations responsible for creating, producing, and distributing games and services accountable for their actions. Although I am not involved in the video game industry in any professional capacity, I have been playing and enjoying video games my entire life, as many people my age have done. I've grown up playing the original NES, Game Boy, N64, and other consoles. I've spent countless hours solo and with friends and likely, I'm unashamed to admit, a small fortune over the years on the many games, consoles, and their accessories that I have enjoyed. I don't watch professional or collegiate sports, but I approach gaming with the same passion and interest as the generations before mine approached their hobbies, and I am not alone among my generation. I have lived through the many various iterations the gaming industry has gone through, from 16-bit single player adventure games to massively multi player online games and games as a service (GAAS).

Recently I have noticed a striking and pervasive change in the way that the industry approaches gaming, especially using the GAAS model. As this HCR points out, the practice of including "loot boxes" in games is widespread, especially as gaming increasingly become online only and competitive. The gaming industry, like many entertainment industries, understands the implications of the compulsion and addiction pathways and feedback loops in the human psyche.¹ They use this to their advantage, in order to make massive amounts of money while simultaneously feeding into a game development model that negatively impacts the experience of playing video games.² This almost 430 Billion dollar industry practice is completely unregulated in the United States and specifically targets, either institutionally or otherwise, underage gamers with underdeveloped compulsion control mechanisms, and individuals with addictive personality disorder.³

As mentioned above, we should hold these industries accountable for their actions. Gaming isn't just a fun pastime for me. Video games have helped me cope with major

¹ Przybylski, Andrew K., C. Scott Rigby, and Richard M. Ryan. "A motivational model of video game engagement." *Review of general psychology* 14.2 (2010): 154-166.

² Griffiths, Mark D. "Is the buying of loot boxes in video games a form of gambling or gaming?." *Gaming Law Review* 22.1 (2018): 52-54.

³ Macey, Joseph, and Juho Hamari. "eSports, skins and loot boxes: Participants, practices and problematic behaviour associated with emergent forms of gambling." *new media & society* 21.1 (2019): 20-41.

stresses throughout my life, they help me to relax after a long day, and they facilitate long and fruitful social interactions with other fellow gamers. Whether this legislative body realizes it or not, the gaming industry is a \$138 billion industry, making it larger as a function of annual revenue than the MLB, NFL, and NBA combined.⁴ This massive industry that provides entertainment for billions of people around the world should be afforded the same scrutiny as every other entertainment industry.

I urge this committee to pass HCR 224.

Thank you for the opportunity to testify.

⁴ <https://www.cnbc.com/2018/07/18/video-game-industry-is-booming-with-continued-revenue.html>