



United States
Court of Appeals,
Eighth Circuit, 2003.
329 F.3d 954.

Interactive Digital Software Association v. St. Louis County, Missouri

BACKGROUND AND FACTS *St. Louis County, Missouri, passed an ordinance that made it unlawful for any person knowingly to sell, rent, or make available "graphically violent" video games to minors, or to "permit the free play of" such games by minors, without a parent or guardian's consent.^a Interactive Digital Software Association, and others that create or provide the public with video games and related software, filed a suit against the county in a federal district court. The plaintiffs asserted that the ordinance violated the First Amendment and filed a motion for summary judgment. The county argued that the ordinance forwarded the compelling state interest of protecting the "psychological well-being of minors" by reducing the harm suffered by children who play violent video games. A psychologist, a high school principal, and others offered their conclusions that playing violent video games leads to aggressive behavior, but the county did not provide proof of a link between the games and psychological harm. The court denied the plaintiffs' motion and dismissed the case. The plaintiffs appealed to the U.S. Court of Appeals for the Eighth Circuit.*

IN THE LANGUAGE OF THE COURT



MORRIS SHEPPARD ARNOLD, Circuit Judge.

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* * * If the first amendment is versatile enough to shield the painting of Jackson Pollock, music of Arnold Schoenberg, or Jabberwocky verse of Lewis Carroll, we see no reason why the pictures, graphic design, concept art, sounds, music, stories, and narrative present in video games are not entitled to a similar protection. The mere fact that they appear in a novel medium is of no legal consequence. Our review of the record convinces us that these violent video games contain stories, imagery, age-old themes of literature, and messages, even an ideology, just as books and movies do. * * *

We recognize that while children have in the past experienced age-old elemental violent themes by reading a fairy tale or an epic poem, or attending a Saturday matinee, the interac-

a. St. Louis County Revised Ordinances Sections 602.425 through 602.460.

tive play of a video game might present different difficulties. The County suggests in fact that with video games, the story lines are incidental and players may skip the expressive parts of the game and proceed straight to the player-controlled action. But the same could be said of action-packed movies like “The Matrix” or “Charlie’s Angels”; any viewer with a videocassette or DVD player could simply skip to and isolate the action sequences. * * *

We note, moreover, that *there is no justification for disqualifying video games as speech simply because they are constructed to be interactive*; indeed, literature is most successful when it draws the reader into the story, makes him identify with the characters, invites him to judge them and quarrel with them, to experience their joys and sufferings as the reader’s own. In fact, some books, such as the pre-teen oriented “Choose Your Own Nightmare” series (in which the reader makes choices that determine the plot of the story, and which lead the reader to one of several endings, by following the instructions at the bottom of the page) can be every bit as interactive * * *. [Emphasis added.]

Whether we believe the advent of violent video games adds anything of value to society is irrelevant; *guided by the First Amendment, we are obliged to recognize that they are as much entitled to the protection of free speech as the best of literature*. * * * [Emphasis added.]

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| * * * [To] constitutionally restrict the speech at issue here, the County must come forward with empirical support for its belief that violent video games cause psychological harm to minors. In this case, * * * the County has failed to present the substantial supporting evidence of harm that is required before an ordinance that threatens protected speech can be upheld. * * * [T]he County may not simply surmise that it is serving a compelling state interest because “[s]ociety in general believes that continued exposure to violence can be harmful to children.” Where First Amendment rights are at stake, the Government must present more than anecdote and supposition.

DECISION AND REMEDY *The U.S. Court of Appeals for the Eighth Circuit reversed the judgment of the lower court and remanded the case for the entry of an injunction preventing the county’s enforcement of its ordinance. Video games are entitled to the same First Amendment protection as other types of speech, and the defendants failed to present the required evidence of harm to uphold a law threatening protected speech.*