

SENATE PRIVACY, DIGITAL TECHNOLOGIES, AND CONSUMER PROTECTION COMMITTEE  
Senator Christopher Cabaldon, Chair  
2025-2026 Regular Session

AB 1921 (Ward)  
Version: May 18, 2026  
Hearing Date: June 22, 2026  
Fiscal: Yes  
Urgency: No  
BD

**SUBJECT**

Digital games: ordinary use.

**DIGEST**

This bill requires digital game operators to provide a 60-day notice before ceasing service for the ordinary use of a digital game and to provide either 1) a version of the game that can be used independently of the operator, 2) an updated digital game that enables continued use, or 3) a full refund of the game if an operator ceases service.

**EXECUTIVE SUMMARY**

Long gone are the days of waiting in line at the local game store to secure a new copy of the latest video game. Nowadays, video games are predominantly bought online in various digital formats, making discs, cartridges, and other physical copies increasingly a relic of the past. However, upon reading the fine print, consumers do not own these digital games; rather, they have a license to access the game. This can result in consumers losing access to the game if an operator shuts it down.

This bill seeks to establish consumer protections to address the death of these digital games. The bill requires digital game operators to communicate, 60 days before ceasing services necessary for the ordinary use of the digital game, the date when services will end, which services will no longer be provided, and how a consumer can continue using the game, among other provisions. The bill also requires digital game operators to provide consumers with either a version of the game that can be used independently of the operator, an update to the game that enables continued, independent use, or a full refund for the original purchase price of the digital game.

This bill is author-sponsored and is supported by Stop Killing Games, Consumer Reports, Fulu, and United Videogame Workers - CWA. It is opposed by the Entertainment Software Association and Copyright Alliance. Should the bill pass out of

this Committee, it will next be heard by the Senate Business, Professions, and Economic Development Committee.

### PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that Congress has the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their writings and discoveries. (U.S. Const., art. I, § 8, cl. 8.)
- 2) Establishes the Copyright Act, which grants an owner of copyright to exclusive right to do and authorize reproduction of the work, derivative works, distribution of copies of the work, and performances or displays of the work. (17 U.S.C. § 106.)
- 3) Provides that nothing in the Copyright Act limits any rights or remedies under State laws with respect to, among other things, activities violating legal or equitable rights that are not equivalent to any of the exclusive rights specified by (2) above. (17 U.S.C. § 301(b)(3).)
- 4) Prohibits any person from circumventing a technological measure that effectively controls access to a protected work under the Copyright Act, except as provided by (5) below. (17 U.S.C. § 1201(a)(1)(A).)
- 5) Exempts from the prohibition detailed in (4) any user of a class of copyrighted work whose noninfringing use of the work is adversely affected by the prohibition. Requires the Librarian of Congress to determine via rulemaking which classes of users are subject to this exemption and provides criteria to assist the Librarian in making this determination. (17 U.S.C. § 1201(a)(1)(B-D).)
- 6) Defines “digital good” to mean a digital audiovisual work, digital audio work, digital book, digital code, or digital application or game, whether electronically or digitally delivered or accessed. Excludes from the definition of “digital good” a cable television service, satellite relay television service, or any other distribution of television, video, or radio service. (Bus. & Prof. Code § 17500.6.)
- 7) Defines “digital application or game” to mean any application or game that a person accesses and manipulates using a specialized electronic gaming device, computer, mobile device, tablet, or other device with a display screen, including any add-ons or additional content for that application or game. (Bus. & Prof. Code § 17500.6.)
- 8) Provides that it is unlawful for a seller of a digital good to advertise or offer for sale a digital good to a purchaser with the terms “buy,” “purchase,” or any other term which a reasonable person would understand to confer an unrestricted ownership

interest in the digital good, or alongside an option for a time-limited rental, unless the seller either:

- a) Receives an affirmative acknowledgement from the purchaser that the purchaser is receiving a license to access the digital good, along with a complete list of restrictions and conditions of the license, and that access to the digital good may be unilaterally revoked by the seller if they no longer hold a right to the digital good.
- b) Provides to the consumer before executing each transaction a clear and conspicuous statement that both states in plain language that “buying” or “purchasing” the digital good is a license, and includes a method to access the terms and conditions that provide full details on the license. (Bus. & Prof. Code § 17500.6.)

This bill:

1) Defines the following terms:

- a) “Digital game” to mean any game that a person accesses and manipulates using a specialized electronic gaming device, mobile device, tablet, or other device with a display screen, including any add-ons or additional content for that game.
- b) “Digital game operator” to mean a publisher, developer, or other person or entity that controls whether a purchaser of a digital game can make ordinary use of the digital game, including, but not limited to, controlling authentication systems, server access, digital rights management, or required software updates. Provides that “digital game operator” does not include a person or entity that provides general-purpose hosting, cloud computing, storage, network services, or an online platform or marketplace for the distribution of a digital game, but that does not control whether a purchaser may make ordinary use of the game.
- c) “Ordinary use” means a purchaser’s ability to use the core features of a digital game, consistent with the reasonable expectations of a purchaser based on how the digital game was advertised, marketed, or otherwise described by the digital game operator at the time of purchase.

2) Requires, 60 days before a digital game operator ceases to provide services necessary for the ordinary use of a digital game, the operator to communicate all of the following:

- a) The date when services necessary for the ordinary use of the digital game will end.
- b) Any service that will no longer be provided by the operator.
- c) Any game features that will no longer be available to the purchaser.
- d) Any known security risks that may result from the cessation of services.
- e) How the purchaser can continue to use the digital game or obtain a refund.

- 3) Requires the above disclosure to be provided directly through the digital game and on the digital game operator's internet website.
- 4) Requires a digital game operator who is ceasing to provide services necessary for the ordinary use of a digital game to provide purchasers with one or more of the following:
  - a) A version of the game that can be used by the purchaser independent of services controlled by the operator.
  - b) A patch or update to the digital game that enables its continued use independent of services controlled by the operator.
  - c) A refund in an amount equal to the full purchase price paid for the digital game by the purchaser.
- 5) Prohibits a digital game operator from selling, leasing, or otherwise distributing a version of the game that cannot be used independently from services controlled by the operator beginning on the date an operator ceases to provide service necessary for ordinary use.
- 6) Provides that the above provisions do not apply to any subscription-based services that offer access to any digital game solely for the duration of the subscription, any digital game that is free to play, or any digital game that is advertised to a person that the seller cannot revoke access to after the transaction.
- 7) Provides enforcement authority for violations of the above provisions to the Attorney General or any district attorney.
- 8) Applies only to a digital game first available for purchase or rereleased for purchase on or after January 1, 2027.

### COMMENTS

#### 1. The gaming community and a brief history of video games

The gaming community, consisting primarily of console, personal computer (PC), and mobile gamers, is quite popular. Nationwide, over 190 million people play video games, with 78 percent of households having played on at least one gaming device in the past year.<sup>1</sup> Ever since the advent of beloved games like *Pong*, *Tetris*, and *Pac-Man*, this community has only grown. Complementary to this growth was the shift away from traditional arcade games to household gaming systems, whereby consumers could

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<sup>1</sup> *Video Games Sector* (2023) International Trade Administration, <https://www.trade.gov/media-entertainment-video-games-sector>. All internet citations are current as of June 15, 2026.

enjoy games from the comfort of their homes.<sup>2</sup> Systems like the Atari 2600 and the Nintendo Entertainment System (NES) paved the way for home video game consoles to reach a newfound level of popularity. Around this time, the first online games emerged, and further internet integration through online multiplayer in titles such as *World of Warcraft* gave rise to enhanced player experiences. Additionally, through various online marketplaces, like Steam, gamers could enjoy new titles from their own PC.<sup>3</sup>

In today's world, video games blend high-definition graphics, complex game mechanics, and immersive storytelling. The most popular video games are predominantly online games, and the player bases of a single game can reach millions. There are countless forms of online video games, from massively multiplayer online games (MMOs) to single-player games that rely on internet connectivity and server upkeep.<sup>4</sup>

## 2. From physical to digital

Accompanying the technological advancement of video games themselves is the transition from physical games – like discs and cartridges – to digital games. In recent decades, many forms of media have seen a rise in digital products. Broadly speaking, some examples of these online products and services include music, movies, and books. These products are increasingly easy to purchase on the many devices most people use to take advantage of these goods. However, while many of these goods are available to “buy” or “purchase” online, the buyer is not receiving the type of ownership that comes with ancient products like DVDs, CDs, or paper books:

As the entertainment industry shifts its distribution strategy to let people buy or rent movies closer to – or simultaneously with – their release in theaters, you may find yourself amassing a larger digital library than you've had in the past. But when you buy a movie from a digital service like Amazon Prime Video or Vudu, does it really belong to you? What if you buy a song on iTunes or download one to your phone from Spotify? Are these files yours forever? If you cancel the service or, as unlikely as it may seem, one of these huge companies goes out of business, what then?

The answer is a little complex, but the short version is, no, you don't actually own the digital media files that you purchase. This doesn't mean you're imminently at risk of losing every digital movie and TV show you've ever bought at the whim of a megacorp, but it is possible. . . .

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<sup>2</sup> Samantha Ennis, *Preserving Pixels: The DMCA and the Quest to Preserve Video Gaming's Legacy* (2025) Washington and Lee Law Review 82(2), [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/waslee82&section=20](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/waslee82&section=20).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

What you're purchasing in most cases is a license to watch that video or listen to that song.<sup>5</sup>

Purchasing a digital game leads to the same answer as the aforementioned products. When a consumer purchases a game digitally, they are purchasing a license to use the product. Digital purchases have firmly cemented themselves as the primary method for gamers to acquire video games, as, in 2023, approximately 90 percent of all games sold were digital downloads.<sup>6</sup>

It is important to note that even physical copies of video games are linked to the internet and have a digital aspect. As explained by one article:

While the market for physical copies of works has become less important following the rise of digital video game stores, it has not disappeared. However, it can be observed that the physical data carrier no longer contains the whole game, but only a specific part of it. The installation requires an internet connection and a user account linked to a digital store to download the rest of the game. The paradigm shift in the video games market is striking. Games have slowly turned from a good into a service. It is a rather hypothetical example, but this kind of access to the work is reminiscent of the reader only having access to certain chapters of the book and having to go to the library for the rest...<sup>7</sup>

Likewise, for many games, buying the disk means that a consumer is simply buying a "key" of sorts to unlock the digital download. For instance, Nintendo offers game-key cards for the Nintendo Switch 2 that, despite being a physical product, do not contain game data and serve this purpose.<sup>8</sup>

This transformation is also reflected in many current digital games. Games nowadays rely heavily on internet-dependent launchers or third-party servers. Licenses, therefore, can be revoked with relative ease. Additionally, video games are increasingly using persistent online authentication, commonly known as always-on digital rights management (DRM):

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<sup>5</sup> Geoffrey Morrison, *You Don't Really Own the Digital Movies You Buy* (August 4, 2021) The New York Times, <https://www.nytimes.com/wirecutter/blog/you-dont-own-your-digital-movies/>.

<sup>6</sup> J. Brodie Shirely, *Physical Game Sales Are Down in the US* (January 27, 2025) GameRant, <https://gamerant.com/physical-game-sales-down-us-january-2025/>.

<sup>7</sup> István Harkai, *Preservation of video games and their role as cultural heritage* (2022) Journal of Intellectual Property Law & Practice 17(10), [https://www.researchgate.net/publication/364619146\\_Preservation\\_of\\_video\\_games\\_and\\_their\\_role\\_as\\_cultural\\_heritage](https://www.researchgate.net/publication/364619146_Preservation_of_video_games_and_their_role_as_cultural_heritage).

<sup>8</sup> *Nintendo Switch 2 Game-Key Card Overview* (2026) Nintendo, [https://en-americas-support.nintendo.com/app/answers/detail/a\\_id/68415/~/\\_nintendo-switch%26nbsp%3B2-game-key-card-overview](https://en-americas-support.nintendo.com/app/answers/detail/a_id/68415/~/_nintendo-switch%26nbsp%3B2-game-key-card-overview).

In the context of video games, always-on DRM requires the user to connect to the internet to play a video game, even if the user decides they want to play their video game offline or in single-player mode. A notorious example is Blizzard's *Diablo III*, an action RPG which offers single and multiplayer gameplay. Upon its release in 2012, Blizzard set the video game community aflame when it botched the launch of *Diablo III* due to its overloaded servers preventing users from connecting and accessing the game. *Diablo III*'s always-on DRM continues to inconvenience players today – players who frequently encounter in-game lag or end up completely disconnected from the game if their internet connection is weak or if the company's servers are experiencing any issues.

[...]

Always-on DRM exacerbates the issues of fragmented ownership rights in the age of digital media. Many consumers are unaware of the differences between purchasing a physical and a digital product, and often fail to notice the differences in the terms of agreement for products purchased online. Requiring an online connection may add an additional layer of security for the company, but it adds an unnecessary step in accessing one's legally acquired purchase, and it may even block a legal user's attempts to access their purchase under various circumstances.<sup>9</sup>

In 2024, the Legislature passed AB 2426 (Irwin, Ch. 513, Stats. 2024), which prohibited a seller of a digital good from advertising the sale of a digital good that is not available for permanent offline download with the terms "buy", "purchase", or any other term that would lead to an understanding of unrestricted ownership.

### 3. A sunset send-off: When games start to die

While there are many different preferences and diverse opinions across the gaming community, all gamers can agree that their favorite game carries important significance for them. Unfortunately, due to several potential reasons, operators may elect to stop providing live service updates for their digital games. This is typically referred to as "sunsetting."

To take a modern example, Bungie, a video game development studio responsible for creating blockbuster titles such as the early *Halo* series, recently announced it would

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<sup>9</sup> Olivia Yoon, *Always Online DRM and Video Games* (September 27, 2021) Cardozo Arts & Entertainment Law Journal (AELJ) Blog, 293, <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1292&context=aelj-blog>.

discontinue service updates for its beloved game, *Destiny 2*.<sup>10</sup> Though some players across various mediums mourn, the studio has committed to keeping the game online and playable despite ending active service, effectively preserving gameplay.<sup>11</sup>

While there are games that continue to maintain their servers despite moving on to other titles, others are not as fortunate. Rather, they are completely taken down and rendered unplayable. In 2024, Ubisoft angered many passionate gamers over its shutdown of *The Crew*, an online racing game released in late 2014. This shutdown made the game unplayable. While predominantly a multiplayer game, *The Crew* had a robust single-player mode, which led many users to express frustration that the entire game was shut down.<sup>12</sup> Additionally, while Ubisoft offered refunds to those who had recently purchased the game, the eligibility criteria were not well defined.

As digital games continue to proliferate, this experience may snowball. This process is already happening for some digital games:

Ubisoft recently went under fire for shutting down several online services, including the single player *Might and Magic X: Legacy*, on June 1st, 2021. *Might and Magic X: Legacy's* single-player and downloadable content is protected by DRM which requires users to go online to authorize their access to the game. Though this is less intrusive than requiring users to stay connected in order to play the game, the closing of the game's servers has left players unable to proceed past Act I of the game and unable to access any downloadable content. Shortly after shutting down these services, Ubisoft also pulled the game from Steam and left thousands of players – from those who owned an existing copy to those who recently purchased the game – unable to access the game, unless they applied an “unofficial workaround” to play past a certain point in the game.<sup>13</sup>

The author further provides the following examples:

*Anthem* – Servers shut down with no offline mode, no refunds.

*Darkspore* – DRM servers shut down, unplayable even for owners of physical discs.

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<sup>10</sup> *Destiny 2: Every End is a New Beginning* (May 21, 2026) Bungie, [https://www.bungie.net/7/en/News/Article/d2\\_may\\_21\\_2026](https://www.bungie.net/7/en/News/Article/d2_may_21_2026).

<sup>11</sup> *Ibid.*

<sup>12</sup> Laura Cress, *The gamers taking on the industry to stop it switching off games* (June 6, 2026) BBC, <https://www.bbc.com/news/articles/c8e8e7g0r82o>.

<sup>13</sup> Olivia Yoon, *Always Online DRM and Video Games* (September 27, 2021) Cardozo Arts & Entertainment Law Journal (AELJ) Blog. 293, <https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1292&context=aelj-blog>.

*Babylon's Fall* – Shut down in less than a year with no refunds offered.

*Kingdom Under Fire 2* – Shut down in less than two years with no refunds offered.

*Hood: Outlaws & Legends* – Refunds only for players who purchased two weeks before.

*The Day Before* – Taken down after four days, refunds were generally limited to players who had played for less than two hours, but extended to some who sought them out.

*The Flock* – Planned finite support period measured by the number of in-game deaths, shut down before reaching this number, refunds only for recent purchases.

That's not to mention games like *Overwatch* that were permanently shut down to make way for the sequel, games like *Lawbreakers* that were converted to free-to-play before shutting down with no refunds for paid players, and games like *New World* that are now approaching server shutdown with no end-of-life plan in place.

The tragic fall of *The Crew* and many other popular video game titles has sparked the rise of the Stop Killing Games movement. This movement brought together passionate gamers who were tired of seeing some of their favorite games removed and rendered unplayable. To fully understand this outrage, it is important to note that, for many gamers, the death of a game goes well beyond financial loss. Gamers can spend hundreds or thousands of hours playing their favorite game, building core memories, and creating friendships with other players along the way. For these individuals, losing access represents years' worth of effort; these are experiences they may never be able to replicate or revisit, even if a dead game comes out with a sequel. A BBC article explains this very notion in the context of *The Crew's* shutdown:

For players such as Chemicalflood, who told me he had been playing *The Crew* for nearly a decade, the move - which left the game unplayable - felt personal.

"I was around 18 at the time of the launch - it was a big part of my adult life growing up," he said. "It was a great escape from hardship at the time, so it has always been something special to me."

Over the years, he said, the game became something he shared with his children, who enjoyed exploring its virtual recreation of the United States.

"The shutdown itself wasn't upsetting," he explained. "But how they handled it was the kick in the teeth."

For Chemicalflood and many fans like him, the issue was not that Ubisoft ended support. It was that players lost access altogether.<sup>14</sup>

#### 4. What this bill does

Seeking to address these concerns, this bill requires digital game operators to communicate 60 days before ceasing services necessary for the ordinary use of the digital game, the date when services will end, which services will no longer be provided, and how a consumer can continue using the game. The bill requires these notices to be posted on the digital game's online website and in the digital game itself. The bill also requires digital game operators to provide consumers with either a version of the game that can be used independently of the operator, an update to the game that enables continued, independent use, or a full refund for the original purchase price of the digital game if a digital game operator ceases services that prevent the ordinary use of a game. This bill offers a series of exemptions, stating that its provisions do not apply to any game offered for no monetary consideration, a subscription-based service, or a digital game that the seller cannot revoke access to after the transaction. Lastly, this bill provides that its provisions only apply to digital games first available for purchase or rereleased for purchase on or after January 1, 2027.

According to the author:

AB 1921 aims to protect video game users against unexpected shutdowns of their digital games. When a game operator stops supporting a live-service game server, that game becomes inoperable for users who purchased a license with the expectation of continual access. This bill requires user notifications before the end of server support and ensures that paid users walk away with either a playable version of the game or a refund once services cease. As consumers increasingly enjoy entertainment and engage in hobbies via digital goods, furthering digital consumer protection and transparency in this space is essential.

In practice, this bill could function as follows. In 2030, Operator XYZ develops Digital Game A, which costs \$60 and relies on various technologies to remain playable. Unfortunately for Operator XYZ, this game has lackluster success with its player base. After a year, seeking to divert more of its resources to Operator XYZ's popular Digital Game B, Operator XYZ decides that it wants to end services for Digital Game A and wipe it from existence. Under this bill, Operator XYZ would be required to announce,

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<sup>14</sup> Laura Cress, *The gamers taking on the industry to stop it switching off games* (June 6, 2026) BBC, <https://www.bbc.com/news/articles/c8e8e7g0r82o>.

60 days before ending service, that it will end service and provide a list of information detailing what that may entail. Once Operator XYZ ceases service, it must either offer a version of the game that can be used independently, an update that enables continued independent use, or a refund to consumers who purchased Digital Game A. This ensures that the enjoyers of Digital Game A can continue to play the game or can at least receive a refund, leading to enhanced consumer protection.

## 5. Copyright implications

The U.S. Constitution grants Congress authority to establish exclusive copyright protections through Article I, Section 8, Clause 8, which empowers lawmakers to “promote the Progress of Science and useful Arts.” Congress so used that power in establishing the Copyright Act of 1976 (the Copyright Act), which establishes copyright protections in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. (17 U.S.C. §§ 101 et seq.) It provides that all legal or equitable rights equal to those within the scope of the Copyright Act are governed exclusively by the Act, and no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State. (17 U.S.C. § 301.)

As it relates to digital games, in 1998, Congress enacted the Digital Millennium Copyright Act (DMCA) in recognition that the internet and digital technology fundamentally reshaped the copyright environment. It primarily created three protections beyond the Copyright Act:

First, the DMCA established protections for online service providers, known as “safe harbor provisions,” which ensure providers are not held liable in certain scenarios where users commit copyright infringement. Central to this protection is the notice-and-takedown system — a mechanism for copyright holders to notify service providers of infringing content, prompting removal. Second, the DMCA grants technical protective measures (“TPMs”) to encourage digital dissemination of copyrighted works. Lastly, the DMCA criminalizes false representation and unauthorized alteration or removal of information in an attempt to ensure accurate attribution in digital contexts. Collectively, these measures aim to “strike a balance,” ensuring robust copyright protection in the digital realm while fostering innovation and growth in online platforms and services.<sup>15</sup>

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<sup>15</sup> Samantha Ennis, *Preserving Pixels: The DMCA and the Quest to Preserve Video Gaming’s Legacy* (2025) Washington and Lee Law Review 82(2), [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/waslee82&section=20](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/waslee82&section=20).

In the context of this bill and video games, Section 1201 of the DMCA, related to TPM provisions, is of particular importance. The DMCA language details that no person shall circumvent a technological measure that effectively controls access to a copyrighted work.<sup>16</sup> The DMCA defines a “technological measure” as the following:

[To] “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and (B) a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.<sup>17</sup>

The anticircumvention provision of the DMCA is quite broad and warrants careful consideration. Notably, however, Congress did recognize that there may be legitimate, lawful purposes to circumvent TPMs. As such, the DMCA outlines a process where consumers can gain an exception for bypassing the TPMs if the DMCA adversely affects non-infringing use of copyrighted materials. The DMCA offers permanent exemptions and temporary exemptions. The permanent exemptions are extremely narrow and would not apply to this subject area. Temporary exemptions are subject to rulemaking proceedings by the United States Copyright Office and are reviewed, renewed, and implemented every three years. One such exemption is directly related to a consumer’s use of abandoned games.

This exemption permits circumvention of TPMs for games in which authentication servers have been fully discontinued. It applies only to local gameplay, as the Register rejected a version of the proposal to adopt it for limited cases of online multiplayer games. While limited, this exemption has been continuously renewed by the Copyright Office since 2015 and was most recently renewed in 2024. This exemption provides two important factors: 1) as aptly noted by the author, there is precedent for consumers to continue use of a video game after an operator has ceased support, and 2) there is potential to align the provisions of this bill with this exemption. As it relates to 2), while the exemption only allows users to circumvent TPMs for local gameplay, it nevertheless may be beneficial to align this bill with the exemption to assuage copyright concerns.

Responding to copyright concerns, the author argues:

AB 1921 does not seek to regulate game design or interfere with intellectual property rights. Nothing in this bill prohibits a game operator from suspending or revoking a license due to a user copying, hacking, or

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<sup>16</sup> 17 U.S.C. § 1201.

<sup>17</sup> 17 U.S.C. § 1201.

violating other platform policies. A 2015 DMCA exemption set a precedent in this space, allowing the circumvention of authentication servers to render playable a game that has been shut down, for purposes of local personal gameplay and archival preservation.

#### 6. Policy consideration

While the options in this bill certainly offer consumers strong protections in the event of lost access, they may be overly limiting and lack flexibility. Accordingly, the author has agreed to amend the bill to add this increased flexibility for digital game operators. The amendments would remove the full refund provision and instead provide operators with the option to provide a refund for the purchase price of a game based on the highest price an operator offered for the game within the last 12 months prior to the cessation of ordinary use. Additionally, the amendments also specify that operators can provide documentation to allow purchasers to host a private or community server or a version of server software to make ordinary use of the digital game, independent of ongoing services. This provides more flexibility by providing additional pathways beyond the existing ones. Lastly, the amendments would delay implementation by another year. The author has also committed to working with developers to ensure reasonable implementation.

#### 7. Stakeholder positions

Consumer Reports writes in support:

Consumer Reports is focused on ensuring that when consumers purchase or license digital services, that their rights are protected and that they understand the transaction they are making. Under AB 2426 (Chapter 513, Statutes of 2024) consumers are slightly more aware that instead of buying a digital game, they are merely licensing it, but they are still spending money with the expectation of being able to play the game when they choose.

But publishers have released games that were later shut down leaving consumers who paid for them frustrated and without options to keep their games. AB 1921 ensures that manufacturers who license games do so in a manner that is fair to consumers, providing them advance notice when those games are going to be taken down and ensuring that when a game gets taken down consumers who were granted the license get a full refund or the ability to access advertised aspects of gameplay without a connection to the server.

Increasingly, consumers seek entertainment and community in online spaces, including server-supported digital games. As live service games

rise in popularity for game developers and gamers alike, end of life procedures are essential tools to ensure prolonged access to the games consumers pay to enjoy. Regulators have occasionally offered guidance that companies who retract access to purchased content may be violating consumer protection law, but clearer rules of the road would better serve both consumers and companies.

United Video Game Workers - CWA writes in support:

On March 12 of this year, the game *Highguard* shut down its servers for good 45 days after its initial launch. This decision was unfortunately made in response to market realities that cost around 100 developers their jobs and erased at least three years of their work out of the public sphere. The game was rendered unplayable or removed from players' libraries. These players lost access to a product they paid for, an exchange that amounts to legalized fraud.

*Highguard's* story is sadly not unique; it is only the most recent in many online games to have been taken down with developers and players left with nothing to show for it. California Assembly Bill 1921 aims to rectify this pattern of careless management by requiring the publishers of online games to either provide a new version or patch to keep the game playable for the public or refund the money to the players that believed in the product to purchase it with their hard earned money. The benefits to players and game workers are very evident and so we at United Videogame Workers - CWA support this bill and implore the California State Assembly to pass it into law.

In opposition, the Entertainment Software Association (ESA) writes:

AB 1921 is premised, in part, on the idea that consumers “own” digital games in a way that entitles them to indefinite access. That framing does not reflect how software is distributed. Consumers receive a license to access and use a game, not an unrestricted ownership interest in the underlying work.

California has already addressed consumer transparency through its existing “Buy Button” law (AB 2426), which ensures that consumers understand they are acquiring licensed digital content. The June 2024 California Senate Judiciary Committee analysis of Assembly Bill 2426 stated, “...while many of these goods are available to “buy” or “purchase” online, the buyer is not receiving the type of ownership that comes with ancient products like DVDs, CDs, or paper books, and “...while there is nothing inherently wrong with these licensing structures, they may not

align with what a consumer expects, especially when the term “buy” or “purchase” is being used.” The recognition of the inherent difference between physical and digital goods lead the California legislature to pass AB 2426 to ensure that consumers had appropriate knowledge that digital goods are licensed and not owned.

In response to the above concern, the author notes:

This bill does not challenge the fact that a purchaser buys a license to play a digital game. Instead, this office is concerned with fairness and transparency for consumers who reasonably expect to have continued access to the games they pay for. When a purchaser pays for a license to play a video game, they should be able to make use of that digital content or seek compensation if that is no longer possible.

AB 1921 builds off the work started with AB 2426 (Irwin), which required a seller of a digital good to clearly disclose that the purchaser is receiving a license at point of sale. Further action is necessary to increase transparency around the end-of-life or revocation of licenses for digital goods.

ESA further provides:

In addition to licensing constraints, many games rely on third-party technical services such as authentication systems, anti-cheat technologies, cloud infrastructure, and matchmaking services. These services are often outside a publisher’s control and may be discontinued over time. Even single-player games increasingly depend on online functionality, including updates, cloud saves, and security features. When these services are no longer available, the game may not function as originally designed. While some games can be adapted to operate offline, this is not always possible due to security risks, architectural limitations, or contractual restrictions. Where feasible, publishers already take steps to manage end-of-life transitions responsibly – such as providing advance notice, issuing final updates, or enabling limited offline functionality. However, these measures cannot be guaranteed in all cases.

The author responds:

AB 1921 does not mandate that every supported service continue to function forever. It pertains to “ordinary use” of digital games, referring to a purchaser’s ability to use a game’s core features, consistent with reasonable expectations based on how it was advertised. Not all features are necessary to make use of the core aspects of a game. Microservices

such as anti-cheat, DRM validation, microtransaction handling, in-app purchase validation, and realtime matchmaking are not necessary or expected to continue once the game is not actively supported.

AB 1921 offers operators several options for compliance, allowing responsible end-of-life planning for a wide variety of games. Additionally, AB 1921 exempts subscription-based services and games offered for no monetary compensation. We look forward to further conversations with industry stakeholders to ensure the technical feasibility of maintaining core functionality for paid users.

### **SUPPORT**

Consumer Reports

FULU

United Videogame Workers - CWA

5 Individuals

### **OPPOSITION**

Entertainment Software Association

### **RELATED LEGISLATION**

AB 2426 (Irwin, Ch. 513, Stats. 2024) *See* Comment 2.

### **PRIOR VOTES:**

Assembly Floor (Ayes 43, Noes 16)

Assembly Appropriations Committee (Ayes 11, Noes 2)

Assembly Judiciary Committee (Ayes 8, Noes 2)

Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 4)

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