Against the Digital Tide: Increased Regulatory and Consumer Pressure to Protect Physical Games and Digital Ownership

by Christopher B. Lynch

State regulators are increasingly scrutinizing how companies market digital goods and whether consumers understand the rights they receive when they click "buy." For companies involved in game publishing, digital distribution, e-commerce, and online marketplaces, the increased focus on digital ownership and licensing disclosures may create new compliance and consumer-protection considerations.

Consumers can now pre-order a "physical copy" of a blockbuster game that is, in practical terms, a cardboard sleeve around a license. The box will be real, but the legal right to do much of what people historically associated with "owning" a copy—lend it, resell it, preserve it, or place it on a shelf as a piece of artwork or as a trophy—may be considerably less real.

Hot on the heels of Rockstar's announcement that physical editions of the most anticipated game of the decade will just include digital download codes in the cases, other major publishers and studios are moving away from physical media and have announced that future games will only be available through online stores.[1]

These announcements have been met with staunch and vocal resistance from players; if a boxed product contains a download code rather than a transferable disc, the product starts to look less like a thing you own and more like a very nicely merchandised permission slip. At the same time, consumer data shows a clear preference for digital downloads.[2]

Stop Killing Games

None of this is happening in a vacuum. A small but increasingly organized coalition of consumers, collectors, and preservationists is pushing for more regulators to step in, and legislatures are starting to listen.

The Stop Killing Games (SKG) campaign is one of the most significant consumer-rights movements to emerge in gaming in recent years.[3] It began after Ubisoft shut down the servers for The Crew (2014), a racing game that required a constant online connection, even for much of its single-player functionality. When the servers went offline on March 31, 2024, the game became unplayable, prompting criticism that a product sold for years as a game had effectively been destroyed after purchase. The campaign argues that publishers should not be able to render purchased games permanently unplayable when support ends and advocates for measures such as offline functionality, community-hosted servers, or other mechanisms that allow games to remain reasonably playable after official support is withdrawn.

The community's reaction to The Crew's shutdown went beyond a signature campaign. Players review-bombed Ubisoft's other live titles on Steam. Two California residents filed a class action in November 2024 alleging Ubisoft had misled players about what a purchased copy of the game actually included, though the plaintiffs voluntarily dismissed that suit in June 2025. More recently, the French consumer-advocacy group UFC-Que Choisir filed its own suit in March 2026, backed by the Stop Killing Games campaign, alleging deceptive practices and abusive contract terms. Whatever the ultimate legal outcome, the pattern—boycotts, class actions, and now cross-border consumer-group litigation—is itself a signal regulators and publishers are watching.

The stakes behind this debate aren't hypothetical: a 2023 study by the Video Game History Foundation and the Software Preservation Network found that only about 13% of classic games released in the United States before 2010 remain commercially available in any form, while the remaining 87% were classified as 'critically endangered.' For an industry increasingly asking consumers to trust that today's license will still mean something in a decade, that figure is doing a lot of the persuading currently aimed at regulators and legislators.

These issues are complex; preservation of games in perpetuity is a tightly woven web of overlapping laws (including who owns what and what they're allowed to do with it) and regulatory concerns, plus all of the practical and technical limitations of maintaining and preserving a game. But SKG has brought questions of digital ownership, consumer expectations, and video game preservation to the forefront of consumers' minds and made it a policy issue drawing attention from lawmakers and regulators. SKG's European Citizens' Initiative, Stop Destroying Videogames, collected more than 1.29 million verified signatures, requiring a formal response from the European Commission and prompting debate over whether publishers should have obligations to preserve playability after ending commercial support. Although the Commission declined to propose a mandatory preservation requirement, it committed to engaging industry and consumer groups on end-of-life practices.

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[1] Sony PlayStation Blog, https://blog.playstation.com/2026/07/01/physical-disc-production-ending-in-january-2028-for-new-games-releasing-on-playstation-consoles/
[2] FY25.4Q_Supplemental Information
[3] Stop Killing Games, https://www.stopkillinggames.com/

A State-Law Trend Taking Shape

The legal question video game publishers, digital content providers, and online storefront operators increasingly face is whether the consumer-facing language used to market and sell digital goods accurately describes the transaction. When consumers encounter terms such as "Buy Now," "purchase," or "own," regulators and courts may ask whether those representations align with the underlying reality of a limited license, and whether they could mislead reasonable consumers about the nature of the rights being acquired.

Some states and other governments have moved to step into that gap. In California, Business and Professions Code section 17500.6 addresses the sale or advertisement of digital applications and games, digital audiovisual works, digital books, and digital codes. The statute doesn't grant ownership rights, require publishers to keep servers running forever, prevent delisting, or guarantee perpetual access. Instead, it's a consumer disclosure and false advertising law aimed at regulating how the transaction is marketed. If a button says "buy," the state wants the consumer to understand whether "buy" means "own" or "access for as long as the ecosystem continues to smile upon you." As a result, gamers outside California will likely see clearer disclosures simply because it's operationally easier for publishers and storefronts to use the same disclosure framework everywhere.

Looking east, Maryland enacted House Bill 208 in 2025 within the state's consumer-protection framework, which addresses false advertising in digital goods.[4] Proposed legislation in the nearby state of New York would prohibit sellers of digital goods from using "buy," "purchase," or similar terms that a reasonable person would understand to confer unrestricted ownership unless specified acknowledgment or disclosure conditions are met.[5] Illinois and Arizona proposals likewise suggest that lawmakers are beginning to examine how digital products are marketed and what consumers understand to be receiving.[6]

Regulators are increasingly sending a clear message to all of the parties involved in the creation, manufacturing, sales and hosting of digital goods: if your sales page suggests a durable ownership interest, while the legal terms reserve access limits, revocation rights, transfer restrictions, or content-availability conditions, consumer impression may matter more than the formal labels used in the contract.

Practical Considerations for the Full Digital-Goods Ecosystem

Despite increased regulatory attention and consumer concern, businesses can take steps to align their products, infrastructure, and business practices with the direction of emerging regulation and the expectations of an increasingly ownership-conscious customer base.

This could entail:

- Making it more apparent when the customer is purchasing a license rather than unrestricted ownership,
- Choosing distribution models that fit the product and audience,
- Assessing whether offline play or backup functionality is part of the consumer value proposition, or
- Considering whether a single disclosure approach should be aligned with the most stringent state laws rather than redesigned jurisdiction by jurisdiction.

As the regulatory landscape continues to evolve, companies that evaluate these issues proactively are better positioned to reduce risk, strengthen consumer trust, and avoid finding themselves at the center of the next digital-ownership debate. Dickinson Wright helps game publishers, platform operators, device manufacturers, storefronts, and other participants in the digital-goods ecosystem navigate evolving consumer protection requirements. We monitor developments at the state and federal level and help clients assess how ownership, licensing, online-access requirements, and end-of-life practices are communicated to consumers.

Our team can review packaging, storefront and eShop language, purchase flows, activation screens, terms of service, developer and publishing agreements, and other consumer-facing materials. We can help you assess:

- Whether your purchase-flow language ("buy," "own," "purchase") meets disclosure requirements under laws like California's AB 2426 or Maryland's HB 208
- How your terms of service, activation screens, and packaging describe end-of-life, revocation, and transfer rights
- Whether your DRM, server-dependency, and offline-play design choices create ownership expectations your legal terms don't support

The way we play, purchase, and think about games is changing, and the survival of physical game media may depend on how disclosure and preservation laws are written and enforced. That's where practical questions for businesses start.

[4] Maryland HB 208, https://mgaleg.maryland.gov/2025RS/bills/hb/hb0208f.pdf
[5] New York S8952 PDF, https://legislation.nysenate.gov/pdf/bills/2025/S8952
[6] Illinois SB 2822 PDF, https://ilga.gov/documents/legislation/104/SB/PDF/10400SB2822eng.pdf ; Arizona HB 2010, https://www.azleg.gov/legtext/57leg/2r/bills/hb2010p.htm

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