AMERICAN ECONOMIC LIBERTIES PROJECT

GRAND THEFT EVERYTHING: YOU BOUGHT THE GAME, THEY KEPT THE KEYS AND LOCKED YOU OUT

How the Video Game Industry Is Using Digital Permission Slips and Consolidation to Steal Back Video Games You Already Bought and Make Ownership Impossible



By Matt Stoller and Ashley Nowicki

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INTRODUCTION

Over two-thirds of Americans play some type of video game at least once a week,[1] with 30% regularly playing on a console.[2] People of all ages turn to them for stress relief, mental stimulation, and enjoyment. And alongside playing video games, watching others play video games on services like Twitch and YouTube is a major form of cultural entertainment.[3] Video games foster belonging, social connection, self-expression and political organizing, and even new forms of payment and commerce;[4] and today, they are one of the most important modern commercial art forms.[5] In fact, it is the most successful entertainment industry, bringing in $200 billion in revenue in 2025.[6]

But the industry is in crisis, as a small number of gatekeepers have transformed the market to limit competition and ultimately increase their pricing power, eliminating the traditional property rights of gamers, chasing trends like live-service, AI, or cloud gaming models to prioritize increased profits under pressure from Wall Street and shareholders, and cutting costs through layoffs. For instance, since Microsoft's Xbox subsidiary closed on its acquisition of the giant video game firm Activision in 2023, the company has doubled the price of its Game Pass subscription service while closing studios and laying off thousands of developers.[7] However, these pricing decisions are not unique to one company. According to the Bureau of Labor Statistics, the consumer price index category "subscription and rental of video and video games" increased by 14.4% in the 12 months since September 2025.[8] And as prices are up, employment in the industry is falling. At the same time, video game companies are prioritizing profits — chasing trends that have made other games millions of dollars — instead of new, innovative experiences for gamers.[10]

An even more momentous announcement in the industry occurred in July 2026, when another key gatekeeper, Sony, announced it would soon stop publishing its console games in disc format.[11] Going forward, gamers who want to play new releases such as the highly anticipated *The Witcher IV* or *The Elder Scrolls VI* on PlayStation will only be able to buy a revocable digital permission slip.[12] The physical aftermarket for new console games,[13] where gamers can resell, lend, or gift games to one another, will disappear. Analysts believe the rest of the game industry will soon follow Sony's lead.[14] Already, video game company Take-Two's publisher, Rockstar Games, announced that the highly anticipated *Grand Theft Auto VI* would only be available as a digital download.[15]

This decision marks a major change in the video game market, consistent with fostering a market structure that allows a small group of firms to control pricing and output.

The ability to physically possess video games has historically placed limits on corporate dominance in the sector. Retailers could choose to discount competing copies, customers could lend or resell discs, and used-game dealers could create a secondary market. Moreover, many games remained playable even after the publisher stopped supporting them.[16] On the other hand, an account-bound digital license usually cannot be transferred, resold, gifted, or even played across devices, and likely depends indefinitely on the platform's authentication systems,[17] internet access, and publisher support.[18]

Alone, the elimination of physical discs is worrisome. But it is occurring following mergers and acquisitions that have led to monopolization in the industry itself. A sector once defined by open competition, physical ownership, and decentralized artistic creation has been replaced by one based on corporate hierarchy and consolidation. Five platforms — Tencent (mobile), Xbox, Sony, Nintendo (consoles), and Steam (PC) — dominate much of the game publishing apparatus,[19] selling access to games through app stores, subscriptions, or console exclusive chokepoints. In other words, the central problem in video gaming is not simply that physical copies of console games are disappearing, leaving players with digital purchases that they do not control, as the copyright regime disallows them from owning and archiving.[20] It is that this change is occurring inside vertically integrated systems in which the same company may control the hardware, operating system, storefront, payment system, user accounts, subscription service, cloud infrastructure, and an expanding portfolio of game studios, developers, and publishers.[21] As a result, there is no more true consumer ownership in video games.

This is not hyperbole. In litigation, Sony has argued that the company in fact owns these games, alleging that if one user owned it then another user could not purchase it, claiming that a reasonable consumer "would [not] believe that they were obtaining 'ownership.'"[22] It is quite the change. Once upon a time, Sony touted the ease of sharing PS4 games, even producing an "instructional video" showing that sharing a used game is as easy as handing a physical copy to another person.[23] But if Sony — or any other company — owns the game and users do not, there is nothing to protect gamers from price hikes or loss of access.

This shift has made many gamers feel powerless — and furious, believing, correctly, that they are at the financial mercy of platform monopolies, who can cut off their access to long-loved games at will.[24]

At the same time, Sony's competitor Microsoft-Xbox is allowing gamers to convert their old physical games into digitally playable content,[25] and is hiring a strategist to "coordinate the launch of physical [] games across all platforms."[26] It is unclear what this will mean for physical games, but stands out in comparison.

This brief explains the policy roots that led to this change, tracing it to shifts in copyright, monopolization, merger, and contract law. It offers a set of recommendations that will restore the ability of gamers to once again own the property they purchase, as well as promote a competitive market that produces a wide variety of high quality, affordable games.

PART ONE

AN OVERVIEW OF VIDEO GAME MARKETS

BACKGROUND

Video games are played on one of three types of hardware: personal computers, home consoles, and mobile devices. The main ecosystems today are desktop or handheld PCs (usually via software companies Valve[28] and Epic Games),[29] Microsoft's Xbox[30] and Sony's PlayStation (including handheld consoles[31]), Nintendo's Switch and Switch 2,[32] mobile games accessible through Apple and Google's Android devices as well as ones such as those offered by software companies Valve and Epic Games on desktop or handheld PCs.

Developers create the games under a particular studio, while publishers fund, market, and distribute the game — ultimately controlling the projects. To access games,[33] users traditionally have two options: new and used physical discs or cartridges, and digital downloads from an app store, publishers, game launcher or platform, game developers, a subscription service, or digital codes from third-party retailers.[34] Digital platforms — including app stores — and retail stores are the digital and physical storefronts where games are purchased and downloaded.[35]

Historically, gaming has been driven by consoles,[36] but as mobile devices have improved in quality and convenience, they now lead in terms of consumer behavior. In 2026, mobile devices are the most common way to play video games, followed by personal computers, and then specialized consoles made for gaming.[37] In 2026, the industry had total revenue of $214 billion, with $121 billion coming from mobile, $47 billion from consoles, and $46 billion from computers.[38]

MOBILE

Well over 90% of mobile games are accessed through Google and Apple's app stores. Apple's market share of mobile phone app stores in the U.S. in the early 2020s was 55%,[39] bringing in over $10 billion in the U.S.[40] and $19 billion worldwide per year.[41] The small minority of customers who buy in-app games — 10% — are responsible for more than two-thirds of that revenue.[42] Google's market share is around 40%, bringing in $12 billion.[43] Multiple courts have found Apple and Google liable for illegal monopolization or otherwise unfair trade practices over their management of their app stores.[44]

Although there are well over 100,000 video game publishers and developers for mobile games,[45] some dominant firms are emerging. Tencent Gaming is the largest video game publisher in the world and is particularly dominant in the U.S. for mobile gaming.[46]

CONSOLES

Sony, Nintendo, and Xbox are the three major console producers and together control over 90% of the market.[47] All three offer subscription services for a monthly fee — Sony PlayStation Plus, Nintendo Switch Online, and Microsoft's Xbox Game Pass. These subscriptions offer a number of rotating games for digital download, including hardware or subscription exclusives, day one access, and access to indie and third-party games. There are additional features, including access to cloud streaming to play games across hardware or without having to download them, exclusive discounts, as well as "free" in-game benefits like skins, currency, loot boxes, and other rewards. These subscription services are also often required for online multiplayer connectivity.[48] Sony's PlayStation and Microsoft's Xbox are high-performance ecosystems with realistic graphics and high computational needs, while Nintendo offers unique characters, less computational performance, and handheld experiences.

Games can be single player or multiplayer, be exclusive to one platform or subscription service, or be cross-platform.[49] Many popular multiplayer titles, such as *Fortnite, Minecraft,* and *Call of Duty,* are cross-platform, but may be available at different times via subscription service. For Microsoft Xbox's Game Pass, players can access exclusive games on day one, whereas Sony's Playstation Plus users must wait months for major exclusives on the subscription service.[50] For decades, Microsoft's Xbox and Sony's Playstation have relied on console exclusives to boost console sales. But in recent years, both companies have shifted to multiplatform strategies. However, it is rumored that Microsoft's Xbox plans to turn toward exclusives once again to boost console sales, which have reached a 25-year low.[51] Sony and Nintendo have more platform exclusives than Microsoft, with eight exclusive games on PlayStation for every one on Xbox.[52]

Prior to 2000, companies and users could legally reverse engineer video game systems, which meant that console makers could not wholly control which games were usable on their systems.[53] In addition, companies could build emulators to mimic platforms, like in 2000, when Connectix legally built a PlayStation emulator.[54] Since the Digital Millenium Copyright Act — which disallowed circumvention of technological measures meant to protect copyrighted materials — went into effect that same year, platform owners have had much more control over what can and cannot go on the systems they build.[55] Should they opt to make a game platform exclusive, getting access to that one game could require purchasing an entirely new console.[56]

Notably, games that are available via subscription model rotate on a regular basis. This means that at any time, a game may be taken off the subscription plan, requiring a user to purchase the game outside of the subscription.[57] After paying the monthly subscription price, if a user wants to continue playing the game, they must pay the full price of the game to continue having access.

PERSONAL COMPUTING

In contrast, the desktop PC gaming market is structurally more open. Users can install app stores such as Steam and Epic Games Store, publisher-operated launchers,[58] or software obtained directly from a game developer on their computer.[59] Nonetheless, it is monopolized, in this case by the popular app store Steam, which, in turn, is owned by Valve. It is responsible for three-quarters of PC game sales.[60]

Valve's dominance emerged via leveraging must-have video gaming content. Valve, founded in the late 1990s, began as a video game developer.[61] In 1997, Valve worked with Sierra On-Line, who created and owned a third-party service called World Opponent Network (WON), to publish and distribute the popular video game *Half-Life*, claiming it would use it to support compatibility issues for multiplayer gaming. Instead, it allegedly replaced Valve's WON enabled titles to run on its own newly launched service, Steam, and began to build up dominance as a digital platform.[62] Valve then required gamers who wanted access to *Half-Life 2* to have a Steam account — whether they purchased digitally or a physical disc.[63] In 2005, Valve launched the Steam Store, allowing third-party publishers to sell through its platform and reach millions of gamers, in return for a 30% cut of revenues and certain exclusivity agreements. Today, Steam takes a 25% cut for revenue between $10 million and $50 million, and a 20% cut for revenue above $50 million.[64]

What Happened to Physical PC Games?

For at least a decade, new PC games have been entirely digital.[78]

Video games shifted from physical to digital for personal computers due to technological changes, consolidation, and changing consumer preferences. There was widespread availability of high-speed internet, and computers being built without disc drives and with increased storage. The introduction of Steam meant quicker access for users and dominance for the platform. It also meant allowing developers to sell directly to players without having to pay for physical manufacturing, packaging, shipping, and profit sharing to retailers. Retailers have long rejected this change, but later began to sell physical boxes with digital codes instead of discs to gain some profit in the industry.[79] This contention still exists in the industry today.[80]

However, it is unclear how many games hit these revenue milestones.[65] The company also expanded into physical handheld devices like the Steam Deck, which ties into the Steam ecosystem.[66] Today, Steam has 1 billion user accounts and sells more than 100,000 games.[67] It offers a large installed audience, discovery system, reviews, multiplayer and community functions, payments, updates, achievements, and developer tools. A developer may technically distribute elsewhere, but needs access to Steam to achieve commercial success.

At least three antitrust and price fixing suits have been filed against Valve since 2021. According to one antitrust suit, Valve's dominance is due to its use of "most favored nation" clauses. This prevents game developers or publishers from selling their games or in-game monetization at a lower price on rival storefronts like Epic Games.[68] This has a ripple effect through the entire gaming ecosystem, resulting in higher prices for all gamers no matter which storefront they use.

Multiple gaming corporations, including Epic Games,[69] Electronic Arts,[70] Microsoft,[71] Sony,[72] Amazon,[73] and Discord,[74] have attempted to launch competitive stores; however, no other company has been able to challenge Valve's dominance of nearly 75% market share and profit margins of 40 to 80%.[75] Today, Steam's biggest competitor is the Epic Games Store, with 3 to 8% of the market.[76] And most PC gamers rely on Steam,[77] given that it has the biggest library and user base, and gamers do not want to have to move between different services.

GAME PUBLISHERS: AAA GAMES

In video gaming, content is king, and the studios that produce it have ultimate market power. The biggest and most important games are known as AAA games, which are blockbuster-style games with brand equity costing hundreds of millions to produce and market, and typically bringing in much of the industry revenue.[81] *Grand Theft Auto VI* is already estimated to bring in between $1 billion and $4 billion on preorders alone.[81] In 2022, *Call of Duty: Modern Warfare 2* earned $1 billion of revenue in its first 10 days,[83] while in 2013, *Grand Theft Auto V* earned $1 billion in just three days.[84]

As the publisher industry has consolidated, particularly between 2018 and 2026,[85] the mid-tier publisher, which often finances and creates AAA games in the $20 million to $60 million range, is disappearing.[86] What remains are indie and conglomerate publishers; the former offers ambitious and experimental games, while the latter is looking to earn a sizable profit by focusing on legacy brands or hits.[87] As the time between AAA game releases widens and the quality for many gamers appears to drop, due to higher costs and expectations in terms of sales and revenue — particularly for companies formed via mergers and acquisitions and financed by debt — indie publishers are looking to fill the gap.[88]

Sony, Microsoft, and Nintendo have their own studios and publishers, releasing many AAA games. Microsoft, for instance, has first-party franchises such as *DOOM* (ZeniMax), *Forza* (Turn 10 Studios, Playground Games), *Call of Duty* (Activision Blizzard), *Gears of War* (Epic Games IP), *Halo* (Bungie), *Minecraft* (Mojang), and *The Elder Scrolls* (ZeniMax),[89] while Sony publishes *God of War, MLB The Show,* and *Spider-Man* (Insomniac Games),[90] and Nintendo has the popular *Super Mario Brothers* and *Legend of Zelda* franchises.[91]

There are three other major game publishers who own and create valuable games, and dominate part of the video game industry, but are not console companies. Electronic Arts makes *FIFA, Madden NFL*, and *The Sims* franchise;[92] Take-Two makes *Grand Theft Auto* and *Red Dead Redemption*;[93] and Ubisoft makes *Assassin's Creed*.[94] Epic Games, which publishes *Fortnite*, is sometimes considered a AAA-level publisher.[95] In 2012, EA settled a nearly $30 million class-action antitrust lawsuit for allegedly locking out competition for football video games, resulting in higher prices for consumers, as EA secured exclusive licensing deals with the NFL, NFLPA, and NCAA.[96] Take-Two is able to act as a significant price maker around its most popular titles, while Epic Games has paid publishers to sell exclusively on the Epic Games platform.[97]

Shifting Monetization Models and Free-to-Play Games

Since the 1980s, the monetization model of video games has shifted several times with changes in both technology and consumer preferences. Arcade games were introduced as a pay-to-play model, where a user pays to play each round of a game.[98] The introduction of computer games and then consoles brought a new model, where users paid once for an entire game and then had full access to it.[99] The rise of online games brought a shift toward subscription models, where users pay for continued access to games.[100] Subscription models provide more predictable revenue streams for the businesses than one-off purchases.[101] One study by researchers Michiel Van Crombrugge and Stefan Stremersch found that subscription models "enhanced console revenue" without cannibalizing overall video game revenue.[102]

The shift from physical to digital games and the rise in mobile gaming and app stores[103] has also resulted in the rise of so-called free-to-play games.[104] This model allows a user to pay zero upfront cost. The catch is that they feature in-game monetization and microtransactions throughout the game. Users can buy in-game currency, limited-time battle passes that give them tiered rewards as they play and earn experience, and loot boxes which give a random selection of rewards, character skins, weapons, and more. According to one study from 2024, over 80% of adult gamers have spent money in a free-to-play game,[105] and over 50% of players spend money at least once a month,[106] often about $20 each time. Instead of paying $50 to $100 once for a game, these microtransactions cost users anywhere from $5 to $20 or more on a frequent basis. Many users may not know exactly how much they have spent on a particular game.[107] If someone spends $20 a month for 12 months on in-game transactions, the $240 would be well over the cost of a AAA game. The spending is so substantial that these microtransactions are considered the "financial backbone" of the industry by one analyst.[108] They make up a large portion of consumer spending on video games.[109] Children and teenagers are especially susceptible to these transactions.[110] Gamers do not actually own such in-game content or even the games themselves. As soon as publishers choose to stop supporting games or features, players lose access.[111]

What Is an Exclusive?

An exclusive is a game, feature, or distribution right available through one platform but not its competitors.[112] Exclusivity can take several forms:

- **Permanent platform exclusive:** the game is available only on one console or company ecosystem.[113]
- **Timed exclusive:** the game reaches one platform first and rivals later.[114]
- **First-party exclusive:** the platform funds or develops the game and releases it only on that platform or hardware.[115]
- **Acquired exclusive:** a formerly independent studio or franchise is purchased, and content is later restricted.[116]
- **Subscription exclusive:** a game may be sold on several systems but included in only one multigame subscription service.[117]
- **Cloud exclusive:** only selected cloud services receive streaming rights.[118]
- **Content or technical exclusive:** all systems receive the game, but one gets characters, levels, additional content, early access, superior performance, or other advantages.[119]

Benefits of Exclusives

Exclusivity can:

- give a platform a reason to invest in a new game that might otherwise go unfunded;
- permit close optimization between software and hardware;
- create competition between platforms to offer distinctive games;
- support entry by a new platform seeking an initial user base;
- reduce costs, as technology differs across consoles;
- and allow a smaller developer to exchange exclusivity for guaranteed financing or marketing.

Costs of Exclusives

Exclusivity can also:

- force customers to buy multiple devices;
- fragment multiplayer communities;
- increase switching costs and account lock-in;
- deny rivals an important input;
- reduce a studio's potential audience;
- remove developer control over a game, forcing developers to design a game with specific hardware and content boundaries in mind, and limiting creative freedom;[120]
- convert a previously cross-platform franchise into a platform weapon; and
- allow a vertically integrated platform to favor its own subscription, store, or cloud service.

Exclusivity is not inherently problematic. The critical questions are who owns and ultimately controls the content, how indispensable it is, whether the exclusivity results from new investment or acquisition, whether it forecloses effective rivals, and whether customers can switch without abandoning substantial digital libraries and social networks.

PART TWO

THE TRANSFORMATION OF THE INDUSTRY

VERTICAL INTEGRATION AND FINANCIALIZATION

Since the early 2000s, the video game industry, particularly game publishers, has consolidated, with various major studios ending up in the hands of either Sony or Microsoft.[121] Between 2018 and 2023, Sony acquired at least 10 studios and developers to expand into live-service and PC gaming,[122] while Microsoft acquired at least nine during the same period.[123] And in 2023, Microsoft completed the largest video game acquisition ever when it acquired Activision Blizzard, which was itself formed via a merger of Activision and Vivendi Games, both of which were also roll-ups of formerly independent studios.[124] The Federal Trade Commission (FTC) sued to block the deal, claiming Microsoft would have the means and incentive to restrict content and degrade the quality of Activision Blizzard games on competing consoles and subscription or cloud services, harming competition and consumers, resulting in higher prices, lower quality, and less innovation. The agency noted that Microsoft had already invested in scaling up its subscription and cloud service, and has a history of withholding content and shutting out rivals.[125]

A vertically integrated video game company operates at several levels of the supply chain. Microsoft, for example, owns Xbox hardware, the Xbox operating environment and store, Windows, Game Pass, Xbox Cloud Gaming, Azure cloud infrastructure,[126] and publishers and studios including Bethesda, Activision, Blizzard, King,[127] Mojang, and numerous Xbox studios.[128] Sony owns PlayStation hardware, the PlayStation operating environment, the PlayStation Store, PlayStation Network, PlayStation Plus, cloud services, and an extensive collection of studios.[129]

It's not necessarily bad to have video game platform companies producing games. A platform may finance risky games, optimize them for hardware, coordinate distribution, or subsidize hardware with software revenue. This dynamic is especially true when vertical expansion is done through internal development.[130] The Super Mario Brothers franchise, for instance, was created by Nintendo for its own consoles.[131] And generally, consoles often lose money, with the games and deals with third parties bringing in enough compensating revenue to turn a profit.[132]

However, vertical integration is undesirable when it occurs through external acquisition of studios by a platform, as it allows companies to buy dominance and therefore power over the market. The competitive concern arises when ownership of content is combined with control over access to customers. A platform can favor its own games, withhold them from rivals, place them exclusively in its own subscription, impose worse technical or commercial terms on competing platforms, or use the threat of withholding to influence the market. This isn't theoretical. Since 2019, Sony has acquired 11 game studios, but the company has already closed three of them, and even more have suffered layoffs.

Bluepoint Games, which created Demon's Souls, was acquired by Sony in 2021 and then shut down in 2026 following a canceled live-service game, with 70 employees losing their jobs.[133] Sony acquired Bungie in 2022, and in 2026 underwent a massive reduction, laying off around 400 people, or half of Bungie's workforce.[134]

Microsoft's acquisition announcement for Activision Blizzard also demonstrates this. The company explicitly described the transaction as extending its gaming business across mobile, PC, console, and cloud, and said the acquisition would give Microsoft 30 internal game-development studios. The acquisition has led to at least three studio closures,[135] 5,000 layoffs,[136] an increase in the price of the Xbox Game Pass subscription from $16.99 to $19.99 to $29.99 (the price has since come down to $22.99),[137] and tighter control of gaming markets, as the company put day one game access to Call of Duty behind its highest subscription tier.[138]

Another notable example occurred earlier this year when Electronic Arts (EA) — a major video game publisher and developer that was recently acquired by private equity and investment firms including Public Investment Fund, Silver Lake, and Affinity Partners —[139] shut down infamous game studio *BioWare*, resulting in the layoff of 50 employees and the cancellation of the next *Mass Effect* game, just two months after the acquisition was finalized.[140]

TIMELINE OF MICROSOFT ACQUISITIONS

Microsoft has been building dominance in the gaming market for many years,[141] acquiring over 25 game studios and publishers since 2000[142] to build a "moat" around the company that "nobody else can attack" around the gaming business.[143] The following is a timeline of Microsoft's major game-development and publishing acquisitions. It does not cover every minor asset purchase, but it captures the principal expansion of Microsoft's first-party content portfolio. Notably, each acquisition also granted Microsoft access to many existing or upcoming game titles that are not listed because there are too many to list.

Date	Acquisition (notable valuation)[144]	Competitive significance
September 2002	Rare[145]	Rare became an Xbox studio and was expected to create exclusive console games for Microsoft.
September 2014	Mojang ($2.5 billion)	Gave Microsoft ownership of *Minecraft*, one of the largest cross-platform game franchises.
June 2018	Playground Games, Ninja Theory,[146] Undead Labs, and Compulsion Games	Microsoft announced that it was doubling its development-studio organization through four acquisitions and the creation of The Initiative.
November 2018	Obsidian Entertainment and inXile Entertainment	Expanded Microsoft's role-playing-game portfolio and brought Xbox's announced studio total to 13.
June 2019	Double Fine Productions	Brought the announced Xbox Game Studios total to 15.
March 2021	ZeniMax Media/Bethesda ($7.5 billion)	Added Bethesda Game Studios, id Software, Arkane, MachineGames, Tango Gameworks, ZeniMax Online, Alpha Dog, and Roundhouse, along with franchises such as *The Elder Scrolls, Fallout,* and *Doom*.
October 2023	Activision Blizzard King ($68.7 billion)	Added *Call of Duty, Warcraft, Diablo, Overwatch*, and the King mobile business. Microsoft announced the transaction in January 2022 and completed it on October 13, 2023.

The important shift is not simply in the number of studios.[147] Microsoft moved from purchasing individual developers and studios to purchasing entire publishers,[148] catalogues, distribution relationships, mobile operations, and strategically important franchises. By consolidating across the market, the company is able to own more of the ecosystem, and grow its dominance and pricing power. At the same time, Microsoft has expanded to cloud and subscription gaming, charging gamers money each month. And with games rotating on subscription services, the company is able to also limit access to gaming.[149]

TIMELINE OF SONY ACQUISITIONS[150]

Sony's expansion has generally involved smaller transactions than Microsoft's two publisher-scale acquisitions, but it reflects the same strategy of combining a platform with proprietary content and supporting technology.

Date	Acquisition (notable valuation)	Competitive significance
December 2005	Guerrilla Games	Added the developer of *Killzone* and the later *Horizon* series.
March 2010	Media Molecule	Added the developer of *LittleBigPlanet* and later *Dreams*.
August 2011	Sucker Punch Productions	Added the developer of *Infamous* and later *Ghost of Tsushima*.
June 2012	Gaikai[151]	Added cloud-streaming technology that became strategically important to PlayStation's subscription and cloud services.
January and August 2019	Audiokinetic and Insomniac Games[152]	Added game-development audio technology and the developer of the *Spider-Man, Ratchet & Clank,* and *Resistance* games.
June–December 2021	Housemarque, Nixxes, Firesprite, Bluepoint Games, and Valkyrie Entertainment	A rapid expansion of Sony's development, remastering, porting, and support capacity.
January–August 2022	Bungie ($3.6 billion),[153] Haven Entertainment Studios, and Savage Game Studios	Expanded Sony into live-service development, new intellectual property, and mobile games.
April 2023	Firewalk Studios	Added another live-service development team.

Acquisitions do not automatically mean that every future game becomes exclusive, but an acquisition places ultimate control over financing, release schedules, intellectual property, and long-term platform access in the hands of the platform owner. And similar to Microsoft, Sony has also expanded its business model to include cloud and subscription gaming.[154]

THE CONSEQUENCES: LAYOFFS, STUDIO CLOSURES, REDUCED CONTENT, AND HIGHER PRICES

Consolidation is often justified on the grounds that larger companies can provide studios with capital, stability, and technical resources. Recent events show, however, that acquisitions do not guarantee job security, creative freedom, or sustained game production and game releases. What they appear to guarantee is increased costs to consumers.

LAYOFFS, STAGNANT WAGES, AND LOSS IN BARGAINING POWER

When mergers and acquisitions occur, the number of companies competing for workers decreases, as does pay, while layoffs occur.[155] As the gaming industry rapidly consolidated in the pandemic and immediate post-pandemic period, layoffs in the sector became a constant. Between 40,000 and 50,000 people lost their jobs in the sector between January 2022 and July 2025.[156] By percentage of the industry or a particular company, these numbers can be staggering. A few examples can suffice. In 2026, Microsoft spun off Double Fine, a studio the company acquired in 2019, laying off 25% of their staff in the process.[157] The downsizing shows no signs of letting up. Industrywide, between 2024 and 2026, one-third of all video game employees were laid off.[158]

Below, we detail major layoffs following consolidation.

Date	Company	Action
January 2024	Microsoft	Microsoft laid off approximately 1,900 employees across Activision Blizzard and Xbox shortly after completing the Activision transaction.[159]
February 2024	Sony	Sony announced approximately 900 layoffs, equal to about 8% of its global PlayStation workforce.[160]
February 2024	Sony studios	The reductions affected Insomniac and Naughty Dog; Sony proposed closing London Studio entirely and reducing employment at Guerrilla and Firesprite.[161]
May 2024	Microsoft/Bethesda	Microsoft closed Arkane Austin, Tango Gameworks, and Alpha Dog, and consolidated other teams. All were units of ZeniMax, which Microsoft had acquired in 2021.[162]
June 2024	Sony/Bungie	Sony-owned Bungie announced 220 layoffs, citing economic developments and its integration of 155 jobs into Sony, losing 40% of its total workforce in 12 months.[163]
September 2024	Microsoft	Microsoft announced another 650 gaming-division job cuts, primarily in corporate and support positions associated with post-acquisition restructuring.[164]
October 2024	Sony/Firewalk Studios	Sony announced the closing of its Firewalk Studios subsidiary after its game failed to hit Sony's targets, ending 210 jobs.[165]
July 2025	Microsoft/Xbox	Microsoft announced 9,000 layoffs company-wide, with significant cuts to Xbox to divert resources towards AI investments.[166]
July 2025	Sony/Bungie	Bungie ended development of its game Destiny 2, halving the studio, including 292 layoffs in Washington alone.[167]
July 2026	Microsoft/Xbox	To further boost profitability "to pay for its AI investments," 4,800 jobs were cut along with an overhaul to Xbox, which has struggled to compete with PlayStation and Nintendo.[168]

Claims that consolidation leads to more jobs and productive output are clearly wrong.

REDUCED CONTENT

As Microsoft and Sony have bought up publishers, studios, and ultimately game developers, the amount of content being released has fallen, game development has taken longer, and content diversity has decreased.[169] As video game companies consolidate markets, they also consolidate control over what content viewers can access. Once they are large enough, companies often put their shareholders' and executives' interests — including buybacks and dividends, merger and acquisition decisions, regulatory efforts, tax policy, and contracts — over research and development, customer support, worker wages, and consumer costs. And when large games — particularly AAA games — fail to meet financial expectations, large, consolidated game conglomerates will shut down games, lay off employees, or even shut down a developer. This is true even if the game still has an active fanbase.[170] This is because as the industry has become more consolidated and the cost to develop games has become more expensive, it has also become more financialized, with large publishers turning to external investors to fund the development of games.[171] And when a game does not meet financial projections, publishers still must pay back investors, with the result that they are prioritized over both customers and workers. For example, Sony acquired game developer Firewalk Studios in 2023,[172] which created and marketed the game *Concord* for nearly a decade before release.[173]

When the game was released in 2024, it did not perform as well as expected.[174] Less than one month later, Sony shut down the game. A few months after that, it closed the developer entirely, laying off over 170 people.[175]

HIGHER PRICES

Prices are rising for hardware, software, subscription services, and games. Historically, console prices have decreased over time. However, beginning in 2025, this trend reversed.

- Sony launched the PS5 and PS5 Digital Edition in 2020 for $499.99 and $399.99. In 2024, the PS5 Pro launched for $699.99.[177] In 2025, Sony was charging $549.99, $499.99, and $749.99 respectively, an increase of 10%, 25%, and 7% respectively. And effective April 2, 2026, Sony increased the price to $649.99, $599.99, and $899.99 respectively, an increase of 30%, 50%, and 28% from 2020. Inflation was 30% from 2020 to 2026, and 6% from 2024 to 2026.
- In 2020, Microsoft launched the Xbox Series X for $499.99. In 2025, the disc model increased to $649.99, and the digital model was $599.99.[178] By 2026, Microsoft was charging $799.99 for disc and $749.99 for the digital model, up 60% and 50% respectively, while inflation was 30%.[179]
- When the Nintendo Switch launched in 2017, it was $299.99. In 2026, Nintendo increased the price 13% to $339.99.[180] Inflation over the same time period was 37%. In 2025, the Switch 2 was launched for $449.99, but had already increased by late 2026 by 11%, to $499.99, while inflation was only 4%.[181]
- When Microsoft first introduced Game Pass in 2017, it was $9.99 a month.[182] In 2020, they launched a new tier that merged with their online play subscription Xbox Live Gold to create Game Pass Ultimate at $14.99. This was a 50% increase, while the rate of inflation was 36%.[183] In 2023, the price rose to $16.99 — a 70% increase from 2017 — and in 2024 to $19.99 — a 100% increase from 2017.[184] At the same time, inflation was 24% from 2017 to 2023, and 28% from 2017 to 2024.[185] In October 2025, Microsoft raised Game Pass Ultimate from $19.99 to $29.99 a month, a 50% increase from the previous year and 200% increase from launch in 2017.[186] Inflation over the same time period was 2% and 31% respectively.[187] Xbox then reduced that price to $22.99 in April 2026 but simultaneously ended day one Game Pass availability for future Call of Duty releases, which will instead arrive approximately a year later.[188]
- When Sony introduced PlayStation Plus in 2010, it was $49.99 a year.[189] In 2016, the price increased to $59.99,[190] a 20% increase, while the rate of inflation was 9%.[191] Beginning in 2022, Sony offered different tiers, and Premium was $119.99 a year[192] — a 140% increase compared to the 32% rate of inflation.[193] In 2023, Sony raised the price to $159.99[194] — a 220% increase since launch compared to 38% rate of inflation[195] — and in 2026, annual prices remained the same, but monthly and three-month plans increased in price.[196]
- At the same time, in-game monetization and the explosion of downloadable content (DLC) have increased the price of games and make up a large portion of consumer spending on video games.[197]

While never easy, industry consolidation has made it increasingly hard for consumers to resist predatory increases. A gamer who has accumulated hundreds of account-bound games cannot respond to a PlayStation price increase as easily as a customer buying an ordinary consumer product. Switching platforms or hardware may mean losing access to a digital library, subscriptions, achievements, social connections, accessories, and exclusive games. This installed-base lock-in weakens price competition even where several console brands nominally remain.

THE DISAPPEARANCE OF PHYSICAL OWNERSHIP AND AFTERMARKETS

As noted above, earlier this year Sony announced an end to physical ownership of games in the form of discs, citing changing "consumer preferences and the broader [] shift away from physical discs."[198] And while it is true that spending on physical games has declined over the past two decades, recent game launches have actually led to an *increase* in physical game purchases.[199] Sony's physical disc, cartridge, or archival copy creates several forms of competition that disappear when a game becomes an account-bound license:

- a customer can ordinarily sell, trade, lend, or give away their copy of the game;[200]
- used copies compete against newly manufactured copies;
- public libraries, archives, and collectors can preserve copies;
- an offline game may remain usable after the publisher stops selling or supporting it; and
- competing retailers can offer discounts or bundles for the same product.

The current market replaces that decentralized system with a permission structure. The platform or publisher authenticates the account,[201] controls the only native digital storefront, records the license, and determines whether the software remains downloadable or functional. The change ends consumer control of an archival copy of the game. Users will no longer be able to use the property they have purchased without authentication and permission from Sony. And anyone who attempts to get around protections that Sony puts on games is subject to legal sanction.

Sony's January 2028 transition is therefore more consequential than a change in packaging. Retailers may continue selling digital codes, but they will no longer possess an independently transferable copy of a newly released PlayStation game. These digital codes generally become an account-bound license once redeemed — and therefore cannot be transferred or otherwise used again.[202] Because of this change, there will be no ordinary used-disc market for any new game titles. And once the publisher no longer supports the game title, the game is effectively shut down. According to one study in 2023, only 13% of classic video games released prior to 2010 in the United States are available to play.[203]

The aftermarket for used games is a $7.2 billion market.[204] Game stores rely on *physical* games — both new and used — to stay in business. While used game sales tend to yield higher profit margins than new game sales,[205] blockbuster releases bring additional traffic and revenue to stores, increasing sales of all products. Without physical games, such stores may go out of business, with negative ripple effects on consumers, employees, and communities.

Ending physical production can reduce manufacturing and distribution costs and reflect consumer demand. But without a transferable digital equivalent, it also eliminates an aftermarket that disciplined publishers' prices and gave customers residual control over games they purchased.

PART THREE

THE POLICY CAUSES

The end of video game ownership has multiple causes, ranging from unchecked vertical integration and monopolization to copyright rules and digital controls that can prohibit users from tinkering or downloading their own property. Arbitration clauses that make it more difficult for users to band together and fight back in court also play a role. The law provides a set of tools that allows dominant firms to exert excessive control including:

1. DIGITAL MILLENNIUM COPYRIGHT ACT SECTION 1201

The Digital Millennium Copyright Act, which Congress passed in 1998, makes reverse engineering, tinkering, and downloading archival copies illegal. Section 1201 outlaws three forms of conduct:[206]

1. circumventing a technological measure (passwords or encryption) that controls access to a copyrighted work;
2. making or distributing tools or services (emulators) designed to circumvent access controls; and
3. trafficking in tools that bypass technological measures protecting copyright owners' exclusive rights.

This law also establishes a triennial Copyright Office proceeding through which narrowly defined classes of users may obtain temporary exemptions. This framework has been internationalized through the copyright provisions of U.S. trade agreements. These agreements not only include the prohibition on creating an exception allowing the distribution of tools needed to circumvent digital locks and other technological protection measures, but also require countries to impose civil and criminal penalties for violations. Treaty obligations make it more difficult for countries, including the U.S., to modify their own laws.[207]

WHY IT MATTERS FOR VIDEO GAMES

Section 1201 protects more than the copyrighted code itself. It protects the technological boundary surrounding the code. As a result, a person may own a physical device and possess a lawful copy of a game but still face legal risk when bypassing a technological lock to repair, preserve, study, modify, or continue operating it.[208]

The triennial exemption system offers modest protection for abandoned games and institutional preservation, but its exemptions are limited by defined classes, purposes, users, and conditions. An exemption permitting circumvention also does not legalize the distribution of the tools required to perform that circumvention.

CIVIL PENALTIES

A court can issue an injunction, order impoundment or destruction of devices, award actual damages and profits, and award attorney fees. A plaintiff may instead elect statutory damages of $200 to $2,500 for each act of circumvention, device, product, offer, or service. Repeated violations within three years of a prior judgment can produce an award of up to three times the otherwise applicable amount.[209]

CRIMINAL PENALTIES

A person who willfully violates Section 1201 for commercial advantage or private financial gain may face:

- up to $500,000 in fines and five years' imprisonment for a first offense and
- up to $1 million and 10 years' imprisonment for a subsequent offense.[210]

THE POLICY MISTAKE

Copyright infringement was already unlawful prior to this law's enactment. Section 1201 added a legal prohibition against opening the technological lock, even where the user's underlying purpose may be repair, interoperability, preservation, security research, or continued operation of discontinued software.

For video games, that gives a platform durable control over the format. A publisher can shut down an authentication or multiplayer server, while customers and preservationists may remain legally constrained from recreating the missing function. The law thus converts a technological design choice into a legally protected means of market control.

2. LAX MERGER ENFORCEMENT FACILITATED TOO MUCH VERTICAL INTEGRATION

Vertical integration is not always harmful, but the disappearance of independent studios through an endless wave of mergers is, as documented in this paper, worrisome and harmful to both consumers and workers. This merger wave is a result of legal laxity, particularly the inability of enforcers to challenge deals under the Clayton Act, which bars mergers which "may substantially lessen competition."[211]

No gaming studio acquisition had been challenged under the Clayton Act until Microsoft sought to buy Activision Blizzard in 2022, when the FTC sought a preliminary injunction against Microsoft's purchase of Activision Blizzard. Despite the record size and importance of the merger, Judge Jacqueline Scott Corley of the Northern District of California denied the injunction.[212] The court concluded that the FTC had not shown that the acquisition was likely to substantially lessen competition in console gaming, multigame subscriptions, or cloud gaming. The Activision decision illustrates a structural weakness in modern vertical-merger law: the government was effectively required to predict exactly how a rapidly evolving platform would foreclose rivals, while Microsoft could rely on uncertainty about future conduct and business models.

In dynamic platform markets, enforcement should protect the competitive process before control over indispensable content and distribution becomes irreversible. In reality, the deal was only good for Microsoft and its executives.[213] In the three years after this decision, despite Microsoft's promises to release more games and that blocking the deal would "make [] gamers worse off," the opposite has happened.[214] Microsoft laid off employees, closed studios, and raised prices for its Game Pass service — with no recourse for gamers or the public.

Lax monopolization enforcement of app stores has become another bottleneck. Customers cannot install or use a competing store or competing payment system. App stores can then collect commissions, rank or suppress products, impose contractual conditions, and privilege its own services. This is demonstrated by the behavior of Google and Apple, who combined control over 90% of the app store market.[215] In Great Britain, the CMA found that Apple and Google possessed an effective duopoly over mobile ecosystems, including operating systems, app stores, and browsers.[216] The 2020 Epic cases subsequently exposed practices that enforcers had left in place for years, including:

- Apple used anti-steering rules to prevent developers from directing customers to less expensive external payment options;[217]
- Apple's standard in-app commission was as high as 30%,[218] and its attempted commission on external purchases was found to have a prohibitive effect; and
- Google entered agreements affecting developers, device manufacturers, preinstallation, rival stores, and sideloading.

These cases demonstrate that app-store restrictions are not merely neutral security rules. In fact, a jury found Google liable under both Section 1 and Section 2 of the Sherman Act.[220] Security and privacy are legitimate objectives, but gatekeepers can design rules that protect their commission and exclude competing distributions while claiming to protect users.

Console markets present an even more complete form of closure. Unlike a Windows PC, a PlayStation, Xbox, or Switch does not ordinarily allow the owner to install a competing native game store.[221] Once physical copies disappear, the platform's approved digital infrastructure becomes effectively unavoidable.

3. BINDING ARBITRATION

Sony's U.S. PlayStation terms contain a binding-arbitration clause and class-action waiver, subject to a written opt-out that generally must be mailed within 30 days.[222]

Microsoft's consumer agreement provides that U.S. residents must submit covered disputes to an individual neutral arbitrator rather than sue before a judge or jury, except in small-claims court, and includes a class-action waiver.[223]

Nintendo's Switch 2 agreement similarly requires most claims to proceed through individual arbitration and waives court, jury, class, and representative proceedings, subject to an opt-out procedure.[224]

Valve previously used similar terms but removed its mandatory arbitration and class-action waiver in 2024 amid a large number of arbitration claims. Its current Steam Subscriber Agreement no longer contains the former mandatory individual-arbitration provision.[225] Other companies, such as Amazon, that removed arbitration clauses in the wake of having to pay high upfront fees for mass arbitrations have reintroduced the clauses along with procedural rules designed to defuse the financial risk of mass arbitration.[226] Counting on corporations to voluntarily refrain from imposing arbitration is a fragile and impermanent solution.

Forced arbitration does not literally prevent every claim. A sufficiently large individual dispute may still be brought, and small-claims proceedings may remain available. But even when technically available, it often makes consumer litigation economically irrational:

- an individual loss may be only $20, $70, or a few hundred dollars;
- expert analysis and legal representation cost far more than the claim;
- class procedures cannot aggregate millions of similar injuries;
- decisions generally do not create public precedent;
- evidence and proceedings may remain confidential; and
- no single customer has an adequate incentive to challenge a platform-wide practice.

Arbitration can be efficient when both sides voluntarily choose it after a dispute arises. The problem is a non-negotiable pre-dispute clause imposed as a condition of using the console, account, or game library.[277]

PART FOUR

CURRENT EFFORTS TO MAINTAIN ACCESS

There are a number of ongoing efforts to preserve video games after companies shutter them, and ensure that consumers have access to what they purchase, including legislation, lawsuits, advocacy petitions, and boycotting of game launches by brick-and-mortar video game stores.[228]

Right now, with the recent announcement that Sony will no longer offer physical games, while Microsoft is allowing gamers to transfer their physical copies into digital,[229] and the largest, most expensive AAA game (*Grand Theft Auto VI*) to date is set to release [this week], there is growing momentum in the United States to act.[230] In February 2026, California Assembly member Chris Ward introduced the *Protect Our Games Act*, which would, if enacted, require companies to notify players at least 60 days in advance before shutting down online servers needed to play the game and provide a way for users to keep playing the game or offer a full refund.[231] There is also an ongoing class action lawsuit — that Sony is trying to force into arbitration or get dismissed entirely[232] — in which gamers allege that the company misled customers because they did not disclose that paying for a digital game does not grant permanent ownership or access.[233] Two game stores — Loot Box Gaming and Video Games Plus, which both operate in the U.S. — have announced they will not be selling *Grand Theft Auto VI*, as it will be released not as a physical disc but instead as a box with a digital code inside.[234] Both companies cite the importance of video game preservation, with Loot Box Gaming going a step further to say, "[i]f a product can't honor the people who pay their hard earned money to purchase it, then we have no business trying to sell it."[235] At the federal level, Representative Ritchie Torres (D-NY) introduced the Power to the Players Act, which would direct the FTC to undertake a rulemaking effort to protect gamers and their access to their digital libraries.[236] While the bill aims to address the same issue, this legislation is indirect, as it requires an additional entity to act. As a result, it would likely be subject to a long rulemaking process, allow for corporate interests to push for language that favors the status quo, and ownership would be delayed.

PART FIVE

HOW TO RESTORE OWNERSHIP OF VIDEO GAMES

To ensure gamers still have access to the games they purchase — and ultimately restore ownership — there are a number of steps policymakers can take. This includes:

- Passing a federal version of the *Protect Our Games Act*, requiring companies to either allow gamers to have access to a game after the publisher no longer supports it or receive a full refund;
- Requiring the option to turn digital copies into physical copies, or requiring companies to offer physical discs;
- Passing the proposed federal legislative package below;
- And if the federal government fails to act, there are options for state legislatures and enforcers below.

VIDEO GAME OWNERSHIP, INTEROPERABILITY, AND PRESERVATION

1. REMOVE VIDEO GAMES FROM DMCA SECTION 1201[237]

The act should provide that Section 1201 does not apply to circumvention of a technological measure controlling a video game, video game console, accessory, authentication service, or related server protocol. In essence, this provision would repeal the DMCA Section 1201 for the video game industry.

2. PRESERVE ORDINARY COPYRIGHT RULES

The exemption should not legalize copyright infringement. Copying or distributing a game without authorization would remain subject to the ordinary Copyright Act. The reform would separate infringement from the act of opening a technological lock.[238]

UNWIND MICROSOFT–ACTIVISION BLIZZARD

1. STRUCTURAL DIVESTITURE

The act should include divestiture — a spin-off, sale, or closure to resolve competition concerns[239] — separating Activision Blizzard King from Microsoft, overseen by the FTC.[240] The preferred remedy is restoration of ABK as an independent company. An independent publisher again has a straightforward economic incentive to reach customers on all commercially viable platforms.[241]

2. TRANSITIONAL SAFEGUARDS

During divestiture, the act should require:

- independent management and financial records;
- preservation of studios and intellectual property;
- no transfer of key assets outside ABK;
- no retaliation against rival stores or platforms;
- nondiscriminatory licensing during the transition;
- data separation;
- an independent monitoring trustee; and
- prohibitions on exclusive or long-term agreements designed to frustrate the remedy.[242]

3. PROSPECTIVE MERGER RULES

The act should also establish a presumption against acquisitions in which a major game-platform operator purchases:

- a publisher controlling a strategically important franchise;
- a publisher active across several competing platforms;
- a leading subscription catalogue;
- a significant cloud-gaming input; or
- a major mobile-game publisher.

The platform should bear the burden of proving that the transaction will not create an incentive or ability to foreclose rivals.[243]

OPEN VIDEO GAME APP STORES AND DISTRIBUTION

Covered gatekeepers should include console operators, dominant PC storefronts, mobile operating-system providers, major cloud-gaming platforms, and any digital game store exceeding statutory user or revenue thresholds.

1. PERMIT COMPETING DISTRIBUTION

A covered platform should not prevent a user from:

- installing a competing store or stores;
- obtaining a game directly from a developer;
- using a lawful external payment system;
- redeeming a key sold by an independent retailer; or
- restoring lawfully acquired software from a backup.

Price discrimination may not be used to circumvent these rules.

2. BAN ANTI-STEERING RULES

Developers must be free to tell customers about lower prices and purchasing options outside the gatekeeper's store.[244]

3. REQUIRE NONDISCRIMINATION

A platform may not rank, review, certify, price, or technically disadvantage a rival's software because it competes with the platform's first-party game, store, subscription, payment system, or cloud service.

4. CONTROL SELF-PREFERENCING

The operator should be barred from self-preferential placement of its own games. Search ranking, recommendation systems, and subscription placement should be subject to auditable rules and conflict-of-interest prohibitions.

5. PERMIT REASONABLE SECURITY STANDARDS

Platforms may impose objectively necessary security, privacy, parental-control, and technical-integrity requirements. But those requirements must be:

- published in advance;
- applied equally to first- and third-party software;
- no more restrictive than reasonably necessary;
- reviewable by an independent body; and
- unavailable as a pretext for protecting store commissions.

6. PRESERVE INDEPENDENT RETAIL COMPETITION

For closed consoles, the law should at minimum require that publishers and platforms permit independent retailers to sell competitively priced digital keys or physical discs. A stronger version would require interoperable third-party storefronts.[245]

END FORCED ARBITRATION FOR VIDEO GAME CONSUMERS

The act should render unenforceable and unlawful any predispute agreement that requires arbitration or waives class, collective, representative, or jury proceedings for a dispute involving:

- a video game;
- console or gaming hardware;
- a digital game account;
- virtual currency or in-game purchases;
- a gaming subscription;
- game preservation or continued access; or
- a video game store or platform.[246]

The prohibition should apply regardless of whether the clause appears in:

- clickwrap terms;
- an end-user license;
- console setup;
- account registration;
- packaging;
- a software update; or
- revised terms presented after purchase.

In addition, there should be a rule prohibiting companies from terminating accounts because a customer refuses arbitration.[247]

If the federal government fails to act, states should pass their own versions of the *Protect Our Games Act*. Simultaneously, state attorneys general and consumer protection agencies should investigate and crack down on industry consolidation; anti-competitive or unfair business practices; and deceptive, misleading, or fraudulent marketing surrounding video game ownership.

CONCLUSION

The video game industry is moving from a market in products toward a market in revocable permissions. A small number of companies increasingly control the devices, stores, accounts, payments, subscriptions, cloud systems, and games that players rely on to participate.

Digitization can make distribution cheaper and games more accessible. But when digitization is combined with vertical integration, anti-circumvention law, closed stores, and forced arbitration, it also eliminates the institutions that once constrained publisher power: rival retailers, physical ownership, used-game dealers, repair businesses, archives, community servers, and collective litigation.

This proposal insists that basic incidents of ownership and competition survive the transition to digital distribution.

Its core principle is simple: buying a game should not require surrendering control of your device, accepting a permanent distribution monopoly, or giving up your right to preserve the game.

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[230] *See, e.g.*, Sarah Zulkiflee, "GTA 6 estimated to cost over $1 billion, set to become the most expensive game ever made," GOSU Gamer, May 2026, https://www.gosugamers.net/entertainment/news/78390-gta-6-estimated-to-cost-over-us-1-billion-set-to-become-the-most-expensive-game-ever-made.

[231] California AB1921, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1921. A similar bill — with the same name — was introduced in the Pennsylvania legislature by state Senator John Kane in September of this year. Senator John Kane, "Co-Sponsorship Memo Details," https://www.palegis.us/senate/co-sponsorship/memo?memoID=49252.

[232] Mot. to Compel Arbitration and Stay Proceedings, or [] Dismiss, *Heycock v. Sony Corporation of America*, No. 3:26-cv-6016. (N.D. Cal.) August 21, 2026.

[233] Class Action Complaint, *Andrew Garcia et al. v. Sony Interactive Entertainment and Sony Corporation of America*, No. 3:26-cv-6016. https://storage.courtlistener.com/recap/gov.uscourts.cand.472492/gov.uscourts.cand.472492.1.0.pdf?ref=aftermath.site.

[234] X, Loot Box Gaming, June 24, 2026, https://x.com/LootBoxGamingUS/status/2069756247507624039?s=20; X, VGP Video Games Plus, June 24, 2026, https://x.com/VideoGamesPlus_/status/2069773098295910714.

[235] *Id.*

[236] U.S. Representative Ritchie Torres, *Power to the Players Act*, https://ritchietorres.house.gov/posts/rep-torres-announces-power-to-the-players-act-legislation-to-ensure-gamers-own-their-games.

[237] 17 U.S.C. § 1201(a)(1)(A), (a)(2), (b).

[238] *See* 17 U.S.C. §§ 106(1), (3), 501 (establishing copyright owners' exclusive rights of reproduction and distribution and providing liability for infringement); *see also* id. § 1201(c)(1) ("Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.").

[239] Thomas Reuters, Practical Law, Divestitures, https://uk.practicallaw.thomsonreuters.com/w-010-2779?transitionType=Default&contextData=(sc.Default)&firstPage=true.

[240] As the Supreme Court explained, the Clayton Act "regards divestiture as the remedy best suited to redress the ills of an anticompetitive merger." *See California v. American Stores Co.*, 495 U.S. 271, 280–81, 1990, https://www.law.cornell.edu/supremecourt/text/495/271.

[241] *See* Administrative Complaint ¶¶ 13, 109, *In re Microsoft Corp. & Activision Blizzard, Inc.*, FTC Docket No. 9412, December 8, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/D09412MicrosoftActivisionAdministrativeComplaintPublicVersionFinal.pdf (alleging that independent Activision had an incentive to offer its titles broadly and that acquisition by Microsoft would change those incentives by allowing the combined firm to sabotage the performance of Activision's games on rival consoles).

[242] *Id.*

[243] *Cf. United States v. Philadelphia National Bank*, 374 U.S. 321, 363 (1963) (recognized a presumption of illegality for a merger producing undue market concentration and placing the burden on the merging parties to rebut that presumption).

[244] *See, e.g., Epic Games, Inc. v. Apple Inc.*, 67 F.4th 946 (9th Cir. 2023).

[245] *See, e.g.*, Regulation (EU) 2022/1925, art. 6(4).

[246] A broader prohibition covering consumer disputes has also been proposed in the Forced Arbitration Injustice Repeal Act. See FAIR Act of 2023, H.R. 2953, 118th Congress, 2023.

[247] Cf. 42 C.F.R. § 483.70(m)(1).



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economicliberties.us | @economicliberties | info@economicliberties.us