

The Manufactured Piracy

Server shutdowns, revoked purchases, and the legal case for game preservation

Publishers sell with the vocabulary of ownership: a buy button, a purchase receipt, your library. Then servers go dark, titles vanish without refund, and the customers and archivists who keep what was sold to them running are handed the industry's word for their conduct: piracy. This Article argues the label inverts the law.

Sold with one word. Revoked with another. Prosecuted with a third.

THE DELETED LIBRARY

Dec. 2023: PlayStation customers noticed that "purchased" Discovery content would be removed over licensing changes, no refund. Walked back after outcry. 2026: the pattern repeats with StudioCanal titles, removal effective September 1, again without refund.

THE DEAD SERVER

A one time price for the product. The publisher later decommissions the authentication servers it requires, and the product becomes permanently inoperable. The copy never changed; the seller withdrew a component never disclosed as severable.

THE FIX, RENAMED

Community developers reverse engineer the dead handshake and let owners of lawful copies keep playing what they paid for. The industry's word for this, in takedown letters and legislative testimony: **piracy**.

THE LABEL RUNS BACKWARDS

The customer's conduct is, at most, breach of covenant. The seller's conduct is the one the law increasingly condemns.

Playing a lawfully purchased game after shutdown maps onto contract, not copyright, under the industry's own authorities. The community infrastructure that enables it is lawful under the very cases cited against it.

"Piracy" performs work in this debate precisely because it imports violations, unauthorized reproduction and distribution of protected works, that the conduct at issue does not involve. The task is to take the label apart and examine what remains.

What the Customer Bought

The vocabulary of sale, the drafting of license, and the ownership rights the drafting defeats

A purchase at the button. A revocable permission at the definitions section. Only the seller drafted both.

AT THE POINT OF SALE

The button says **buy**. The receipt says **purchased**. The interface says **your library**.

A survey of nearly 1,300 consumers found widespread belief that "buy now" conveys ownership rights, and willingness to pay more for those rights.

IN THE DEFINITIONS SECTION

Use of the words "own, ownership, purchase, sale, sold, sell, rent, or buy" does not mean or imply any transfer of ownership of any content, data, or software, or any intellectual property rights.

One major storefront's terms, stripping the transactional words of their ordinary meaning.

"Licensed, not sold" is not a fact about the product. It is a drafting choice made by the party it benefits.

Vernor's three factors are each satisfied by the seller's own instrument: specify a license, restrict transfer, restrict use. The test asks, in substance, whether the document the seller wrote calls the transaction a license and restricts it like one. Unilateral, post-button, never negotiated.

The ask is not overruling Vernor. It is testing the characterization rather than reciting it. Where the point of sale speaks the language of sale, the definitional reversal buried in the terms is the contradiction consumer protection law exists to police.

Congress attached self-help rights to ownership. The drafting severs them at the root.

17 U.S.C. §109(a) · First sale

The owner of a particular copy lawfully made may sell or otherwise dispose of it, notwithstanding the copyright owner's distribution right.

17 U.S.C. §117(a) · Essential step & archives

The owner of a copy of a program may make copies or adaptations as an essential step in using it with a machine, and may make archival copies.

Both attach to the owner of a copy. The deemed licensee owns nothing to which they can attach. The architecture is coherent only if the characterization is honest; where it contradicts the marketed transaction, it is being operated as a trap.

CALIFORNIA ASSEMBLY BILL 2426 · ENACTED 2024

No "buy" button without either a permanent copy or a conspicuous confession.

PATH ONE · DELIVER

Provide a copy that can be permanently downloaded and used offline. The customer is armed with a copy to which ownership protections can attach.

PATH TWO · DISCLOSE

State conspicuously, at the point of sale, that the transaction conveys a license and access may be revoked. The seller concedes it sells terminable access.

Either election narrows the space in which a publisher can simultaneously collect sale prices and deny that anything was sold.

What Copyright Actually Forbids After the Servers Go Dark

MDY's covenant-condition line, Davidson's two wrongs, and the section 1201 overlay

No nexus to an exclusive right, no infringement. A term of use is a covenant, and its breach sounds in contract.

The infringement label attaches only where the violated term **conditions the license** on conduct implicating reproduction, adaptation, distribution, public performance, or display. Ordinary terms of use are covenants; the violator is a contract breacher, exposed to contract remedies, and nothing more.

"WoW players do not commit copyright infringement by using Glider in violation of the ToU."

APPLIED TO THE SHUTDOWN CUSTOMER

Her copy was lawfully acquired. Running it loads memory exactly as the license contemplated when the seller's servers did the handshake. Connecting to a replacement server breaches, at most, a covenant about environments of use. **The remedy lies in contract, against a counterparty that already withdrew its own performance.**

The case cited for the piracy label is a checklist that well-built preservation infrastructure passes.

WHY BNETD LOST · THE TWO WRONGS

It **circumvented** the authentication measures controlling access to Battle.net mode, defeating the §1201(f) interoperability defense. And it **enabled unauthorized copies**: the replacement could not validate CD keys, so "unauthorized copies of the Blizzard games were freely played on bnetd.org servers."

WHAT PASSES THE CHECKLIST

A community server that **authenticates lawful copies**, circumvents no protection measure because the publisher's measure was the server itself and the publisher removed it, and hosts no protected content of its own commits neither of Davidson's wrongs.

Davidson does not address an emulator that validates keys and blocks unauthorized copies; its holding is confined to circumvention that "constitutes infringement."

Community hosting is permitted when it suits the publisher, and prosecuted rhetorically when it does not.

One of the best selling games in history has run for over a decade on a **publisher-authorized ecosystem of community hosted servers**: third parties run the software, administer communities, even charge for access, under license terms that permit exactly this. An admission that community hosting is not inherently infringing, unsafe, or destructive.

The continuation case differs in one respect: **consent**. That difference sounds in contract. It cannot, under MDY, transmute breach into infringement; it cannot, under Davidson, make unlawful a server that circumvents nothing and enables no unauthorized copy.

The publisher that shut down the only authentication service and then invokes copyright is asking the law to treat its own withdrawal of performance as the customer's violation.

The triennial exemptions concede the whole premise: abandonment is real, and continued play is noninfringing.

§1201(a)(1) prohibits circumventing access controls; the trafficking provisions reach the tools. Preservation sometimes requires defeating authentication checks that no longer have a server to talk to, so §1201 sits over the shutdown problem independently of infringement.

37 C.F.R. §201.40 permits circumvention on lawfully acquired games whose outside server support has been discontinued: continued individual play, and preservation by eligible libraries, archives, and museums, on the institution's premises.

An official recognition, renewed every three years, that the statute would otherwise **criminalize the cure**.

The premises wall

Lawfully preserved.

Lawfully playable.

If you travel to the building.

In the most recent completed rulemaking cycle, the Register recommended against expanding the preservation exemption to permit off-premises, remote access to preserved games, and the request was denied.

For a medium whose cultural life is networked, the premises wall preserves the artifact while extinguishing the experience, and it concentrates the loss on those least able to travel to it.

The strictest liability regime in the Copyright Act sits between the owner and her copy.

Corley · 2d Cir.

The Sony substantial-noninfringing-use defense does not apply to a §1201 trafficking claim; the statute "does not concern itself with the use of those materials after circumvention has occurred."

MDY · 9th Cir.

§1201(a) liability requires no nexus to infringement at all, "contrary to the plain language of the statute" to hold otherwise; Chamberlain v. Skylink refused.

§1204(a)(1)

Willful commercial violation is a federal crime.

Per se, criminally enforceable, indifferent to infringement. And the piracy label attaches, in public discourse, to conduct Congress has been repeatedly persuaded to exempt **precisely because it is noninfringing**.

The Policy Vehicle

End of life obligations, and the objections the industry raises against keeping its own promises

Disclose, or provide continuity. A disjunction the sellers themselves control.

STOP KILLING GAMES · ECI

One million signatures crossed in 2025, obligating a formal European Commission response. The demand: at end of support, leave the product reasonably functional, by offline patch, server binaries, or otherwise.

CALIFORNIA AB 1921

The domestic vehicle. Its structural significance: it locates the shutdown problem in consumer protection, at the point of sale and end of life, not in the conduct of preservationists.

Neither branch expands copyright, touches an exclusive right, or forces any publisher to operate anything forever. A seller that objects to both is asking to keep the conversion rate of the word "buy" while bearing none of the word's meaning.

"It's piracy."

Piracy is unauthorized reproduction and distribution. A replacement server hosts no protected content; it performs a handshake. The label does its work in press releases and testimony, not in complaints.

"Games are services now."

The honest subscription, sold and priced as access, is untouched. The argument reaches the product sold at a one time price under the vocabulary of ownership. A sale at the register cannot become a service in the courtroom.

"Security and cheating."

Post-shutdown, there is no official infrastructure left to protect; the comparison is imperfect community play versus no play at all. An implementation-quality argument, addressable in an end of life release, not an argument that continuation is unlawful.

"The losses are trivial."

Purchasers lose paid-for goods without refund; archives lose a medium's history behind the premises wall; and customers whose disabilities made digital distribution the accessible channel absorb the loss whole. The differential burden belongs in any unconscionability analysis.

The seller sells with the vocabulary of ownership. The seller revokes with the vocabulary of license. And when the customer or the archivist acts to keep what was paid for, the seller supplies the vocabulary of crime. Each act depends on the audience forgetting the previous one. Read without the labels, the law does not cooperate.

The piracy was never in the preservation.
It was in the sale.

Table of Authorities · Cases

All authorities as cited in Gilly, T. (2026), The Manufactured Piracy, Working draft, July 2026 (v0.2). Citations verbatim from the Article's footnotes.

Chamberlain Grp., Inc. v. Skylink Techs., Inc., 381 F.3d 1178 (Fed. Cir. 2004).

Davidson & Assocs. v. Jung, 422 F.3d 630, 641–42 (8th Cir. 2005).

MDY Indus., LLC v. Blizzard Entm't, Inc., 629 F.3d 928 (9th Cir. 2010), as amended (Feb. 17, 2011).

Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1121 (9th Cir. 1999).

Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001).

Vernor v. Autodesk, Inc., 621 F.3d 1102, 1111 (9th Cir. 2010).

Per the working draft, several reporter star pages and contemporaneous-source pin cites are marked in the Article "to be pinned on the citation verification pass"; they are reproduced here as they appear in the draft.

STATUTES AND REGULATIONS

17 U.S.C. §106.

17 U.S.C. §109(a).

17 U.S.C. §117(a).

17 U.S.C. §1201(a)(1)(A); id. §1201(a)(2), (b)(1); id. §1201(c)(1); id. §1201(f).

17 U.S.C. §1204(a)(1).

37 C.F.R. §201.40.

Cal. Assemb. B. 2426 (2023–2024 Reg. Sess.) (enacted 2024; effective Jan. 1, 2025).

Cal. Assemb. B. 1921 (2025–2026 Reg. Sess.).

OTHER AUTHORITIES

Notice from Sony Interactive Entertainment to PlayStation Store customers regarding Discovery content (Dec. 2023); Sony Interactive Entertainment, updated customer notice (Dec. 2023).

Louis Rossmann, video commentary documenting the StudioCanal removal notice (YouTube, June 2026) (transcript on file with author).

Terms of service definitional provision, on file with author.

Publisher end user license agreement provisions authorizing community hosted servers (Minecraft).

U.S. Copyright Office, Section 1201 Rulemaking, Ninth Triennial Proceeding, Recommendation of the Register of Copyrights (Oct. 2024).

European Citizens' Initiative, Stop Destroying Videogames (signature threshold reached 2025).

Aaron Perzanowski & Chris Jay Hoofnagle, What We Buy When We "Buy Now", 165 U. Pa. L. Rev. 315 (2017).

Aaron Perzanowski & Jason Schultz, The End of Ownership: Personal Property in the Digital Economy (2016).