

May 7, 2025

The Honorable Andrew Ferguson, Chair
Melissa Holyoak, Commissioner
Mark Meador, Commissioner
Rebecca Slaughter, Commissioner
Alvaro Bedoya, Commissioner

U.S. Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chairman Ferguson, and Commissioners Holyoak, Meador, Slaughter and Bedoya,

On behalf of public interest organizations, library groups, and advocates for consumer rights, we write to express our strong support for Senator Ron Wyden's February 25, 2025, letter urging the Federal Trade Commission to protect consumers in the digital marketplace. As physical goods give way to digital formats, the definition of ownership—and the expectations around it—have become increasingly ambiguous. It is time for the FTC to provide clarity by establishing a clear and consistent standard for what constitutes a “sale” of digital goods.

Ownership Must Mean Something in the Digital Age

Americans understand ownership to mean more than mere temporary access—it means control. It means they have bought something, not leased it on someone else's terms. These expectations do not vanish when the format shifts from physical to digital. Yet today's digital platforms often advertise a “sale” while delivering only a revocable license—without disclosing the limitations until after the purchase. This is not just a failure of transparency; it is a distortion of basic consumer understanding.¹

¹ See Aaron Perzanowski and Chris J. Hoofnagle, *What We Buy When We Buy Now*, 165 U. Pa. L. Rev. 315 (2017). Available at: https://scholarship.law.upenn.edu/penn_law_review/vol165/iss2/2.

To that end, we urge the FTC to define the term *digital sale* in a way that reflects traditional ownership rights. Specifically, a transaction should only be labeled as a *sale* if it includes:

- **The Right to Use:** Ownership must mean continued access and the ability to use the digital product. If a digital store closes or a service ends, users should retain functional access to their media.
- **The Right to Preserve:** Consumers must have the technical and legal ability to archive, repair, and back up digital purchases. Ownership must allow consumers to ensure they can still access and use their stuff even after a platform ends support or the content is removed from a catalog.
- **The Right to Transfer:** Like physical goods, digital products should be transferable. Whether by lending to a friend, leaving to children in a will, donating to a library, or reselling, consumers deserve to exercise this traditional ownership prerogative.

In order for these rights to be realized, a buyer must be able to *take possession* of the digital product at the time of purchase. If it can only be accessed via a proprietary device or platform, the transaction cannot be deemed a “sale.”

These ownership rights are critical to restoring and maintaining the public’s trust in digital marketplaces. Without them, Americans are paying the same or even higher prices² for digital goods that can be revoked, altered, or rendered inaccessible without warning—scenarios we’ve already witnessed in cases involving Sony, Amazon, and others, as Senator Wyden highlights in his letter. And these rights do not merely benefit consumers—they support local self-reliance, enable efficient use of taxpayer dollars, and preserve the ability of schools and libraries to serve their local communities by ensuring that cultural and educational materials can be preserved, studied, and shared long after commercial platforms move on.

² See, e.g., Aaron Perzanowski, *Digital is cheaper and other bogus arguments*, (9 May 2017), <https://www.perzanow.ski/blog/2017/5/8/digital-is-cheaper-other-bogus-arguments>.

Real-World Examples of How Lack of Digital Ownership Harms the Public

The lack of transparency in digital ownership has led to numerous incidents adversely affecting American consumers. Beyond the cases highlighted in Senator Wyden’s letter, here are some additional real-world examples, dating back more than 15 years:

1. **Amazon Deletes *1984* from Kindles (2009)**

Amazon remotely deleted copies of George Orwell’s *1984* from customers’ Kindles without warning, citing a licensing dispute with the book’s publisher. This Orwellian moment highlighted the startling lack of consumer control in digital purchases and sparked public backlash about what it truly means to “own” a digital product.³

2. **Google Shuts Down Revolv Smart Home Hub (2016)⁴**

In 2016, Google-owned Nest discontinued the \$300 Revolv smart home hub, rendering it completely non-functional. This move left customers with inoperable devices after only three years, despite previous assurances of a “lifetime subscription”⁵ in defiance of Americans’ justifiable expectations that the products they buy will retain their usefulness even after losing software support.⁶ These abandoned devices also pose a significant cybersecurity threat as bases for botnets and other distributed cyberattacks.⁷

3. **Microsoft Closes its Ebooks Store, Revokes Access to Purchased Books (2019)**

Microsoft opened a digital book store and sold thousands of ebooks to customers, only to shut down the store and revoke access to all of those purchased ebooks—all

³ See Brad Stone, *Amazon Erases Orwell Books From Kindle*, The New York Times (17 Jul 2009), <https://web.archive.org/web/20250316002425/https://www.nytimes.com/2009/07/18/technology/companies/18amazon.html>.

⁴ This is just one example of something that has become a regular practice: companies intentionally “bricking” software enabled devices in order to force consumers to upgrade. Other examples include Sonos’s controversial “recycling” program and Amazon discontinuing the Echo Lock in 2020 and the Cloud Cam in 2022, rendering the devices non-functional due to their reliance on cloud services.

⁵ Ry Crist, *Nest pulls the plug on the Revolv smart home hub*, CNET (6 Apr 2016), <https://www.cnet.com/home/smart-home/nest-pulls-the-plug-on-the-revolv-smart-home-hub/>.

⁶ Stacey Higginbotham, *Hey Siri, Are You A Zombie?*, Consumer Reports (5 Feb 2025), <https://innovation.consumerreports.org/hey-siri-are-you-a-zombie/>.

⁷ Omer Yoachimik and Jorge Pacheco, *Record-breaking 5.6 Tbps DDoS attack and global DDoS trends for 2024 Q4*, Cloud Flare Blog (1 Jan 2025), <https://blog.cloudflare.com/ddos-threat-report-for-2024-q4/>.

within the span of only two years. This move underscores how digital rights management (DRM) allows companies to control and rescind access to digital content, leaving consumers without access to the products they believed they owned.⁸

4. Sony Removes Purchased Discovery Shows from PlayStation (2023)

In December of 2023, Sony gave notice to users that “Due to our current licensing arrangements with content providers, you will no longer be able to watch any of previously purchased Discovery content and the content will be removed from your video library.” This impacted over 1,300 popular shows, including MythBusters, Cake Boss, Deadliest Catch, and How It's Made, leaving users unable to view purchased content in their library.⁹

5. Telstra TV Box Office Shuttles, Consumers Lose Libraries (2024)

Telstra announced the closure of its Box Office streaming platform, leaving users scrambling to migrate their libraries to another service—or risk losing access entirely. For many, the transition wasn't smooth, and it underscored how ephemeral digital purchases can be when tied to corporate platforms.¹⁰

6. Sony Erases Funimation Users' Purchases as It Sunsets the Service (2024)

Funimation was an American video-on-demand and streaming service focusing on anime, where users could stream and also purchase their favorite shows. Through a series of acquisitions, Funimation was shut down in April of 2024 and users were “ported over” to another service, Crunchyroll. However, Funimation users were told that “Crunchyroll does not currently support Funimation Digital copies, which means that access to previously available digital copies will not be supported.”¹¹

⁸ Brian Barrett, *Microsoft's Ebook Apocalypse Shows the Dark Side of DRM*, WIRED (30 Jun 2019), <https://www.wired.com/story/microsoft-ebook-apocalypse-drm/>.

⁹ Sophie McEvoy, *Sony removing purchased Discovery TV shows from PlayStation Store*, Games Industry Biz (4 Dec 2023), <https://www.gamesindustry.biz/sony-removing-purchased-discovery-tv-shows-from-playstation-store>.

¹⁰ Josh Taylor, “My whole library is wiped out”: what it means to own movies and TV in the age of streaming services, *The Guardian* (13 May 2024), <https://web.archive.org/web/20250326133328/https://www.theguardian.com/media/article/2024/may/14/my-whole-library-is-wiped-out-what-it-means-to-own-movies-and-tv-in-the-age-of-streaming-services>.

¹¹ Funimation End of Services Help Page, <https://help.crunchyroll.com/hc/en-us/articles/22843839604500-Funimation-End-of-Services> (last accessed 5 May 2025).

Momentum at the State Level: California’s AB 2426

States are beginning to recognize the need for clarity. California’s Assembly Bill 2426 (AB 2426), which took effect on January 1, 2025, requires companies selling digital goods to California consumers to clearly disclose when a transaction results in a revocable license rather than actual ownership, and to provide consumers with easy access to the license terms. This law reflects growing concern over the deceptive use of the word “buy” in digital transactions and underscores the public demand for transparency and truth in advertising.

As more states consider legislation in this space, clear and consistent guidance from the FTC is essential. A federal standard defining what constitutes a “digital sale” would not only protect consumers nationwide but also provide industry stakeholders with a uniform set of expectations, reducing legal uncertainty and regulatory fragmentation across jurisdictions.

A Clarifying Rule, Not a Mandate

Let us be clear: we are not asking the FTC to *require* digital platforms to offer true sales. Companies remain free to license content under limited terms if they wish. However, if a transaction does not include the essential rights of preservation, use, and transfer, it should not be marketed or labeled as a *sale*. This definitional clarity would bring much-needed honesty to the digital marketplace and restore consumer trust.

As the FTC looks to chart a new course for the new administration, we look forward to working with you in protecting consumers from unfair and deceptive practices in the digital marketplace.

For more information, contact Meredith Rose at mrose@publicknowledge.org.

Sincerely,

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