

## ***European petition: Stop Killing Games***

### Why providing continued support do not work for all games

#### Introduction

The video games industry is committed to consistently providing players with high-quality interactive gaming experiences and recognises the passion and community that grows around its games.

**The decision to discontinue a video game's online services is multi-faceted and is never taken lightly and must always be a matter of choice. When it does happen, the industry ensures that players are given fair notice of the prospective changes in compliance with local consumer protection laws.**

This document explains the reasons why a video game company may decide to discontinue the functionalities supporting the online video game, and why this may lead to the video game may no longer be playable.

#### ***Online video games are interactive entertainment***

Unlike a book, or a film, an online video game is not a static work. Online video games are interactive entertainment, that combine numerous elements of artistic and intellectual creation with software programming and server infrastructure.

Online video games evolve over time after their initial release, providing consumers with regular new content, experiences, patches, and updates. This is highly valued by players and is required to compete in the market. It involves significant, ongoing development expenditure over years, sometimes decades.

Video games companies put significant investment into creating and developing the best interactive entertainment and experience for their passionate player bases.

**The right to decide how, when, and for how long to make an online video game services available to players is vital in justifying this cost and fostering continued technical innovation. As rightsholders and economic entities, video games companies must remain free to decide when an online game is no longer commercially viable and to end continued server support for that game.** Imposing a legal obligation to continue server support indefinitely, or to develop online video games in a specific technical manner that will allow permanent use, will raise the costs and risks of developing such games. It will have a chilling effect on game design, and act as a disincentive to making such games available in Europe. It is far from a trivial modification or a simple addition to the game development phase. It would ignore material reputational, safety, and security concerns.

While there are video games companies that have elected to enable their online games to live beyond that is being proposed their commercial viability, this is and must always be a matter of choice as it will depend on what is reasonable and appropriate for the specific game, games company, and audience.

All video games, whether digital or physical copies, are licensed. As is the case with virtually all digital works when consumers purchase online games, regardless of the country of sale, what they acquire is a personal license to access and play the copy of the game they have purchased in accordance with the game's terms of service. The consumer does not acquire ownership of

that video game. These clear intellectual property rights underpin the entire market and enable the strong investment that the industry has seen for decades. There is no legal uncertainty about the status quo of video games.

## Why an obligation on video game companies to provide only a limited type of end-of-life plan is disproportionate

It is not clear what the initiators of the stop killing games petition seek to achieve as a legal change. It appears to be a combination of a requirement to provide online services for as long as a consumer wants them, regardless of price paid, and/or a requirement to provide a very specific form of end-of-life plan where the game is altered to enable private servers to operate. We do not believe these are proportionate demands.

Online video games are complex operations. They offer interactive features that are supported by multiple servers enabling functionality of ever-increasing complexity. This is integral to the modern gameplay experience that players expect. As consumer expectations for more engaging and evolving content increases, these online features are increasingly becoming intertwined in the overall gameplay experience as opposed to being limited to a dedicated online mode within the game. In many video games, this interconnected dependency makes it difficult to cleanly segregate online features from offline functionality. Here are the ways in which players and companies would be affected:

### **Player Safety:**

1. **Reduced or No Player Protection:** Requiring games to run on private servers would result in the inability for games companies to continue to protect players from illegal or harmful content or conduct, as their moderation and player safety teams would no longer be involved. In particular cheating could become rampant without proper enforcement. Reporting systems designed to allow players to flag problematic content and behaviour to games companies would no longer operate as intended or would have to be disabled entirely. The absence of effective moderation systems would create a less safe environment for consumers and may foster the proliferation of undesirable content while simultaneously frustrating the ability for EU Digital Services Coordinators to act against such content. This not only presents a safety risk for consumers but could also lead to brand reputation issues for the video games company.
2. **Increased Security Risks:** Releasing game code or server binaries to facilitate the creation of private servers operated by players could expose games companies and consumers to bad actors, malware, data breaches, and DDOS attacks.

### **Impact on Companies:**

3. **Significant Engineering and Architectural Challenges:** Allowing players to run private servers would present significant engineering and architectural challenges for many games, due to the way in which such online features are integrated with other proprietary systems and services required for the game. Creating a private-server compatible version would be a prohibitive cost, in some cases years or decades after the game's initial release when only a small audience remains.
4. **Negative impact on investment in games, jobs, growth and consumer choice:** Ensuring an online game can work without official server support, requires a significant

investment of engineering resources making it a very costly exercise for video games companies. Many of the costs that games companies would incur in implementing an end-of-life plan would have to be incurred towards the end of the commercial life of the game, when it is no longer commercially viable to continue support. Requirements to implement such plans could lead to less risk taking, fewer investment projects in developing new games, and potentially fewer jobs. Ultimately, it could lead to increased costs for consumers and less choice.

5. **Reputational Harm:** Allowing players to run private servers, with online interaction possibilities could result in players using those games in ways that don't align with the games companies' brand values, leading to a negative association with the brand, thereby harming its reputation.

### **Impact on Intellectual Property Rights:**

6. **Erosion of Intellectual Property Rights:** Mandating games companies to keep their online games operable post-official support would undermine their rights and autonomy in deciding how their intellectual property is utilised. There is a vital interest in maintaining effective copyright protection, including protection against circumvention of technologies that control access to copyrighted video game software, where such circumvention is undertaken in circumstances that would lead to the unauthorised public exploitation of games.
7. **Competition from Community-Supported Versions:** Such a requirement could lead to community-supported versions of games competing with official versions, potentially jeopardizing the financial investments of the video games companies. This would lead to confusion between trademarks, and the original trademark holder may be held responsible for actions undertaken by a community supported version.
8. **Forfeiture of Licensing and Reproduction Rights:** Allowing consumers to create or run modified copies of online games would necessitate games companies to either license additional rights or refrain from enforcing them, effectively leading to a forfeiture of control over these rights.
9. **Constraints from Third-Party IP:** Games companies often utilize third-party software and services, which may have licensing terms restricting their use to the commercial life of the game or prohibiting sublicensing to players, thereby hindering the modification or patching of games for private servers. In particular this could jeopardize and infringe the copyright of the musical works and lead to legal action from these right holders on the basis of unauthorised exploitation of their works.
10. **Constraints from third party services:** Games depend on third-party services such as platforms on which the game is offered to the consumer. Releasing the code for those services, which would be necessary should a legal requirement allow player communities to run a game, may not be possible as this would potentially be an IP infringement. Furthermore, game company's servers are increasingly run on the cloud. If cloud servers are discontinued, which sometimes happens, this necessitates either shutting down older titles or creating costly workarounds. The latter may not always be possible.

All of the above would also affect compliance with PEGI ratings. Where a game has a PEGI age rating and offers multiplayer functionality, the games company is contractually bound by the PEGI Code of Conduct to respect various obligations related to online safety and privacy. The inability

to do so would expose the games company to legal uncertainty with respect to its contractual obligations under the PEGI Code of Conduct.

## The importance of consumer protection laws

Notwithstanding the applicable licensing structure, all video games offered to players in the EU are subject to European consumer protection laws, which include robust transparency and fairness obligations on games companies and ensure that games companies act reasonably when terminating online support for a game.

European consumer protection laws provide consumers with warranties and redress rights with respect to both the game and the physical medium on which the game is made available, but these laws do not transfer ownership of the game to consumers.

Games are licensed to the consumer in accordance with their terms of service. These set out the terms upon which consumers may access and play such games and the situations in which such licensed rights may be terminated. Consumers are informed that their access to online games and associated services may terminate and are informed with sufficient notice in cases where that does happen.

- **Transparency:** Players must be given reasonable prior notice before any termination of access to the game.
- **Reimbursement:** The Digital Content Directive provides consumers with price reduction and reimbursement rights in certain circumstances, but also with repair and replacement rights if a game service fails to achieve conformity with certain required warranties.
- **Service Duration:** EU legislation requires that the service aspects of online video games be provided for a reasonable amount of time, taking into account all relevant factors. It would be disproportionate for a specific duration to be imposed as this would need to be valid of all types of services, not just games.
- **Fair Terms:** The Unfair Terms Directive prohibits games companies from imposing terms on consumers that significantly imbalance the parties' rights and obligations to the detriment of consumers.

## Video game companies are committed to the preservation of games and their cultural value

It is important to separate the legal proposals being made by the petitioners – for specific end-of-life requirements for commercial video games – from the question of the preservation of games as creative and cultural works.

Video Games Europe and their member companies are committed to, and actively support, serious professional efforts to preserve video games and recognise the industry's creative contributions under circumstances that do not jeopardize game companies' rights under copyright law.

For example, members regularly donate game copies and hardware to preservation organisations and support museum exhibitions featuring games<sup>1</sup>. Other video game companies have undertaken the gigantic task of creating video games libraries to support the preservation of games<sup>2</sup>.

However, the industry's innovation and economic activity depends on strong copyright protection for the software and other creative works that are its lifeblood, and preservation efforts should not be confused with uses that could conflict with the normal exploitation of the work by the right holder or unreasonably prejudice the legitimate interests of the author.

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<sup>1</sup> Electronic Arts recently supported use of Battlefield 1 in a World War I exhibition at the Notre Dame de Lorette in Souchez, France (June 2023-January 2024) and War and Peace Museum in Novion Porcien, France (April-December 2024) and use of SimCity 2000 in the "Game Society" exhibition at the National Museum of Modern and Contemporary Art in Seoul, Korea (May-September 2023).

<sup>2</sup> <https://embracergamesarchive.com/>