

TYPES NOT MAPPED YET January 24, 2025 | TTR not mapped yet | Joseph W. Scott, Luke Sosnicki

California Expands False Advertising Law to Require Express Licensing Disclosures in Sales of Digital Goods

On January 1, 2025, California expanded its False Advertising Law to increase the protections afforded to consumers transacting in digital goods. Now, sellers of “digital goods” as defined by the new law must follow strict procedures to ensure that a consumer is fully informed that it is purchasing a license for a digital good as opposed to a full, unrestricted ownership interest. Mirroring previously enacted provisions of the False Advertising Law, non-compliance with the new section exposes sellers to civil penalties and criminal enforcement.

Strict Requirements for Sellers of Digital Goods

Effective January 1, 2025, Assembly Bill No. 2426 augments California’s False Advertising Law to ensure that the purchasers of digital goods understand exactly what, and what rights, are included in their purchase. New section 17500.6 of California’s Business and Professions Code provides that it is unlawful for the seller of a digital good to advertise or offer for sale such digital good using the terms “purchase” or “buy” (or any term which a reasonable person would understand to confer an unrestricted ownership interest in the digital good) unless one of two conditions is fulfilled:

1. the seller receives an affirmative acknowledgment from the purchaser that (1) he or she is receiving a license, (2) has received a complete list of restrictions and conditions of that license, and (3) that the license may be unilaterally revoked (if applicable); or
2. the seller provides to the purchaser prior to the transaction (1) a clear and conspicuous statement that the purchaser is buying a license, and (2) includes in the transaction a method for the consumer to access the full details of the license (*e.g.*, QR Code, hyperlink, or similar access method).

Section 17500.6 further requires that the purchaser’s express acknowledgment and the seller’s “clear and conspicuous statement” be separate and distinct from the other terms and conditions of the transaction.

By design, § 17500.6 is wide-reaching and governs consumer transactions for video games, applications, audio works, audiovisual works, electronic books, and codes (meaning a code the holder can redeem to obtain a digital good), but expressly excludes from its purview cable television service, satellite relay television service, or any other distribution of television, video, or radio service.

The new law also excludes from its requirements subscription-based services that advertise or offer for sale access to any digital good solely for the duration of the subscription, digital goods advertised or offered to a person for no monetary consideration, and digital goods advertised or offered to a person that the seller cannot revoke access to after the transaction (*i.e.*, where the customer has permanent offline access to the digital good).

Existing Consumer Confusion

The issue of consumer confusion regarding their rights to software had been litigated before § 17500.6 was enacted. For example, in November 2024, French video game publisher Ubisoft was sued in a class action in the United States District Court for the Eastern District of California for allegedly misleading consumers into believing that they were purchasing full ownership rights in a video game. Following Ubisoft’s shutdown of its online hosting servers of popular racing video game “The Crew” and its subsequent revocation of user licenses, purchasers were left without access to the game and without the ability to download the game software.^[1] Ubisoft offered no refunds nor any way for purchasers to access the digital files. The action remains pending.

Civil Penalties for Non-Compliance

As with other violations of California's False Advertising Law, each violation of § 17500.6 is punishable by a fine of up to \$2,500 per § 17500—which can rapidly accrue. In the context of digital applications and games, § 17500.6(a)(2) expressly covers “any add-ons or additional content for that application or game.” The law would thus cover not only the first purchase of the application or game, but also any subsequent addons or microtransactions thereafter.

Retailers of digital goods should be prepared for this additional regulatory oversight, and for those dealing in thousands of transactions for digital goods every day, including streaming services providing digital access to movies or shows and video game publishers embedding micro-transactions for additional content within their games, this exposure is substantial. Retailers should ensure that their procedures comply with the explicit requirements of the new law to avoid regulatory penalties, and minimize their exposure to potential consumer claims.

[1] *Cassell et al v. Ubisoft Entertainment S.A. et al.*, Docket No. 2:24-cv-03058 (E.D. Cal. Nov 04, 2024).

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