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Cancellation and withdrawal in the Nintendo eShop

During late 2017, the Norwegian Consumer Council carried out a survey on digital game stores. This included the Nintendo eShop.

During the research, we noticed the following term in the eShop:

[What is the order cancellation policy for digital purchases?](#)

All sales are final. Please be sure that you meet all of [these download requirements](#) for your game before you place your order.

For additional information, please see the [Purchase Terms](#).

During our analysis, we found no other terms regarding cancellation or withdrawal on any of Nintendo's sites, either American, European or Norwegian.

The Consumer Rights Directive is applicable to sales of digital games purchased in the Nintendo eShop to consumers domiciled in EU and EEA countries. Domestic implementation of the directive applies to purchases made in Norway.

In accordance with article 16 (m) of the Consumer Rights Directive the consumer does not have the right of withdrawal if the supply of the digital content has begun with the consumer's prior express consent and his acknowledgement that his consent entails that he thereby loses his right of withdrawal.

This exemption only applies to digital content where the *performance* has *begun*. The performance has not begun for games that have not yet been released.

Even with prior consent, Nintendo cannot, prohibit the consumer from cancelling or withdrawing from a digital content contract before the performance has begun.



Based on this, the Norwegian Consumer Council has the following questions regarding Nintendo eShop:

- Can consumers freely cancel or withdraw from a pre-order or pre-purchase before the release of the game?
- If yes, how does the consumer proceed to forward such a claim?
- If not, please explain the legal reasoning.

With regards

The Norwegian Consumer Council

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Electronically signed document