

To

The Norwegian Consumer Authority
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Oslo, 26th April 2018

Complaint against the online video game platforms Steam, Origin, Playstation Store, and Nintendo eShop regarding the right of withdrawal

The Norwegian Consumer Council (NCC) is an independent interest organization for consumers.

The digital video game market has at times been characterized by consumer challenges such as unfinished products, invasive digital rights management technologies, and misleading advertising combined with pre-orders.

Based on these challenges, in November and December 2017 the NCC looked at how consumer rights are safeguarded when purchasing video games through the seven largest digital game platforms. The platforms that were looked into included Battle.net, Origin, Steam, Uplay, Nintendo eShop, Playstation Store, and Xbox Store.

This work is a part of the NCCs ongoing efforts to strengthen consumer rights in digital services and products.

In conjunction with the research, it was discovered that several of the platforms operate with practices that the NCC believe are in breach of the Act relating to the duty of disclosure regarding and right to cancel distance contracts and off-premises sales (the Cancellation Act) (implementation of Directive 2011/83/EU relating to consumer rights) section 22,m. In this regard, the NCC hereby submits complaints against the following companies to The Consumer Authority:

- Steam (owned by Valve Corporation), Origin (owned by Electronic Arts), and Playstation Store (owned by Sony Interactive Entertainment) are in breach of the right of withdrawal by not getting express consent from the consumer and his acknowledgement that he thereby loses his right of withdrawal.



- Nintendo eShop (owned by Nintendo) is in breach of the right of withdrawal by not accepting cancellations of pre-orders before the launch date.

Documentation/ attachments:

- The NCC's report «Mapping of refund-systems and the right of withdrawal in digital games»¹, published in December 2017 (in Norwegian only).
- Correspondence between the NCC and Nintendo's German branch regarding the way that the company practices the right of withdrawal for pre-orders, from February 2018.
- The article «We tested the right of withdrawal for Sony and Microsoft»² from Pressfire, dated 27.2.2018 (in Norwegian only).

European points of contact

Steam

Valve Corporation

Valve Sàrl

Bld Royal 26

2449 Luxembourg, Luxembourg

https://www.firmenwissen.de/az/firmeneintrag/2449/9370198662/VALVE_S_R_L.html

Origin

Electronic Arts

EA Swiss Sàrl

Place du Molard 8

¹ <https://fil.forbrukerradet.no/wp-content/uploads/2017/12/20171206-bakgrunnsnotat-og-dokumentasjon-spill.pdf>

² <http://www.pressfire.no/nyheter/PC/12760/Vi-testet-angre retten-hos-Sony-og-Microsoft>



1204, Geneva, Switzerland

<https://www.ea.com/about>

Playstation Store

Sony Interactive Entertainment Europe Limited

10 Great Marlborough Street

London

W1F 7LP

United Kingdom

<https://www.playstation.com/en-gb/footer/about-us/>

Nintendo eShop

Nintendo of Europe GmbH

Herriotstrasse 4

60528

Frankfurt am Main

Germany

<https://www.nintendo.co.uk/Support/Company-Information/Company-Information-1106807.html>

Points of complaint

Lack of explicit consent

In the review of the service providers, the NCC found that the user terms of Steam, Origin, and Playstation Store refer to the loss of the right of withdrawal for EU/EEA-customers once the service is used or downloaded.³

³ Check-list or other explicit consent, «Consumer Rights Directive – Guidance (2011)» (The European Commission) – [page 49](#)



However, the NCC cannot see that any of these three service providers properly gather consent from the consumer about the loss of the right of withdrawal, as required in the Cancellation Act, section 22, m.⁴

Steam does not mention the right of withdrawal at all during the purchasing process, while Origin and Playstation Store mention the right of withdrawal without following the formal requirements for this.⁵

In December 2017, the NCC attempted using the right of withdrawal through Steam. Steam has not answered the request.

Cancellation of pre-orders

In conjunction with the report «Mapping of refund-systems and the right of withdrawal in digital games», the NCC has also looked at the user terms and other public information about the possibility to cancel pre-orders of digital games.

All of the platforms offer the possibility of pre-ordering certain video games. The seller often offers extra content as an incentive to pre-order digital video games. When the video game is released on the market, the game is made available for the consumers that placed a pre-order.

The game console or computer often downloads an encrypted part of the game before the release date. These files are unencrypted/unlocked upon the game's release. This practice is commonly referred to as "pre-loading".

The rules of cancellation in the consumer rights directive article 41 do not apply, since digital video games are not regarded as «products» under the definition in article 2.

⁴ See «Kartlegging av refusjonsordninger og angrerett i digitale spill» pg. 13 (in Norwegian only).

⁵ Check-list or other explicit consent, «Consumer Rights Directive – Guidance (2011)» (The European Commission) – [page 65+](#)



To the NCC's understanding, the «performance» as stated in the Cancellation Act section 22, m, cannot be regarded as «begun» before the game can be used, which is after release date. We also refer to the Consumer rights directive article 16,m, which uses the phrasing “performance has begun”. According to our interpretation, the consumer can in accordance to the Cancellation Act section 22, m, despite a legal consent, still withdraw from the contract regarding the purchase of a video game until the release date of the game.

In the NCCs review of the platforms, it emerged that Nintendo eShop does not allow cancellations of pre-orders, even if the game has not yet been released. The NCC pointed this out in the attached letter to Nintendo regarding their practices (dated 06.02.2018). In the answer from Nintendo (dated 28.02.2018), the company claims to operate in accordance with the Cancellation Act. They point to the “performance” having “begun” already when the console performs a pre-loading of the game.

Based on the NCCs review, the Norwegian video game magazine Pressfire looked at the practices of cancellation of pre-orders for the platforms Playstation Store, Xbox Store, and Nintendo eShop.⁶

While the NCC only looked at user terms and other available information regarding the cancellation of pre-orders, Pressfire tested the actual practices by attempting to use the right of withdrawal on video games that were pre-ordered, but not yet released.

The tests performed by Pressfire confirmed that Nintendo do not allow consumers to cancel pre-orders.

The article from Pressfire demonstrates that there are unclear practices regarding pre-orders in both the Playstation Store and in the Xbox Store. The NCC has not looked further into how these platforms handle the cancellations of pre-orders, but the tests performed by Pressfire seem to indicate that these platforms also have problematic practices regarding pre-orders.

⁶ <http://www.pressfire.no/nyheter/PC/12760/Vi-testet-angreren-til-hos-Sony-og-Microsoft> (in Norwegian only)



Summary

Based on the above, the Norwegian Consumer Council asks the Consumer Authority to follow up on the following two issues:

- Steam, Origin, and Playstation Store do not gather explicit consent from consumers regarding the loss of the right of withdrawal, but still seem to deny consumers the right of withdrawal.
- Nintendo does not allow consumers to cancel pre-orders after preloading has begun, even though the game is not yet available for use.

Best regards

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