

Date of Hearing: April 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2426 (Irwin) – As Amended March 21, 2024

PROPOSED CONSENT

SUBJECT: Consumer protection: false advertising: digital goods

SYNOPSIS

As more and more music, movies, books, and magazines have become available for purchase online as digital media, many consumers have moved away from purchasing physical media and instead store their media libraries online. This technology has allowed consumers to listen to their music library while reading a book or magazine anywhere and anytime through their phones or tablets. Similarly, a consumer can pull out their laptop computer and watch the latest movies that they have purchased online. These purchases often cost the same, if not more, as purchasing the physical media. In addition, consumers, especially in the case of movies and television shows, are often given the option to “buy” the movie or a season of a show for one price or rent it for a limited time at a lower price.

In recent years, acquisitions, mergers and lapsed contracts at various media companies have put at risk the digital media that consumers may have believed they owned. As retailers continue to pivot away from selling physical media, the need for additional consumer protections on the purchase of digital goods becomes more important.

As we move toward an increasingly digital-only marketplace, it is crucial that consumers clearly know and understand the nature of their transactions. This includes the reality that they may not have genuine ownership of their purchase. Unless the digital good has been offered for download so it can be viewed without a connection to the internet, the seller can remove access from the consumer at any point in time.

California's False Advertising Law makes it unlawful for any person doing business in California to make false or misleading advertising claims to California consumers. This bill adds to those laws restrictions related to the advertising of digital goods for sale, making it unlawful for a person to advertise or offer for sale a digital good that a reasonable person would understand to confer an unrestricted ownership of the digital good.

This bill is author-sponsored and has no support or opposition on file in this Committee.

SUMMARY: Prohibits a person from advertising or offering for sale a digital good, as defined, with the terms “buy,” “purchase,” or any other term that a reasonable person would understand to confer an unrestricted ownership interest in the digital good. Specifically, **this bill:**

- 1) Allows a person to advertise or offer for sale a digital good with the terms “buy,” “purchase,” or any other term that a reasonable person would understand to confer an unrestricted ownership interest in the digital good, or alongside an option for a time-limited rental, only if:

- a) The digital good can be downloaded to an external storage source to be used without a connection to the internet.
- b) The seller receives from the purchaser at the time of each transaction an affirmative acknowledgment of all of the following:
 - i) That the purchaser is receiving a license to access the digital good.
 - ii) A complete list of restrictions and conditions of the license.
 - iii) That access to the digital good may be unilaterally revoked by the seller if they no longer hold a right to the digital good, if applicable.
- 2) Defines, among other terms, “digital good” as a digital audiovisual work, digital audio work, digital book, digital code, or digital application or game, whether electronically or digitally delivered or accessed. “Digital good” does not include a cable television service, satellite relay television service, or any other distribution of television, video, or radio service.

EXISTING LAW:

- 1) Makes it unlawful for a person doing business and advertising in this state from making any false or misleading advertising claim. (Bus. & Prof. Code § 17508(a).)
- 2) Authorizes the following entities to seek an injunction ordering an immediate termination or modification of the false or misleading advertising claim: the Attorney General, any district attorney, county counsel, city attorney, or city prosecutor in this state. Specifies that the injunction shall be sought in the name of the people of the State of California, or upon the complaint of any board, officer, person, corporation or association, by any person who has suffered injury in fact and has lost money or property as a result of the false or misleading advertising claim. (Bus. & Prof. Code § 17535.)
- 3) Provides that any person who violates the False Advertising Law shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction. (Bus. & Prof. Code § 17536.)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

1) **Background.** As more music, movies, books, and magazines have become available for purchase online as digital media, many consumers have moved away from purchasing physical media and instead store their media libraries online. This technology has allowed consumers to listen to their music library while reading a book or magazine anywhere and anytime through their phones or tablets. Similarly, a consumer can pull out their laptop computer and watch the latest movies that they have purchased online. These purchases often cost the same, if not more, as purchasing the physical media. In addition, consumers, especially in the case of movies and television shows, are often given the option to “buy” the movie or a season of a show for one price or rent it for a limited time at a lower price. As an example, a simple search of the Apple

store turns up a recent movie, “Anyone but You” that a consumer can purchase for \$19.99 or rent for \$5.99.

For a number of years, consumers purchasing classic Disney movie DVDs were given a code that allowed the purchaser to also access the movie online. Theoretically, the purchaser could ultimately get rid of the DVD and still “own” the movie using the online digital code. However, according to an article provided by the author, when Disney was preparing to launch their online streaming service, Disney+, it removed much of its content from online and limited customers to only accessing it through its subscription service.¹

Similarly, consumers who had “purchased” Warner Brothers content from Amazon Prime have found that what they thought they owned was being deleted from Amazon Prime without warning as Warner Brothers deleted entire online media libraries. “The message is clear – companies like Warner Bros. and Disney offer digital copies of content, but they have the power to delete that content from a user’s private digital library.”²

2) **Purpose.** In recent years, acquisitions, mergers and lapsed contracts at various media companies have put at risk the digital media that consumers may have believed they owned. As retailers continue to pivot away from selling physical media, the need for additional consumer protections on the purchase of digital goods becomes more important. For many consumers, digital goods are the only option to access certain digital content. For example, a movie or video game may only be released as a digital good, with no option to own it physically. Digital goods also offer access without the need for shipping, reducing the overall climate impact of each good.

The author notes in their background document that as consumers are pushed towards an increasingly digital-only marketplace, it is crucial that they clearly know and understand the nature of their transaction. This includes the reality that they may not have ownership of their purchase. Unless the digital good has been offered for download so it can be viewed without a connection to the internet, the seller can remove access from the consumer at any point in time. This bill is intended to provide clarity to consumers when they “purchase” digital goods.

3) **Author’s statement.** According to the author:

When a consumer purchases an online digital good like a movie or TV show, they receive the ability to view the media at their leisure. Often times, the consumer believes that their purchase has given them permanent ownership of that digital good, similar to how the purchase of a movie on a DVD or a paperback book provides access in perpetuity. In reality though, the consumer has only purchased a license, which, according to the seller’s terms and conditions, the seller can revoke at any point.

AB 2426 will address this issue by requiring sellers of digital goods to provide an explicit disclosure for each purchase of a digital good informing the consumer of the true nature of their purchase, ensuring that consumers have a full understanding of exactly what they have bought.

¹ Miller, Alissa. “You Can Say Goodbye to Some of Your Purchased Warner Bros. Digital Content.” *No Film School* (Sep. 30, 2022) available at <https://nofilmschool.com/warner-bros-deleting-purchased-digital-content>.

² *Ibid.*

4) **What this bill would do.** This bill would prohibit a seller of a digital good from using terms that imply ownership of the digital good unless they do one of the following:

(1) Allow the digital good to be downloaded to an external storage source to be used without a connection to the internet.

(2) Receive from the purchaser at the time of each transaction an affirmative acknowledgment that the purchaser knows they are only receiving a license along with each restriction and condition for the license, as well as a notice that the access to the digital good may be unilaterally revoked by the seller if that applies to the digital good.

5) **Analysis.** Consumers have an expectation that they will have the ongoing ability to enjoy the things they purchase, digital media included. By penalizing misleading advertising practices of purveyors of digital media who present a revocable access right in terms ordinarily associated with permanent ownership, the bill will incentivize advertising practices that align with the realities of these products, thereby helping consumers to make more informed choices. As such, this bill proposes what appears to be a common sense and much-needed consumer protection.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Julie Salley / P. & C.P. / (916) 319-2200