



CALIFORNIA'S NEW LAW IMPOSES STIFF PENALTIES FOR FALSE AND MISLEADING DIGITAL ADVERTISING



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California recently enacted AB 2426, an amendment to its false advertising laws aimed at addressing misleading claims about the sale of digital goods.

Effective January 1, 2025, this law introduces new requirements for sellers who use terms like “buy” or “purchase” in their advertisements for digital goods, ensuring consumers are not misled into believing they are acquiring unrestricted or unqualified ownership rights.

This is an important amendment to California’s advertising laws for one simple reason: Digital goods – like games, social video, movies, TV, and the like – often only exist on remote servers, which means that consumers do not really have possession of these goods after they buy them. If a server shuts down, these digital goods disappear. And that’s precisely why advertising claims for such goods deserve additional scrutiny.

Commercial Overview

AB 2426 emerged in response to controversies surrounding consumer access to digital goods. In December 2023, a major game developer delisted a popular racing game, and by April 2024, completely shut down the servers supporting it. As a result, “owners” of the game were instantly unable to play it. Similar actions occurred when another game developer delisted seven games, and a multinational media conglomerate removed over 1,300 seasons of shows due to licensing issues. In each case, consumers were led to believe that they had purchased **permanent** ownership but instead held revocable licenses – licenses that could be nullified if and when it was beneficial for the seller of those digital goods to do so.

How AB 2426 Works

AB 2426 prohibits sellers from advertising digital goods with terms suggesting full ownership unless:

1. **Buyers provide affirmative acknowledgement** - The buyer must explicitly acknowledge that:
 - a. The buyer is only purchasing a license to access the digital good in question; and
 - b. The buyer understands the restrictions and conditions of the license, including the specific



possibility that the digital good will be no longer accessible by the buyer if the seller loses distribution rights.

2. **Clear and Conspicuous Disclosure:** Before the sale, sellers must provide buyers with:
 - a. A hyperlink, QR code, or similar access to the full license terms; and
 - b. A plain-language statement that the purchase constitutes a license with specific, enumerated limitations, not permanent ownership of the digital good in question.

There is one final requirement worth noting. The aforementioned disclosures must stand apart from other transaction terms to ensure that buyers have an opportunity to review and accept such disclosures.

Scope and Exemptions


AB 2426 applies broadly to transactions involving digital audiovisual works, audio works, books, codes, applications, and games. However, it excludes a range of transactions, including: (1) subscription services offering digital goods only for the subscription's duration; (2) digital goods offered without monetary consideration; and (3) Digital goods where access cannot be revoked, such as those permanently downloaded and usable offline.

Optimizing Your Compliance Posture

Cutting edge technology companies who sell digital goods need to be aware that violations of AB 2426 may result in penalties of up to \$2,500 per violation and potential exposure to expensive consumer lawsuits under California's Unfair Competition Law.

With this in mind, it is critical to adopt a proactive approach to compliance with AB 2426. Consider taking the following steps:

1. **Review Monetization Strategies for Digital Goods**
 - a. Sellers must evaluate their approaches to selling and monetizing digital goods. This is critical



because under AB 2426, selling licenses – rather than permanently owned digital goods – is a highly regulated business activity.

- b. Selling licenses instead of permanently owned goods will likely impact some technology companies' economics, as the cost of complying with AB 2426 must be included in revenue models and forecasts for digital goods.
2. **Clarify License Terms:** Update advertisements, sales agreements, and disclosures to clearly communicate licensing arrangements with all consumers, partners, and counterparties.
 3. **Monitor Distribution Rights:** Proactively address licensing agreements and potential licensing disputes to prevent unexpected disruptions to consumer access.

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This article is for informational purposes, and is not intended to serve as legal advice. For any questions or concerns, it is advised that an attorney be retained to provide guidance. This article is based on the law and information reviewed at the time this article was drafted.

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