

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

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Dear Mr. Rheen

I am an attorney with the law firm of Jenner & Block LLP. We represent Nintendo of America Inc. (“NOA”). It has recently come to my client’s attention that, through Logistics and LogisticsCT.com, you are unlawfully offering to the public what you call the “**Nintendo Switch SX CORE SX LITE Mod Chip Service.**” Your offering of a service that is designed to circumvent Nintendo’s technological security measures (“Technological Measures”) is illegal, and a violation of the copyright laws of the United States. More specifically, your conduct is a violation of both the Anti-Circumvention and Anti-Trafficking provisions of Section 1201 of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201. My client demands that you cease and desist offering your mod services immediately.

As you must be aware, NOA, along with its parent, Nintendo Co., Ltd. (collectively referred to herein as “Nintendo”) develops and distributes the Nintendo Switch, one of the most popular video game consoles of all time, as well as the proprietary and copyrighted software that serves as Nintendo Switch’s operating system. Nintendo also develops and distributes the Nintendo Switch Lite, which runs all the same games as the Nintendo Switch, but is smaller and playable as a handheld device.¹ Nintendo has placed certain Technological Measures within the Nintendo Switch to protect against unauthorized access to and copying of Nintendo’s copyrighted works. These Technological Measures are essential for Nintendo to protect its intellectual property from piracy. When they are circumvented, Nintendo suffers tremendous harm, as individuals can then use the consoles to play pirated games. Nintendo’s business necessarily relies upon the authorized and licensed sales of authentic copies of video games, and

¹ References to the Nintendo Switch herein include both the Nintendo Switch and the Nintendo Switch Lite, unless a distinction is drawn in the text.

upon the trust it has built over decades from third-party game developers that the games they develop will be secure on Nintendo's consoles and will not be illegally distributed or played.

Through the mod service you are offering, you literally break open a customer's Nintendo Switch, and then solder the SX Core and SX Lite into the console.² As you know, the SX Core and SX Lite, manufactured by Team Xecuter, are illegal pirate modchips (or "circumvention devices") that circumvent Nintendo's Technological Measures. Your conduct is therefore a violation of Section 1201(a)(1) of the U.S. Copyright Act, which provides that "[n]o person shall circumvent a technological measure that effectively controls access to a work protected under this title." Nintendo's Technological Measures on the Nintendo Switch effectively control access to numerous of Nintendo's copyrighted works, including its operating system, and your service circumvents Nintendo's Technological Measures.

Your mod service also violates the Anti-Trafficking provisions of the DMCA. Section 1201(a)(2) of the DMCA provides that "[n]o person shall . . . offer to the public, provide, or otherwise traffic in any . . . service" that "is primarily designed or produced for the purpose of circumventing a technological measure." You are similarly in violation of 17 U.S.C. § 1201(b)(1) which provides that "[n]o person shall . . . offer to the public, provide, or otherwise traffic in any . . . service" that "is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof." By offering to the public an installation service for the modchips, you are offering a service that is primarily designed to circumvent Nintendo's measures and thus violating the DMCA. Among other remedies, violations of Section 1201 entitle Nintendo to (1) statutory damages in the amount of \$2,500 per "act of circumvention," "offer," or "performance of service"; (2) Nintendo's attorneys' fees; and (3) injunctive relief. 17 U.S.C. § 1203. You may also be liable for aiding and abetting certain sellers of the SX Core and SX Lite, *see infra*, note 5, and for secondary copyright infringement, subject to statutory damages of up to \$150,000 per work infringed, as well as attorneys' fees and injunctive relief. *See* 17 U.S.C. §§ 503, 504. Finally, you are inducing breach of Nintendo's customers' agreements and engaging in other unfair and deceptive business practices.

This letter should come as no surprise to you, given the fact that you seem well aware of the unlawful nature of your entire operation. Indeed, on the LogisticsCT.com website, you state in bold red text that your services are "NOT for the purchase of the Nintendo Switch SX CORE or SX LITE mod[s]." ³ You then cross out in bold red two links you had at one time featured on the website, through which you directed your customers to resellers from whom they could purchase the SX Core or SX Lite, and then bring the modchips to you for unlawful installation. You even acknowledge that two resellers have cancelled and refunded their pre-orders for the SX

² See <https://www.logisticsct.com/product/nintendo-switch-sxcore-mod-chip-service/>.

³ See <https://www.logisticsct.com/product/nintendo-switch-sxcore-mod-chip-service/> (emphasis in original).

Core and SX Lite, “presumably by Nintendo intervention.”⁴ In other words, you are aware that my client has brought a lawsuit against certain resellers of these modchips,⁵ *and* aware that certain resellers have canceled orders for the modchips and refunded their customers, and yet you are continuing to provide a service to install those very same modchips into Nintendo Switch consoles. Nintendo will not tolerate such baldly unlawful conduct.

My client hereby demands that you immediately cease and desist any and all installation services for any of Nintendo’s consoles, including but not limited to installation of the SX Core and SX Lite into the Nintendo Switch. My client further demands that you remove any reference to the SX Core and SX Lite, and your installation services, from any website, internet posting, or social media account within your control (including but not limited to LogisticsCT.com, and any online marketplace, Facebook, YouTube, Twitter, Instagram, LinkedIn, or Discord accounts), while retaining backup copies of anything removed. *See, e.g.*, Federal Rule of Civil Procedure 37(e). Nintendo further demands that you provide an accounting of any and all devices or products manufactured by Team Xecuter—including but not limited to the SX Core, SX Lite, SX Pro, or SX Gear—as well as any other products designed to circumvent technological measures on Nintendo’s consoles, whether now in your possession or received after the date of this letter, and that you preserve such products until further direction from Nintendo.

Please contact me by no later than **Monday, June 22, 2020**, with written confirmation that you have complied with the demands set forth in this letter. If I have not heard from you by June 22, I will assume that you are not interested in such an amicable resolution and will advise my client to consider taking all necessary and appropriate actions to protect its legal rights.

Finally, this letter is not intended to be a complete statement of Nintendo’s legal position or the relevant facts and law, and nothing contained in this letter is intended to, or does, constitute a waiver of any rights, claims, remedies, defenses or positions of my client, all of which are expressly reserved.

Sincerely,

/s/ Alison I. Stein

Alison I. Stein

⁴ See <https://www.logisticsct.com/product/nintendo-switch-sxcore-mod-chip-service/>.

⁵ See *Nintendo of America Inc. v. Anxchip.com et al.*, No. 2:20-cv-00738 (W.D. Wash.); *Nintendo of America Inc. v. Dilts et al.*, No. 3:20-cv-01076 (N.D. Ohio). Through your conduct, you are also aiding and abetting the resellers in their violations of the Anti-Trafficking provisions of the DMCA.