



VIA EMAIL



May 26, 2023



Dear Valve Legal Department,

I am an attorney with the law firm Jenner & Block LLP. We represent Nintendo of America Inc. (“NOA”), which, along with its parent, Nintendo Co., Ltd. (collectively referred to herein as “Nintendo”) develops and distributes video games and video game consoles. Thank you for bringing the announced offering of the Dolphin emulator on Valve’s Steam store to Nintendo’s attention.

The Dolphin emulator is a piece of software that emulates games designed exclusively for Nintendo consoles—specifically the Wii and Nintendo GameCube consoles—so the games can be played on other platforms, specifically, any computing device capable of running major operating systems such as Microsoft Windows, macOS, and Linux, such as the Valve Steam Deck. The developers of the emulator have put up a “Coming Soon” page on the Steam store with a stated plan to ship the software in Q2 2023. *See* https://store.steampowered.com/app/1941680/Dolphin_Emulator/. As set forth below, because the Dolphin emulator violates Nintendo’s intellectual property rights, including but not limited to its rights under the Digital Millennium Copyright Act (DMCA)’s Anti-Circumvention and Anti-Trafficking provisions, 17 U.S.C. § 1201, we provide this notice to you of your obligation to remove the offering of the Dolphin emulator from the Steam store.

The Dolphin emulator is designed solely to play Wii and Nintendo GameCube games. Nintendo owns or exclusively controls copyrights in Wii and Nintendo GameCube games,¹ and authorizes third-party licensees who develop thousands more. Nintendo authorizes these games to be played solely on their native consoles.² To protect Nintendo and its third-party licensees’ copyrighted works, Nintendo places certain technological measures on its consoles and games. These include, among others, encryption on Wii and Nintendo GameCube consoles and games

¹ For instance, Nintendo owns copyrights in the Nintendo GameCube games *Mario Party 7*, PA0001370880, *Animal Crossing*, PA0001255600, and *Metroid Prime*, PA0001275461, and in the Wii games *Wii Sports*, PA0001347772, and *The Legend of Zelda: Skyward Sword*, PA0001764002.

² Or, if Nintendo so chooses, on current-generation consoles when Nintendo remasters and rereleases legacy games. *See, e.g., Metroid Prime Remastered*, <https://www.nintendo.com/store/products/metroid-prime-remastered-switch/>.

that effectively protect against access to and copying of the copyrighted games (and inherently the ability to play those games on an unauthorized console).

Wii and Nintendo GameCube game files, or ROMs, are encrypted using proprietary cryptographic keys. The Dolphin emulator operates by incorporating these cryptographic keys without Nintendo’s authorization and decrypting the ROMs at or immediately before runtime. Thus, use of the Dolphin emulator unlawfully “circumvent[s] a technological measure that effectively controls access to a work protected under” the Copyright Act. 17 U.S.C. § 1201(a)(1). Distribution of the emulator, whether by the Dolphin developers or other third-party platforms, constitutes unlawful “traffic[ing] in a[] technology . . . that . . . is primarily designed or produced for the purpose of circumventing a technological measure” 17 U.S.C. § 1201(a)(2)(A).³

The technological measures on Nintendo’s consoles and games are essential for Nintendo to protect its intellectual property from piracy. When those measures are circumvented, Nintendo and third-party game developers suffer tremendous harm because, for example, individuals can then use the emulator to play pirated games. Other commercial platforms have recognized these concerns and, as an example, we understand Microsoft recently took various emulators—including Dolphin—off its Xbox Store.⁴

We specifically request that Dolphin’s “coming soon” notice be removed and that you ensure the emulator does not release on the Steam store moving forward. 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. Nintendo is happy to discuss in more detail should you have any questions.

Sincerely,



³ The Dolphin emulator similarly violates subparagraphs (a)(2)(B) & (a)(2)(C) of § 1201, as well as each parallel provision in § 1201(b)(1). Nintendo requests that Valve retain backup copies of anything removed, and retain any communications Valve may have received or does receive from the Dolphin developers. *See, e.g.*, Federal Rule of Civil Procedure 37(e).

⁴ *See, e.g.*, Kyle Orland, *Microsoft crackdown disables emulators downloaded to Xbox consoles*, Ars Technica (Apr. 7, 2023), <https://arstechnica.com/gaming/2023/04/microsoft-crackdown-disables-emulators-downloaded-to-xbox-consoles/>.