

ENTERTAINMENT SOFTWARE ASSOCIATION

# IP PROTECTION & ENFORCEMENT OVERVIEW – THE VIDEO GAME INDUSTRY

2023

*Confidential*

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entertainment<sup>®</sup>  
software  
association



# WHO IS ESA?

THE US VIDEO GAME TRADE ASSOCIATION

The Entertainment Software Association (ESA) serves as the voice and advocate for the U.S. video game industry. Its members are the innovators, creators, publishers and business leaders that are reimagining entertainment and transforming how we interact, learn, connect and play. The ESA works to expand and protect the dynamic marketplace for video games through innovative and engaging initiatives that showcase the positive impact of video games on people, culture and the economy. For more information, visit the ESA's website or follow the ESA on Twitter @theESA.

## ACTIVE MEMBERS

Nintendo®



UBISOFT



WARNER BROS.



SONY

ACTIVISION®

BILZARD

T2  
TAKE TWO  
INTERACTIVE

CAPCOM®

BANDAI  
NAMCO

NEXON

KONAMI



SQUARE ENIX



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# EVOLUTION OF VIDEO GAME PURCHASES

PHYSICAL VS DIGITAL SALES



DIGITAL SALES

PHYSICAL SALES



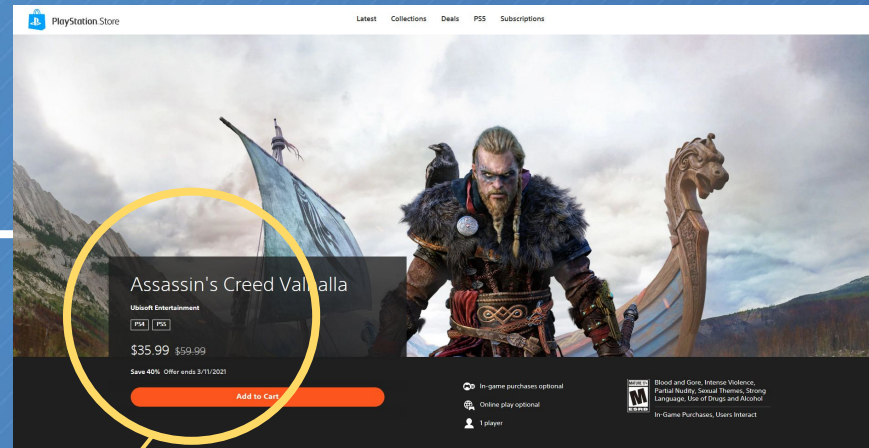
# EVOLUTION OF VIDEO GAME PURCHASES

FROM PHYSICAL TO DIGITAL



## PHYSICAL

From Cartridges to DVDs inserted into a console or PC



## DIGITAL

Files downloaded to console or PC

	FREE TRIAL	SUBSCRIPTION	REQUIRES SUBSCRIPTION
Play the starting adventure at Exile's Reach	✓	✓	✓
Experience multiple classes and races	✓	✓	✓
Get unrestricted access to social features		✓	✓
Play beyond Level 20		✓	✓
Explore the ever-growing Warcraft universe		✓	✓
Get access to WoW Classic		✓	✓
Get access to the new expansion, Shadowlands			✓
Fire up your new hero with a Character Boost			✓
	DOWNLOAD GAME	ADD SUBSCRIPTION	BUY NOW

## MONTHLY SUBSCRIPTION

Pay a monthly fee to play a single title (varies by game)



# EVOLUTION OF VIDEO GAME PURCHASES

FROM PHYSICAL TO DIGITAL



## IN-GAME PURCHASES

Digital items that can add to your in-game inventory (Outfits, cars, currency...)



## STREAMING

Play (almost) any game on any device for a monthly fee



# GRAND THEFT AUTO V

ZERO TO \$1 BILLION

Unlike other mediums, video games are updated to add new content to keep players engaged. Since its release in 2013, GTA V has seen over 35 substantial updates adding new modes and game content. This doesn't include over 200 seasonal events in 8 years (Avg. New Event ~11 Days)

● = CONTENT UPDATE

24 HOURS LATER

\$815M in Global Revenue



2013

Rockstar Releases  
Grand Theft Auto V  
on PS3 & XBOX360

2014

\$1.9B Global Revenue  
45M Units Sold

2014

Rockstar Releases  
Grand Theft Auto V  
on PS4 & XBOX One

2015

Rockstar Releases  
Grand Theft Auto V  
on PC\*

2016

\$4B Global Revenue  
75M Units Sold

2018

\$6B+ Global Revenue  
95M Units Sold

2020

Rockstar Releases  
Its Summer Seasonal Event: Los  
Santos  
(Update #37)



2021

Rockstar Released GTA V  
on PS5 & XBOX Series X

2023

\$B ?

175M Units Sold



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\*In a Limited Time Event, Rockstar Made GTA V FREE to Own in 2020



# PHYSICAL PIRACY

BLAST FROM THE PAST



90s WEBSITE ADVERTISING THE SALE OF BURNED GAMES



COUNTERFEIT GAME CARTRIDGE

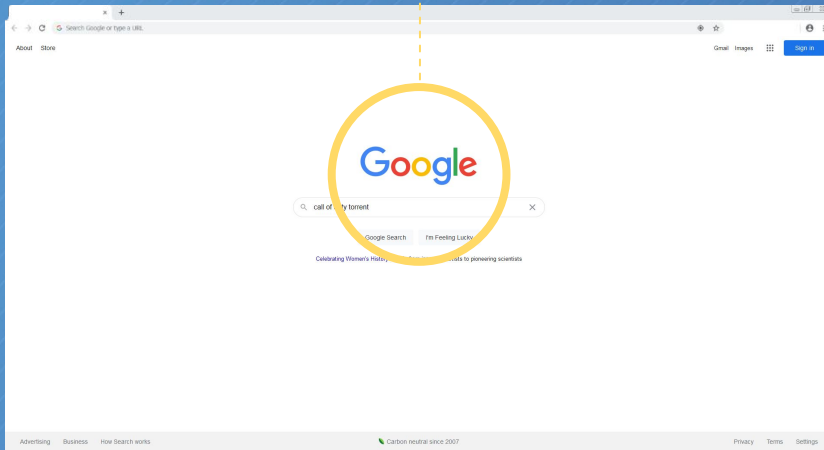


# VIDEO GAME INFRINGEMENT TODAY

FROM PHYSICAL TO DIGITAL

PIRACY IS MOSTLY DIGITAL, STARTED THROUGH SEARCH QUERIES

GAMES FILES ARE LARGE ~20GB – 100GB



**LINKING SITE**

List games available for download



**HOSTING SITE**

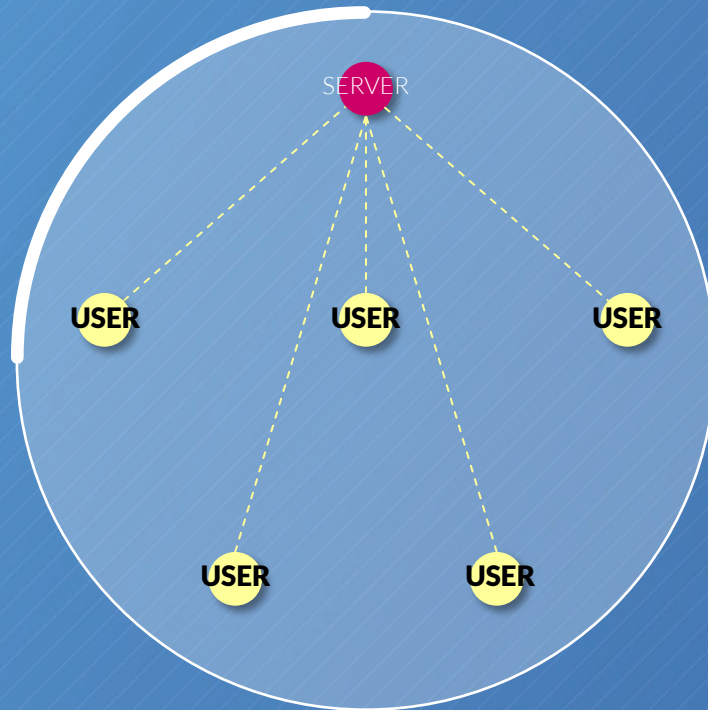
Where the game file resides that you download



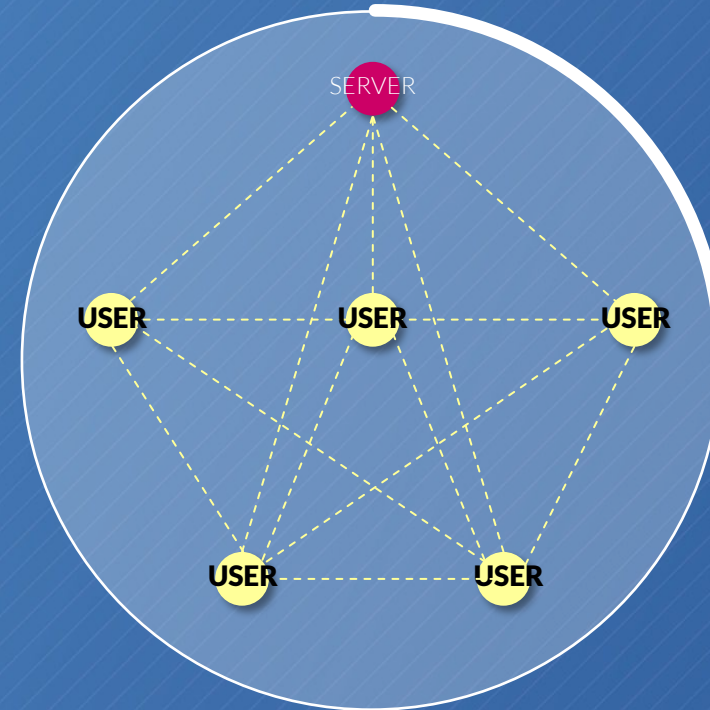
# PEER TO PEER DIGITAL PIRACY

IT'S FASTER

CLIENT SERVER



PEER-TO-PEER



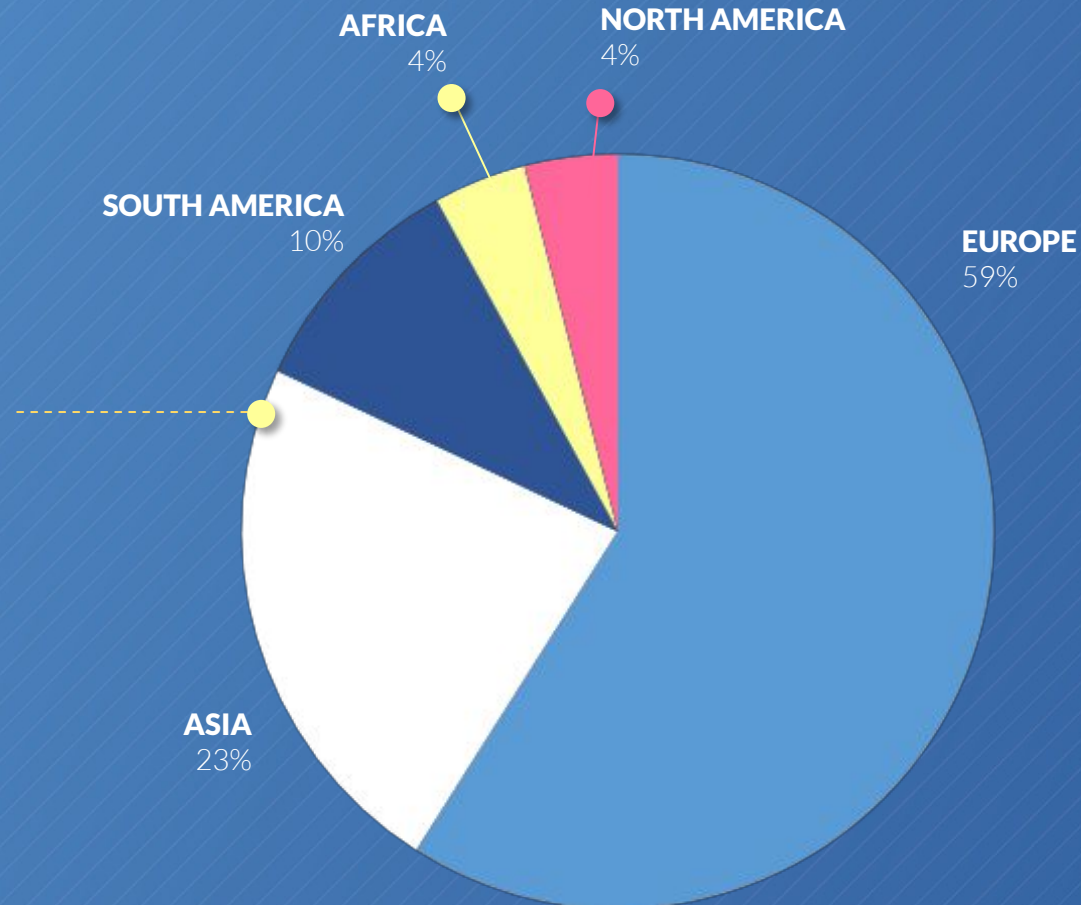


# PEER TO PEER DIGITAL PIRACY

P2P

## 3 BILLION

Infringements Detected YTD to 2022



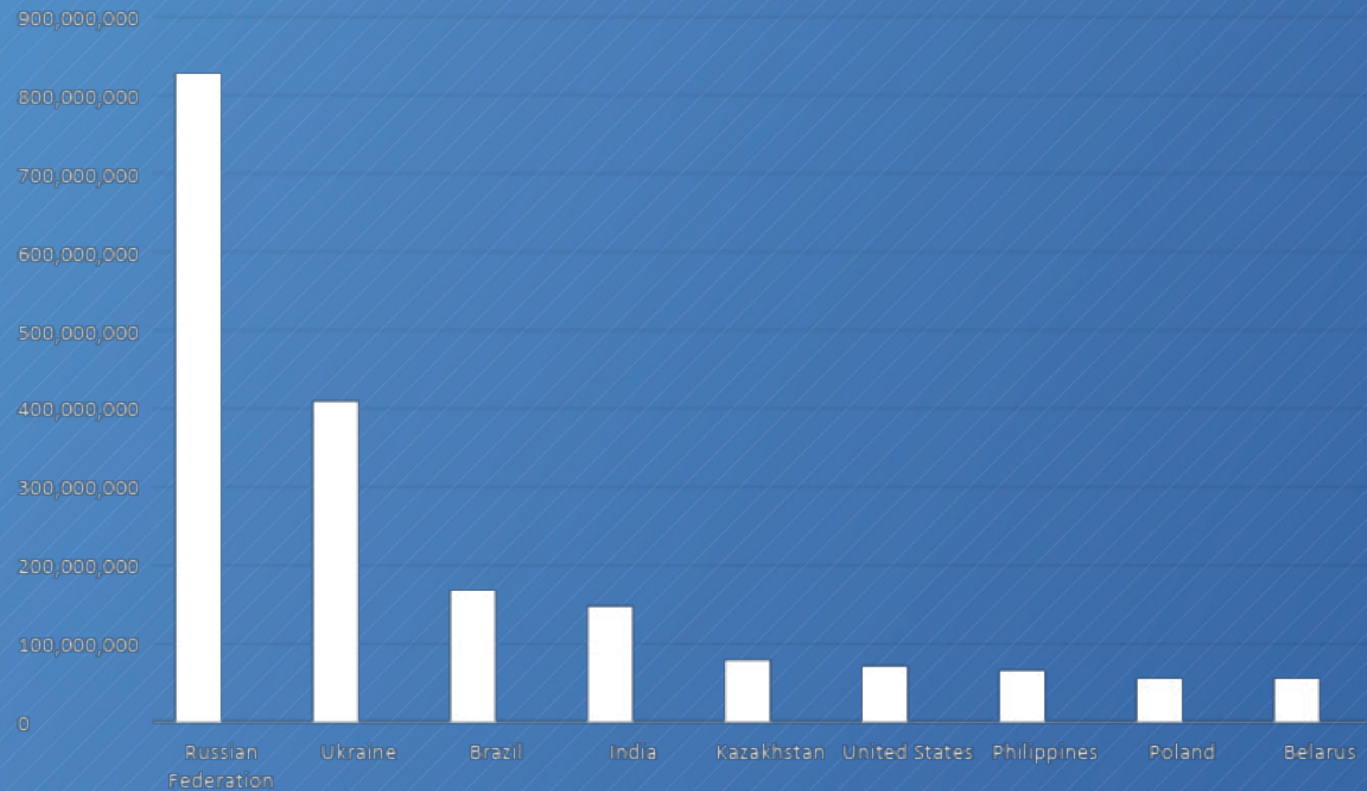


# PEER TO PEER DIGITAL PIRACY

BY COUNTRY

INFRINGEMENTS  
DETECTED

JAN '22 - DEC '22





# SCENE RELEASE GROUPS

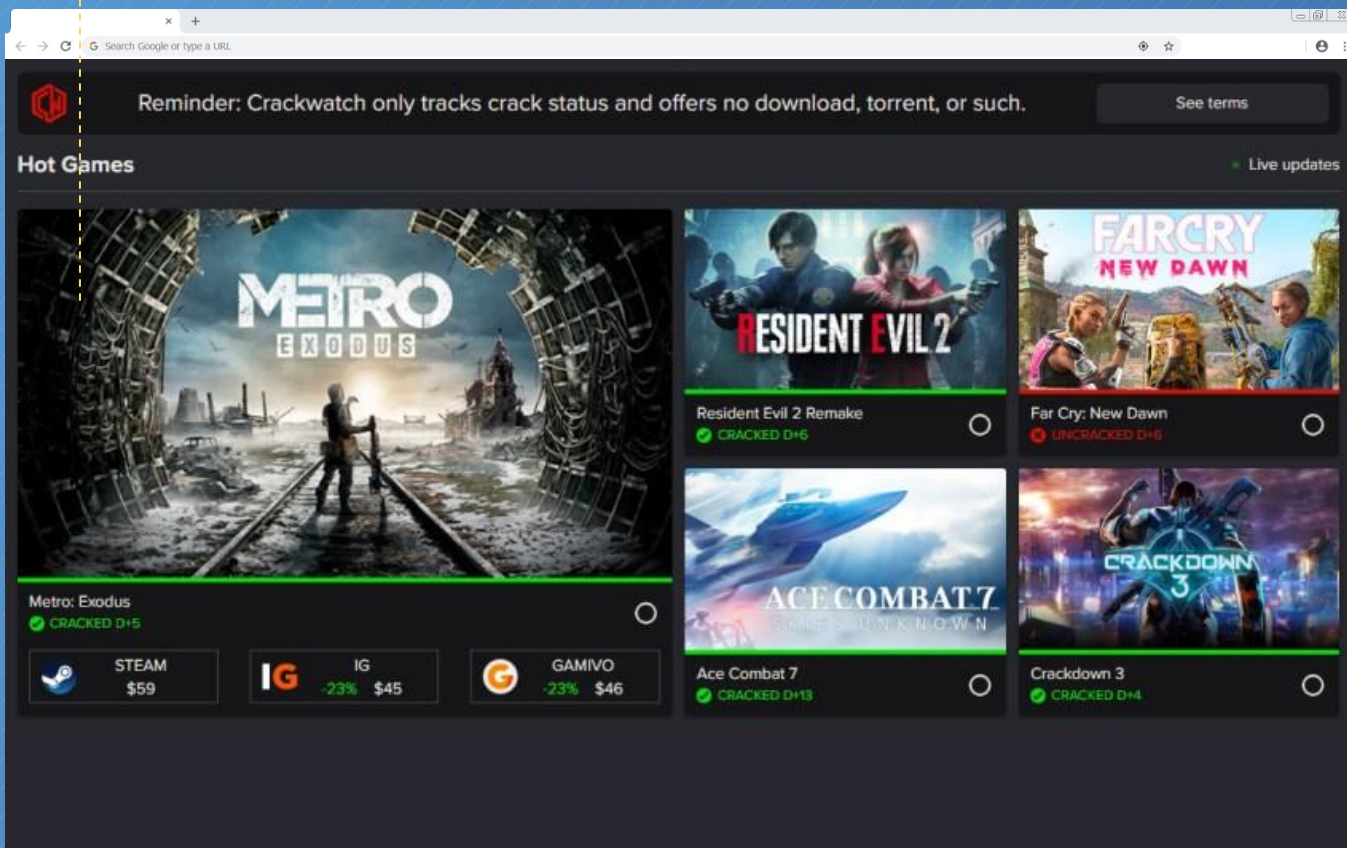
CRACKING GAMES

## VIDEO GAME PIRACY IS MORE INVOLVED THAN PIRATING OTHER IP

Pirate Needs To Circumvent Their Console, And also Have A Cracked Version Of A Game

## ANTI-TAMPER PROTECTIONS (DENUVO FOR PC) DO EXIST THAT HELP EXTEND THE TECHNICAL PROTECTION MEASURES (TPMS)

While TPMs Are Helpful, Piracy Can Impact Game Sales During Initial Release Period



## WELL-KNOWN SCENE RELEASE GROUPS

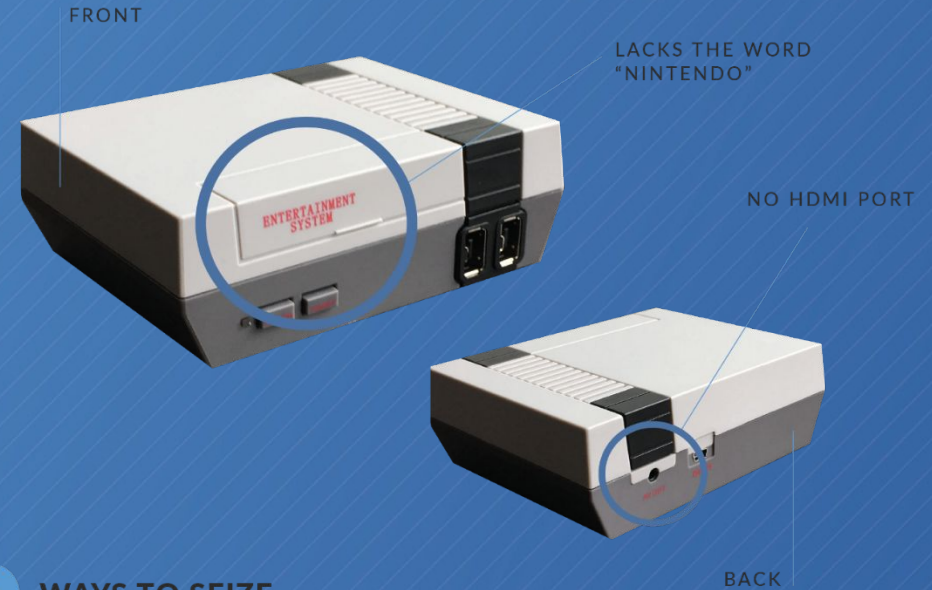
3dmgame Codex  
CPY Empress

## CRACKWATCH's REDDIT THREAD PROVIDES A TABLE OF CRACKED VERSIONS OF GAMES



# PLUG-N-PLAYS

ALL-IN-ONE



## WAYS TO SEIZE

Unauthorized use of Official Nintendo Seal - TMK 09-00046 (See Pg. 19)

Violation of Nintendo's NES controller design.  
(Usually found on top or front of packaging) COP 18-00037 (See Pg. 19)

Infringing copies of Nintendo copyrighted works: Donkey Kong, Dr. Mario, Excitebike, Super Mario Bros3, or Zelda II – The Adventure of Link



# CIRCUMVENTION DEVICES

NINTENDO SWITCH

Illegal Products Designed To Circumvent The  
Technological Protection Measures Employed By  
Nintendo





# UNITED STATES v. GARY BOWSER

CIRCUMVENTION DEVICES

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- Team Xecuter – A global operation that sold illegal devices to allow people to play pirated video games on popular ESA-member consoles.
  - Cost ESA companies more than \$65 million from pirated video games
- FEB. 2022 – Gary Bowser, a video game hacker, pleaded guilty to two federal felonies in connection with the circumvention of consoles to enable the use of pirated and unauthorized copies of video games.
- Victim Impact Statement – ESA provided the U.S. District Court for the Western District of Washington a Victim Impact Statement (VIS) on behalf of members to demonstrate the negative impact that the defendant and similar groups have on the video game industry.
  - Bowser was sentenced to over 3 years in prison.



# LAW ENFORCEMENT ENGAGEMENT

CONNECTED GLOBALLY

- ESA has referred several targets to agencies such as FBI, CBP and City of London Police
- ESA maintains relationships with DHS, IPR Center, FBI, CBP, Interpol, Europol and City of London Police
- Provides trainings to border agents, participates in panels and coordinated activities





# NEW CHALLENGES IN THE VIDEO GAME SPACE



# WHAT IS A UDG?

*IT'S NOT THE ITEM, IT'S HOW IT IS BEING USED*

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A digital asset - virtual currency, digital account, skin or other digital good - that is available within a video game environment or works alongside a video game, that is traded, transferred, or distributed in violation of a publisher's rules and/or Terms of Service

While digital items/currencies in video games are created intentionally by game companies for the use and enjoyment by players, unauthorized use or distribution by third-parties for value is unauthorized and poses significant threat to the way video games are perceived by the public and by policy-makers



# TYPES OF UDGS

SEVEN TYPES

## 1 CHEATS

Unauthorized software that modifies a game or network/server used to generate, accumulate and/or transfer UDGs typically in violation of game publishers' rules and End User License Agreements

## 2 ACCOUNT BOOSTING

The sale of services in which a more experienced player of a game receives (with the buyer's permission) access to the buyer's account and advances that account

## 3 DIGITAL KEYS

Unauthorized sellers of digital codes (keys) for games, account memberships, or gift cards

## 4 IN-GAME ITEM RESALES

Unauthorized sale of digital goods (skins, emotes, etc.) for a game

## 5 DIGITAL ACCOUNT RESALES

The sale or transfer of video game or console accounts and/or credentials that are normally loaded with games, in-game items, or enhanced status to provide advantages in gameplay

## 6 UDG BETTING

Transactions that allow the wagering of digital items based on the outcome of randomized digital games of chance or the outcome of events such as real-world sporting events, esports tournaments, Premier League matches, or other similar events

## 7 VIRTUAL CURRENCY SALES

Unauthorized transfer or sale of in-game virtual currencies, typically through prohibited techniques such as lopsided trading, etc., given that most video games do not have a direct, in-game mechanism for transferring such currencies between player accounts



# AIMBOTS

AUTO AIM



**AUTOMATICALLY TARGETING ANY  
MOVEMENT ON THE PLAYER'S SCREEN**

Aimbots provide a significant advantage in an online multi-player game where faster actions lead to climbing the overall ranks of a game more quickly



# ESP & WALLHACKS

X-RAY VISION



Commonly called ESP or Wallhacks, this cheat allows you to see enemy players or valuable items through walls. In most games where the element of surprise is crucial, this cheat creates an unfair playing field

CAN SEE OTHER  
PLAYERS THROUGH  
WALLS



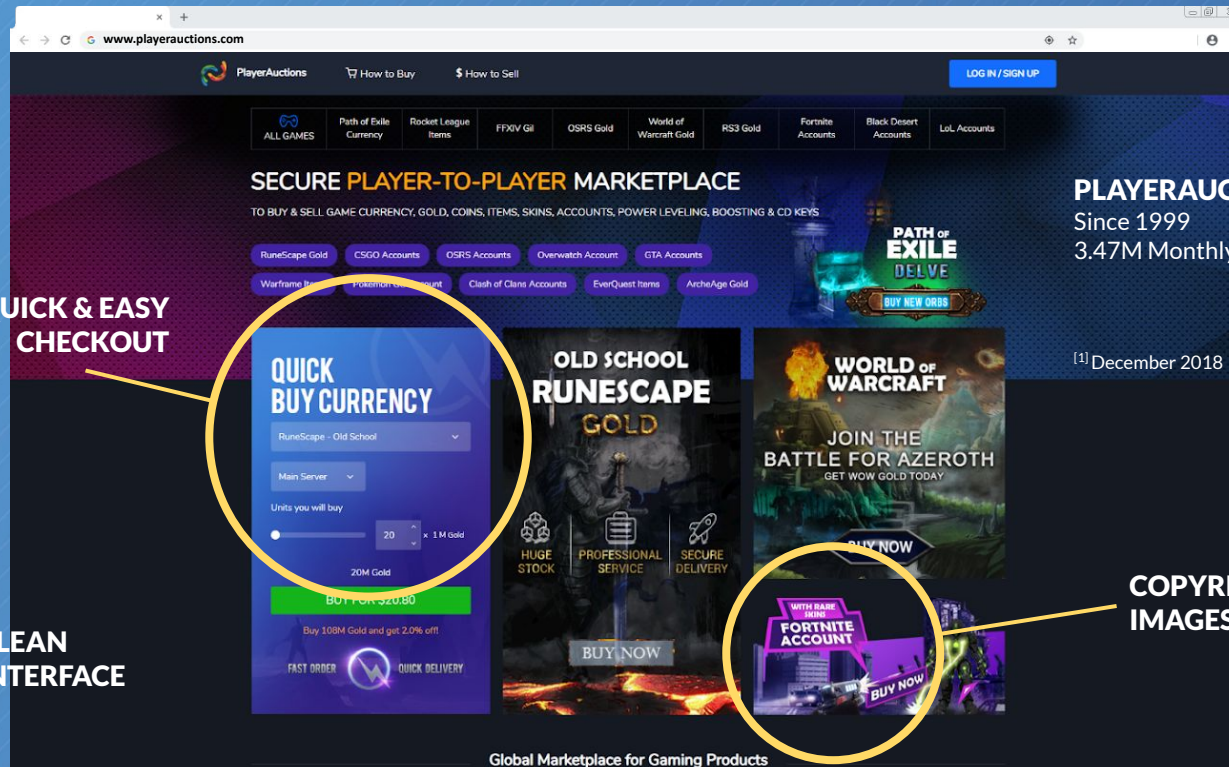
# WHERE ARE UDGs FOUND?

FOUR POPULAR PLACES

1

## STAND-ALONE MARKETPLACES

A site created by the site operator with its own unique URL in which the transaction is between visitors of the site. The site operator only provides the platform in which to facilitate the transaction



2

## STAND-ALONE SITES

A site created by the site operator with its own unique URL in which the transaction is between the site operator and the buyer

3

## POPULAR MARKETPLACES

eBay, Amazon, Mercado Libre...

4

## SOCIAL MEDIA

Selling directly through social media posts



# WHY ARE UDGs AN ISSUE?

A PROBLEM FOR PLAYER & PUBLISHER

## LOST REVENUE

Unauthorized sales and charge-backs due to fraud schemes have a negative financial impact on publishers and force them to divert resources

## FAIR PLAYING FIELD

Threats to gameplay integrity, and as a result, alienating and frustrating legitimate players who, over time, might abandon a game

## FRAUD

Potential for consumer fraud and money laundering schemes

## MALWARE

The use of unauthorized software also increases the risk of exposure to malicious code that can disrupt, damage, or lead to unauthorized access to a user's system





# THANK YOU

[www.theESA.com](http://www.theESA.com)

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