

Nintendo Weakens Emulator Upstart “Yuzu,” Setting Off Panic Within the Emulator Community



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ALERTS

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Nintendo of America’s (Nintendo) recent dispute against emulator developer, Tropic Haze, has highlighted major questions of intellectual property (IP) in the gaming sphere. This alert explores the background behind Nintendo’s dispute, its resolution, and corresponding legal and business ramifications.

Background and Legal Filings

In 2024, the global gaming industry is expected to generate revenues exceeding \$280 billion—up an estimated 80 percent from \$155 billion in 2020, just four years ago. Because this trend is only anticipated to continue, it is no surprise that the gaming industry is now attracting significant numerous IP threats, including piracy.

One of the most vexing methods of piracy is so-called emulation. Emulation is a tool for replicating the technological environment of gaming consoles, which then emulates the gaming experience in nonproprietary settings (e.g., playing Nintendo Switch games on a Windows laptop). Although the practice itself is not new, commercial emulators have only become more prominent as computing and graphical processing powers have increased. Emulators can facilitate piracy by enabling users to access console-based gaming without compensating the IP holders (typically, gaming companies).

On February 26, 2024, Nintendo filed a lawsuit in federal district court against Tropic Haze, a well-known emulator, for copyright infringement, as well as for violating the Anti-Circumvention and Anti-Trafficking provisions of the Digital Millennium Copyright Act.¹

For example, Nintendo’s complaint noted the release of its highly anticipated new title, *The Legend of Zelda: Tears of the Kingdom*. Nintendo alleged that this game was playable on Yuzu a week and a half before its official release, during which time it was illegally downloaded from pirating sites more than one million times, which Nintendo estimated to be worth more than \$60 million in lost sales.

Just one week after Nintendo filed its complaint, Tropic Haze agreed to settle for \$2.4 million. Tropic Haze also agreed to a service-ending permanent injunction in which the court ordered Tropic Haze to: 1) discontinue support of the Yuzu and Citra emulators and all activities to promote or distribute Yuzu; and 2) surrender its Yuzu domain name, copies of Yuzu, and “all circumvention tools used for developing or using Yuzu.”

Effect on the Industry

Nintendo’s lawsuit had an immediate impact on the emulator community. One day after the settlement, the developer of another Nintendo emulator, Drastic, made its emulation app free on the

Android store and publicly disclaimed that it had any financial incentive in the creation of emulation technologies. Drastic's developer, Bunnei, concurrently announced that he would be "leaving the emulation scene for good." Around the same time, the developer of the Pizza Boy emulators removed all of his emulators from the Google Play Store, stating, "My family comes first." And a popular Discord server has since shut down its emulation channel, apologizing for "the need to censor," while the creators of a Nintendo Switch emulator, Skyline, have also halted their work, citing fears of potential legal risks.

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As these examples make clear, Nintendo's lawsuit and subsequent settlement with Tropic Haze will likely have significant impacts on the industry, including discouraging companies from developing emulators. But there is also a possibility that, for several reasons, the settlement's long-term impact may not be as severe as some may anticipate. First, Nintendo's lawsuit against Tropic Haze ended in a hurried settlement, not a thoroughly litigated verdict. In other words, this case did not establish a legal framework for evaluating future challenges and is not binding precedent. Second, some players in the emulation community have created backups of the source code behind certain discontinued emulators, hoping that this backup code will allow such tools to survive after their original creators exit the space. Finally, the gaming community has already seen an influx of new emulators seeking to replace Yuzu, mere hours after it was deleted.

While the legal framework continues to develop and evolve, we expect more disputes between gaming companies seeking to protect their IP, and potential infringers looking to increase access to popular content through emulator technology.

For more information, please contact [Dale Bish](#), or any member of Wilson Sonsini's [litigation](#) practice. For more information about gaming companies generally, please contact any attorney in the firm's [electronic gaming](#) practice, and learn more about the practice by reading *The Scramble*.

[1] *Nintendo of America Inc. v. Tropic Haze LLC*, 1:24-cv-00082, No. 1 (D.R.I. Feb. 26, 2024).