

16 OCTOBER 2020



Open letter: Nintendo's commitment to privacy on AR developments

Dear Mr. Crane,

We are writing to you in light of the recently announced launch of *Mario Kart Live: Home Circuit* designed in partnership with Velan Studios, which could have serious implications for the privacy of our homes and the protection of our personal data.

Video games and gaming platforms impact human rights in many ways. Nearly ten years have passed since a massive hack [brought the world's attention](#) to the sheer amount of data held in your sector, demonstrating your power over personal privacy and security. At the same time, gaming has proven to be an important [platform for social, cultural, and political advocacy](#).

At Access Now, we defend and extend the human rights of users at risk. We seek to advance laws and policies to ensure the protection of users' fundamental rights. One of the main areas of our work is data protection in the digital age. Companies' products, applications, and services often gather an enormous amount of data from and about users and their surroundings. We seek to ensure that people remain in control of their personal information, that their data rights are enforced, and that companies process only as much personal data as they need for their product to function. Private companies carry a responsibility to respect and promote users' rights, beyond complying with local law, and Nintendo is no exception.

While augmented reality promises to open a range of new possibilities for gaming, it also has the potential to amplify risks and create new ones. In the case of *Mario Kart Live: Home Circuit*, we understand that it must create a detailed map of users' homes in order to function. This raises many concerns regarding users' privacy. In our understanding, Nintendo may process significant amounts of information about the players (including children), their location, and their homes and surroundings as they pilot Mario and Luigi around their sitting rooms or kitchens. Our homes are our castles, and we need up-to-date safeguards to keep Bowser out.

Previous augmented reality games, such as [Pokémon Go](#), presented serious concerns regarding the amount of data collected on users. With this latest venture into augmented reality gaming, we want to make sure that users are protected from the start.

Nintendo has yet to provide detailed information regarding the privacy protections that will apply to the use of *Mario Kart Live: Home Circuit* or any steps you have taken to identify and mitigate privacy risks that could arise. To assist in this process, we ask you to provide us with answers to the following questions:

-
- **Did Nintendo conduct any human rights due diligence or review to identify the potential privacy, security, or safety risks of mapping users' homes? What steps were taken to mitigate or prevent these risks?**
-
- **What information is processed (collected, used, accessed) to create the map of where the circuit will be placed?**
 - Please provide details as to whether Nintendo or any of your devices will access information for the setting up and/or use of *Mario Kart Live: Home Circuit*, including information from home WiFi and routers, connected home appliances, smartphones, and any other terminal equipment.
-
- **Will any other information be processed in order for the game to work and/or for its full functionality?**
-
- **Will Nintendo use this data for any other purpose than allowing for the game to work?**
-
- **Where will any data collected be stored? Will all processing be done locally, or will data be sent to the cloud?**
-
- **If any data will be stored outside the user's device, which data security measures are you going to use to protect the information from unauthorized access?**
-
- **Would any of the processed information be available and/or accessible to third parties, or companies other than Nintendo or Velan Studios?**
 - Nintendo should disclose its policies for processing third-party requests for user information, including the number of government requests for user data you receive by country, with compliance rates, and your procedures for responding to these requests.
-
- **Under which jurisdiction will the processing of data take place? Will Nintendo be the controller for the processing, and if not, who would it be?**
-
- **Will any of the processed data be transferred between different jurisdictions where Nintendo operates, and if so which legal mechanism will be used for such transfers?**
-

Furthermore, any company that collects data on users should report publicly on third-party requests for user information through a [transparency report](#). Such reports educate the public about company policies and safeguards against government abuses, and contribute to an understanding of the scope and scale of online surveillance, network disruptions, and a host of other practices impacting our fundamental rights. According to your privacy policy, Nintendo collects information on users, including location data and information on the content users may upload and share. As a company

16 OCTOBER 2020



that collects such sensitive information, it is necessary for Nintendo to also disclose its policies and procedures protecting the data and accounts of everyone interacting with its services through a regular transparency report.

We would greatly appreciate your response by **Friday, October 30**. We look forward to receiving your responses and any other information you consider to be relevant. We would welcome the opportunity to engage with you and your team to help Nintendo become a leader of the gaming sector in respecting human rights.

Sincerely,

Daniel Leufer
Europe Policy Analyst, Access Now

Gaspar Pisanu
Latin America Policy Associate, Access Now

Estelle Massé
Senior Policy Analyst and Global Data Protection Lead, Access Now

Isedua Oribhabor
U.S. Policy Analyst and Business & Human Rights Lead, Access Now