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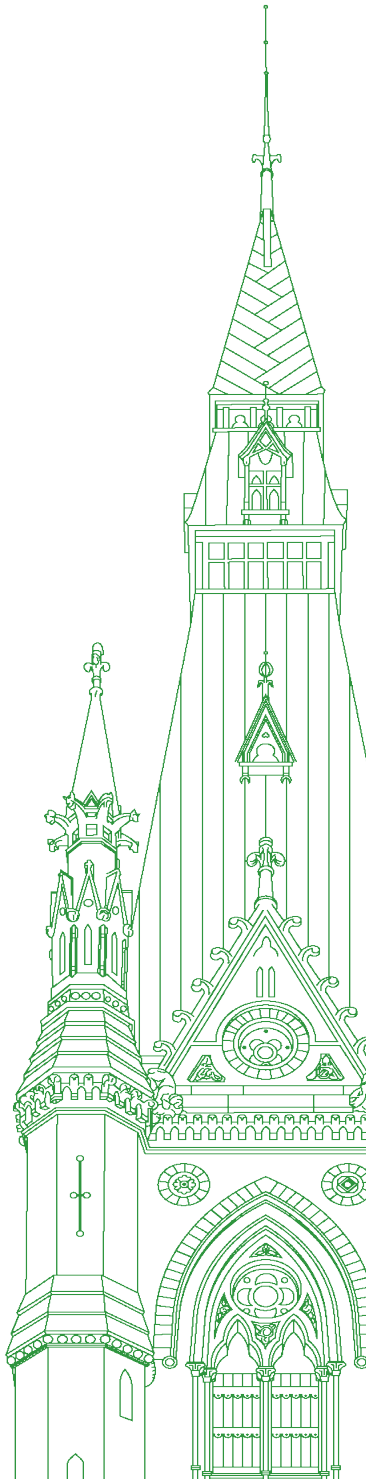

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, February 8, 2023

● (1635)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Ladies and gentlemen, dear friends, I now call this meeting to order.

Welcome to meeting No. 57 of the House of Commons Standing Committee on Industry and Technology.

Pursuant to the order of reference dated Wednesday, October 5, 2022, we are considering Bill C-244, an Act to amend the Copyright Act (diagnosis, maintenance and repair).

Today's meeting is in hybrid format, pursuant to the order adopted by the House on June 23, 2022.

Today, the committee has the pleasure of welcoming, as an individual, Dr. Alissa Centivany, assistant professor at Western University, and Mr. Anthony D. Rosborough, researcher at the European University Institute's Department of Law.

Here with us in Ottawa, we have Mr. Charles Bernard, lead economist of the Canadian Automobile Dealers Association.

We also welcome Mr. Paul Fogolin, vice-president of policy and government affairs of the Entertainment Software Association of Canada.

Finally, we welcome Ms. Shannon Sereda, director of government relations, policy and markets for the Grain Growers of Canada.

Welcome to you all.

Before moving on to more serious matters, I'd like to wish a happy birthday to my colleague, Caroline Desbiens, who has the pleasure of joining the committee. Her birthday was well chosen; it is the same as that of your humble servant.

Happy birthday, Ms. Desbiens.

Mrs. Caroline Desbiens (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, BQ): Happy birthday to you as well, Mr. Chair.

The Chair: Thank you very much.

Let's move on to more serious matters.

Ms. Centivany, you have the floor for five minutes.

[*English*]

Dr. Alissa Centivany (Assistant Professor, Western University, As an Individual): Good afternoon, Mr. Chairman and esteemed members of the committee.

My name is Alissa Centivany. I'm an assistant professor at the Faculty of Information and Media Studies at Western University, where I work on technology policy, law and ethics. I have a JD specializing in intellectual property law and a Ph.D. in information science. I've had research appointments at U of C Berkeley's law school at the Center for Law and Technology, and at the University of Toronto law school's Centre for Innovation Law and Policy.

I'm currently the primary investigator of an SSHRC-funded study on copyright, computerization and the right to repair. I'm grateful for this opportunity to speak to you today.

Repair is impeded by design choices; business strategies; constraints on access, materials and information; various social factors; and laws. By permitting the circumvention of TPMs for diagnosis, maintenance and repair, this bill represents an important, incremental step forward toward reclaiming the right to repair in Canada. For the health of our economy, our planet, our communities and ourselves, repair must be available, affordable and accessible. I'd like to emphasize three points for consideration.

First, the purpose of copyright law is to benefit society by promoting the creation and sharing of creative and artistic works. The purpose of copyright is not to protect business models. Nor is it to ensure that the incumbent beneficiaries of the existing regime reap the rewards of that status in perpetuity. It's absurd that manufacturers of things like tractors, tanks, wheelchairs and washing machines can co-opt copyright law and impede repair, simply by embedding code into their products. This bill carves out a necessary, commonsense exemption to the act's anti-circumvention provisions, while leaving the provision intact for contexts that might bear a legitimate relationship to the overarching purpose of the act.

Opponents of this bill claim that the exemption carries risks to the environment, safety and security. In response, I'd like to say first, “You're barking up the wrong tree.” There are laws that could address those concerns, but they are not copyright laws, which, as just mentioned, are concerned with the production of creative works.

Second, the only way this exemption would impact emissions, safety and security is if the software that governs repair also governed emissions, safety and security. I doubt that this is the case, but if these systems are being bundled together, that is a serious design flaw that manufacturers should remedy.

Third, most consumer devices are insecure for reasons that have nothing to do with repair. The ubiquitous smartening of products through network computerization creates security risks, thus much of this innovation is of questionable benefit to consumers and society.

Fourth, positioning consumers and the repair providers they choose as threats is pretty blatantly anti-consumer.

Finally, whether this exemption is codified or not is irrelevant to risks posed by actual hackers, who have far more sophisticated tools and techniques already at their disposal.

The second big point I'd like to make is that this bill is pro-innovation. In my research, I've interviewed farmers, teachers, engineers, artists, community organizers, health care workers, mechanics, volunteer fixers, schoolchildren, and people living in cities, in the suburbs, in rural areas here in Canada, and also in the U.S., in Europe, and in regions of the global south. A common thread across these differences is that the practice of figuring out what is wrong with something and fixing it is innovative. Our understanding and valuation of innovation in this country has gone astray. We overemphasize novelty, newness and invention, and we underemphasize the work, skill and adaptive situated problem-solving required to keep the things we already have running smoothly. Rather than undermining innovation, as some of the opponents claim, this bill undoubtedly promotes it for the good of workers and the economy.

By the way, this position is shared by our most important trading partner. A brief released two days ago by the White House noted the importance of the right to repair in building a healthy economy. At present, 20 U.S. states have right to repair bills under consideration. Bill C-244 is pro-innovation and is consistent with the actions and interests of our key trading partners.

Finally, repair is not only good for the environment and the economy; it's also good for us as people and as communities. Every act of repair is embedded with important human values. These include productivist values like learning, skill development, self-efficacy, self-determination and digital citizenship, as well as non-productivist values like care, continuity, heritage, hope, mutual support and meaning-making, which together make up the fabric of a richer, more resilient, more livable society and enable us to collectively project a more hospitable, habitable and humane shared future.

● (1640)

Thank you for the opportunity to speak with you today about Bill C-244.

The Chair: Thank you very much, Madam Centivany.

We'll now turn to Mr. Rosborough for five minutes.

Mr. Anthony D. Rosborough (Researcher, Department of Law, European University Institute, As an Individual): Thank you.

Good afternoon, Mr. Chairman and honourable members of the committee.

I'm a lawyer and doctoral researcher in law at the European University Institute. I'm also a practising member of the Nova Scotia Barristers' Society. In the past I've taught in the intellectual property area at the Schulich School of Law at Dalhousie University. My doctoral thesis investigates the design, function and implications of TPMs across the automotive, consumer electronics and agricultural equipment industries. I have published several peer-reviewed articles on the right to repair and TPMs, including a forthcoming publication in the Berkeley Technology Law Journal, which analyzes the right to repair in Canada and the bill under discussion today, along with Canada's international trade obligations. I've included open access links to these works in a brief I've submitted to the committee.

I firmly support the right to repair and the substance of this bill, but my focus this afternoon is not to reiterate the numerous social, economic or ecological benefits of repair. Rather, my aim today is threefold: first, to explain why repair restrictions enabled by TPMs are a misuse of copyright; second, to explain how the bill could be strengthened; and finally, to respond to the core arguments put forward by those who have opposed the bill.

To begin, looking at copyright misuse, access control TPMs in physical devices are best understood as an aberration in the history of copyright. TPMs were first recognized in the 1996 WIPO Copyright Treaty as measures that are used by authors in connection with the exercise of their rights and that restrict acts in respect of works that are not authorized or permitted by law.

TPMs were originally conceived as legal protection to safeguard copy control technologies to assist the digital content industry, but today's access control TPMs in physical devices often bear little, if any, relationship to copyright infringement. They bear only a superficial resemblance to copyright. They function principally to protect technologies, rather than works or the rights of authors, so when device manufacturers rely on anti-circumvention to prevent diagnosis, understanding or repair of computerized devices, this contorts copyright policy to perform the work of a patent or a trade secret. Put simply, this is a misuse of copyright.

As for how the bill could be strengthened, one approach would be to transpose it into a system of comprehensive regulation under section 41.21 of the act. That section allows for regulations that could exclude certain TPMs, or classes of them, from protection and to conduct review and consideration of specific implementations. This may also assist in providing a path forward for Bill C-294, which aims to create a new exception to anti-circumvention for the purposes of interoperability between embedded computer systems. A regulatory framework under section 41.21 could safeguard a whole host of socially beneficial activities. It could also address new and unforeseen uses of TPMs.

To respond to the opponents' claims, opponents have put forward three main themes in their remarks. The first is cybersecurity concerns. The second is health and safety risks, and the third is carve-outs for certain industries.

With respect to cybersecurity, we have scant evidence that repair activities can or will undermine cybersecurity. In any event, cybersecurity should not form part of TPM policy under the Copyright Act. This is not the role of copyright law. A more appropriate framework for cybersecurity considerations is under Bill C-26, currently under consideration, or the Telecommunications Act.

As for health and safety risks, these fears seem to misunderstand what the bill seeks to do. No longer making it unlawful to circumvent a TPM does not equip anyone with new powers or capabilities. The fact is that anyone who wishes to manipulate or modify a device for unlawful purposes can already do so. Any system can be hacked. If the repair of devices poses health and safety risks, the government should consider amending the Consumer Product Safety Act or other legislation. We should ask more of manufacturers and not rely on copyright law to ensure the health and safety of Canadians.

As for industry-specific carve-outs, opponents of the bill have often sought to exempt certain industries or limit the bill's application to consumer products. The reasons for this have not been convincingly argued.

The Copyright Act's purpose is to create a system of rights and incentives, including exceptions and limitations, which govern the use of works. It's not the role of copyright law to distinguish between different technologies or physical devices. In fact, Canadian copyright law has long rested on the principle of technological neutrality. This means that copyright policy should not discriminate against any technology or medium of expression, so to create a TPM distinction based on the type of product or device would amount to a clear violation of this principle.

To conclude, TPMs are increasingly used by manufacturers as a tool for protecting a series of interests that are unrelated to copyright. Repair is not infringement.

● (1645)

The purpose of copyright law is to incentivize the production of artistic and literary works. It encourages authors to bring ideas into the public realm.

Repair-inhibiting TPMs undermine these goals. They function as absolute barriers to the diffusion of knowledge. They are indefinite in duration and receive legal protection in the absence of any connection to copyright.

I ask this committee to move the bill forward and to include it as part of a comprehensive regulatory scheme that ensures that TPMs in devices are protected to the extent that they are connected to copyright.

Thank you.

The Chair: Thank you very much, Mr. Rosborough.

● (1650)

[*Translation*]

I now give the floor to Mr. Bernard for five minutes.

Mr. Charles Bernard (Lead Economist, Canadian Automobile Dealers Association): Thank you, Mr. Chair.

[*English*]

First of all, I want to thank all members of the committee for inviting the Canadian Automobile Dealers Association to express its perspective on Bill C-244.

CADA is a federation of provincial and regional dealer associations that represents 3,400 members across the country. Our dealers employ more than 160,000 Canadians and have always been a major component of the social fabric in rural and urban Canadian communities. Not only do dealers help consumers in accessing a vehicle that fits their needs, but they are also heavily involved in procuring repair services and technical expertise to the clients in the years that follow the purchase.

As committee members will know, since 2009 the repair and servicing market has been intrinsically linked to the Canadian Automotive Service Information Standards agreement, known as CASIS. This voluntary agreement helped build an environment where service and repair information could be exchanged between OEMs and the automotive aftermarket industry. Indeed, the CASIS framework increased the competitiveness in the repair services market, and did so while preserving the fragile balance among safety, compliancy and access to repair services.

In fact, that partnership has allowed the aftermarket to grow since its creation. Data from DesRosiers Automotive Consultants show consistently that the aftermarket has achieved phenomenal growth and is positioned for even greater success in 2022. Also in 2022, the numbers placed the aftermarket well above prepandemic levels—more than 20% higher than 2019 numbers.

However, CADA believes that Bill C-244 threatens that balance, which was built through exhaustive co-operation over the last decade, and offers no real alternative to what CASIS has accomplished in terms of maintaining the regulatory compliancy required to ensure the utmost safety for the consumer.

The CASIS agreement is a well-functioning institution where progress in repair access has been supported by the signatories through expertise, transparency and, most importantly, prudence.

It is also important to highlight the significant safety and environmental considerations that have to be taken into account when repair information and tools are being shared among automotive OEMs and representatives of the aftermarket—considerations that are not applicable to the majority of the products that would be covered under this amendment to the Copyright Act. We firmly believe that the risks in areas such as safety, cybersecurity, vehicle theft, personal data protection and intellectual property rights far outweigh the marginal benefits of increasing the aftermarket service offer.

[*Translation*]

The importance of a different framework for the auto industry also seems to be supported in the December 2021 mandate letter from the Minister of Innovation, Science and Industry. It specifically mentions that the government should explore the idea of a right to repair for appliances and electronics, with no mention of vehicles.

The problem of vehicle theft in Canada is a concrete example of how Bill C-244 could lead to significant problems that parallel the general discussion around the right to repair. Full access to this information would ultimately be shared by everyone, be they car dealerships, aftermarket businesses, or even individuals with criminal or negative intent.

We use this example not to spread a climate of fear or anxiety, but to call committee members' attention to the tension between access to repair information, which is one thing in and of itself, and the many related areas where risks are real and currently observable.

To be clear, on the side of the auto industry, the proposed amendment to the Copyright Act is a solution looking for problems. The CASIS agreement has proven itself. Once again, the Pandora's box that this bill may open could very well generate, as much for consumers as for political players, difficulties on a scale that would overshadow the initial motivations behind the amendment.

We recommend that this committee pay closer attention to the underlying risks of this bill. For example, we strongly encourage the committee to increase participation of cyber security experts, as well as those who specialize in the vehicle theft crisis, general vehicle safety, and the challenges of protecting intellectual property.

Additionally, for the reasons I just outlined, we recommend that the committee include a specific exemption for the automotive industry, rather than support further development of the CASIS agreement and attempt to increase its scope.

I want to thank everyone.

I'm ready to answer your questions in French or English. Thank you very much for your attention.

The Chair: Thank you very much, Mr. Bernard.

I now give the floor to Mr. Fogolin, from the Entertainment Software Association of Canada.

[*English*]

Mr. Paul Fogolin (Vice-President, Policy and Government Affairs, Entertainment Software Association of Canada): Thank you, Mr. Chair and honourable committee members, for the opportunity to speak to you about Bill C-244.

My name is Paul Fogolin, and I'm the vice-president of policy and government affairs for the Entertainment Software Association of Canada. We represent major video game console makers, publishers and large and small developers, as well as national distributors.

The video game industry is the largest entertainment industry in the world, plain and simple, with revenues that far exceed those of both film and music. In 2022, the video game industry earned over $170 billion in global revenues.

At ESAC, we're proud to report that Canada is one of the biggest players in the global games business. Home to close to 1000 studios with over 32,000 full-time employees and contributing $5.5 billion to the Canadian economy, we punch far above our weight.

The Copyright Modernization Act, passed in 2012, has helped to drive this growth by protecting the considerable time, investment and creativity that developers put into their games. This empowers them to innovate and create, knowing that legal protections exist to mitigate the risk of piracy and infringement.

While we recognize the good intentions driving this bill, if passed it could result in unintended consequences for both our industry and our players. Permitting the circumvention of TPMs presents a unique risk to our industry. Let me explain why.

The integrity of the entire video game ecosystem relies on TPMs. Not only do they protect intellectual property, but they prevent hacking and cheating, deter unauthorized access to consumer information and help support cybersecurity. They also allow a console to be securely updated, providing players with new content, extended storylines and updates to the game experience.

Before the Copyright Act was passed, the widespread availability of circumvention devices and services in Canada created an environment in which piracy and modding thrived. The act provided the critical measures needed to pursue those who facilitate and engage in piracy.

This is not a theoretical concern. It's been validated through the courts in litigation. In a precedent-setting decision issued in 2017, Nintendo of America v. King, the Canadian Federal Court awarded over $12 million in damages for the circumvention of TPMs and copyright infringement under the act, including that the defendant was liable under section 41.1 for the trafficking and installation of circumvention devices.

Bill C-244 could permit devices such as mod chips and game copiers to be put back on the market under the auspices of repair. We're deeply concerned that this will make it incredibly difficult for rights holders and law enforcement to pursue legal action against those who traffic in these devices. The burden of proof required would be so high that it would be very, very difficult or virtually impossible to establish liability.

It's also clear, watching the debate on Bill C-244 thus far, that game consoles aren't an area of great concern. I think that speaks to the ease of repairability and consumer satisfaction in this regard. Video game consoles are consistently rated highly for their repairability on websites like iFixit. Most common repairs can be addressed without circumventing TPMs. On top of this, our console makers provide easy, fast, reliable and affordable repair services as well as comprehensive online and off-line networks to troubleshoot issues.

This is an all-encompassing piece of legislation. It doesn't distinguish between a tractor, a fridge or a game console. Similar markets that have right to repair legislation, like some of our friends in the States, do classify different classes. Let me give you two examples: New York's Digital Fair Repair Act, which was recently signed into law by the governor; and Washington state's Bill 1392. Both jurisdictions rightly recognized the unique risk that TPM circumvention poses for our industry and chose to exclude game consoles.

In closing, we're very concerned about the risk posed to our industry and our players. To avoid going backward with protections to IP and to ensure we protect the player experience, we respectfully request that this committee adopt our proposed amendment to exclude game consoles, components and peripherals.

Thank you very much.

● (1655)

[*Translation*]

The Chair: Thank you very much for your presentation, Mr. Fogolin.

Finally, for five minutes, I give the floor to Ms. Shannon Sereda, who is with us in person in Ottawa and represents the Grain Growers of Canada.

[*English*]

Ms. Shannon Sereda (Director, Government Relations, Policy and Markets, Alberta Wheat and Barley Commissions; Representative, Grain Growers of Canada): Thank you.

Good afternoon, Mr. Chair and honourable members of the committee. It is my pleasure to be here today as a representative of the Grain Growers of Canada.

My name is Shannon Sereda. I am the director of government relations, policy and markets with the Alberta Wheat and Barley Commissions. We represent over 17,000 grain farmers across Alberta and are member organizations of the Grain Growers of Canada.

Canadian farmers continue to be world leaders in their accelerated adoption of technology. Modern farming equipment is increasingly reliant on high-tech automized systems, with complex software design and digitized components. The tools to fix that machinery have also become increasingly complex. A laptop and software now often replace a wrench.

This continual innovation in farm equipment is essential for the sustainable growth, efficiency and competitiveness of the Canadian grain sector, yet studies have shown that farmers are often considering older, less efficient and less digitized equipment that they can repair themselves. This is because when a farmer experiences an equipment failure, in almost all instances they are beholden to one point of service, the OEM dealer, to unlock the equipment, provide the parts and have their technicians diagnose and repair the issue. Given that there are typically few centralized dealers servicing many farmers over a large area, this can often take many hours to many days, and can be further impacted by single-source supply chain disruptions for accessing parts.

Farmers are consistently at the mercy of weather. Any delay during what is already a very short growing season poses a major threat to crop yield and quality, and is a financial risks to farmers. For perspective, in one day a farmer can harvest multiple millions of dollars' worth of crop.

Creating a competitive market for equipment repair will give farmers a choice to safely conduct the repairs themselves, through a qualified third party or through the equipment dealerships, thus reducing both risk and cost. Farmers and other skilled individuals in Canada's rural economy are ready and able to safely contribute to a competitive market for repair.

The current legislative environment in Canada supports equipment repair monopolies by allowing OEMs to prohibit the bypassing of TPMs. This leaves farmers and third party independent mechanics limited in their ability to diagnose or repair many potential technical issues. To restore the competitive environment and market for repairs of farm machinery, legislative change is required. Bill C-244 represents the first step in helping to break the monopolization of repair services and allowing Canadian farmers the right to repair their machinery, putting them on equal footing with farmers in other jurisdictions.

The United States and the European Union have made moves toward modernized legislation and regulations specific to agriculture, and are actively working toward creating a competitive environment for third party repairs, data ownership and interoperability. Both the agricultural right to repair bill that was recently introduced in the U.S.A. and other pressures toward increasing competition in repair services are acting to send the right signals to industry.

John Deere, which previously opposed the notion of allowing farmers to conduct their own repairs, has recently signed a memorandum of understanding with the American Farm Bureau Federation. This MOU will formalize U.S. farmers' access to diagnostic and repair codes and manuals and product guides, allowing farmers and independent repair shops to purchase John Deere software and other information needed to service their equipment.

While this is a step in the right direction, it remains to be seen how deep the access will be, how it might be enforced or how reasonable pricing will be defined. The availability of these tools should be cost-conducive for both independent technicians and farmers.

To this end, and in conjunction with Bill C-244, there is a necessary role for modernized provincial legislation in order to further restore a competitive market. In Alberta, for example, the Farm Implement and Dealership Act can be revised to ensure access to tools at a reasonable price.

Farmers are innovators. They have a history of making improvements to existing equipment used on their specific farms to boost productivity. The design practices by OEMs limit ingenuity and innovation for farmers and third parties by disallowing interoperability or the full use of telematics. On-board computers on farm equipment report nearly every detail of what a farmer does. Telematics provide a modern method of using this data to monitor farm equipment to ensure that operations remain reliable and timely.

Farmers have become more tech-savvy and can use telematics together with AI and other software to manage their farms from their iPhones. With full access to telematics, they can see pending issues with machinery by observing engine speeds and tire pressure, or even forecast planting stages and harvest timing.

● (1700)

GPS systems allow them to precisely place inputs, such as fertilizer, to maximize efficiency in cost, which in turn creates positive environmental outcomes, such as emissions reductions.

The agriculture community is pleased that the committee has acknowledged and invited agriculture to be a part of its deliberations on Bill C-244. We would like to ensure that the proposed amendments in Bill C-244 remain free of any exemptions that could limit the potential development of the competitive market for diagnosis, repair and maintenance of farm equipment.

On behalf of farmers, I thank you for the invitation to be here today, and thank you for your time.

The Chair: Thank you very much, Ms. Sereda.

We'll now start the discussion, with Mr. Patzer, for six minutes.

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): Thank you very much to all the witnesses for being here. I really appreciate all the perspectives that everybody brings, and the way you all presented here today.

I'm going to start with Mr. Rosborough.

I like the fact that you have talked about possible specific amendments to the bill. Could you elaborate on what amendments you would like to see? Could you delve into how specifically that would provide a better solution for achieving a right to repair? If you want to preface it with the way the Americans do their copyright exemptions, maybe that would be beneficial as well.

● (1705)

Mr. Anthony D. Rosborough: Section 41.21 of the act allows the creation of regulations to exempt TPMs in certain contexts and to exempt certain classes of them from protection. You could analogize this to the United States' Digital Millennium Copyright Act review and exemption process, which happens every three years under that framework.

There are some lessons to be learned from that approach in that, for one, a substantial amount of evidence has to be produced every three years to get an exemption. That process applies only to direct acts of circumvention, and does not apply to what is sometimes called the trafficking or circulation of circumvention tools.

In order to really give effect to the right to repair, solutions need to be shared. A big part of repair is that it's really about devising solutions, sharing, building community and building collective knowledge. Sharing tools is important to that step.

Section 41.21 of Canada's act enables us to do both at once. There would be a way under section 41.21 to create blanket exceptions for TPMs, which undermine competition in aftermarket sectors. Following that, in the second subsection of section 41.21 there is a framework to create regulations that exempt whole classes, or types, of TPMs from protection, where they produce undue and disproportionate impacts on certain markets. Any relevant factor is, in fact, one of the factors in that list, so it's quite a broad scope of a basis for regulation.

Mr. Jeremy Patzer: Thank you very much for that. I think we're all trying to find some good solutions for various industries.

Ms. Sereda, I grew up on a grain farm just shy of 8,000 acres. Whenever I talk to people about the right to repair, it's based on the premise....For us, we were sometimes four hours from the closest place that would either have parts for us, or have somebody who could come out and do the service. We talk about how much it costs to have a truck roll, and to have someone to drive out there and say, "I don't have the right part," or that maybe the computer doesn't have the right software on it. You're paying that cost to drive back and forth all the time, whereas if you could fix it yourself that would be hugely beneficial.

Can you talk a bit more about what some of your members are saying?

Ms. Shannon Sereda: I think you really hit it on the head. You know and understand the challenges of the expanse of the rural community in which farmers operate, and how far from the OEMs and dealerships they can be.

Given this legislation or enabling independent service providers to access the appropriate tools to help farmers, it would create more choice within the industry, so there would be independent dealers a lot closer to farm sites, where farmers could then access them in a more timely manner or they could come out with the appropriate tools.

Sometimes it's just shutting off a false error that keeps a farmer down for a whole day, or for hours. That cost could be upwards of $1,300. Having access to these tools for those independent service providers is the best way for farmers to have more choice. If they can't repair it themselves, there would at least be providers in closer proximity to their operations.

Mr. Jeremy Patzer: Thank you very much for that.

Mrs. Centivany, I appreciate your intervention as well. Could you talk briefly on the dynamics between federal and provincial jurisdiction when it comes to copyright law, and how that plays a role in the right to repair?

Dr. Alissa Centivany: The Copyright Act in Canada is a federal law. The provinces have jurisdiction over related fields of law, like competition, as has already been stated.

In terms of the current bill under consideration, we really need something at the federal level that makes a clear statement about copyright that would eliminate these anti-circumvention provisions to enable diagnosis, maintenance and repair, and that would still allow provinces to create adaptive strategies that suit their constituencies.

We really need to have a comprehensive approach at the federal level with regard to TPMs.

● (1710)

The Chair: That's about all the time you have, Mr. Patzer.

We will now turn to Nate Erskine-Smith for six minutes.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks, Joël.

I want to start with the Entertainment Software Association of Canada so I'm entirely clear on what the challenge is.

The language in the legislation very clearly stipulates that one can circumvent the TPM only for the purpose of diagnosing, maintaining or repairing a product, so your challenge isn't with the specific language. Your challenge is that this opens up the possibility of tools for circumvention circulating, and then it's hard from an enforcement perspective to delineate between whether it's for the purpose of the legislation or for an improper motive.

Mr. Paul Fogolin: That's exactly correct.

Let me quote something from the WIPO guide on Internet treaties, which will speak to this: "...once placed on the market for such purpose," circumvention tools and exceptions "would become available to all to use with impunity."

You're right on here. It becomes incredibly difficult to do the work of rights holders or law enforcement to find the bad actors. Not only would you have to prove that a circumvention occurred, but you'd have to prove that a copyright infringement resulted and that this was the intent of the circumvention.

The bar becomes so high that from a practical level it becomes incredibly difficult. In particular, mid-size and small companies don't have the resources of some of the larger members to pursue these actors. It becomes incredibly difficult.

Mr. Nathaniel Erskine-Smith: That's helpful.

At the same time, there is a major benefit to consumers. I don't think enough of us focus on legislation that emphasizes consumer needs, and this is a piece of legislation that does.

Professor Centivany, we have heard from the Entertainment Software Association of Canada. They are putting a challenge before you to say that while it is well intentioned and they want a right to repair, there are some negative, unintended consequences as a result of tools circulating.

How do you respond to that challenge?

Dr. Alissa Centivany: First, congratulations on having a $170-billion global industry. That's quite impressive.

In addition, comments were made about the ease with which consumers are able to repair their consoles, for example, and that's fantastic to hear. The question it raises for me is this: Why oppose this bill?

This bill essentially provides an exemption for diagnosis, maintenance and repair, and essentially you're saying that it's already happening, so this bill should have no impact on what you're talking about.

In terms of—

Mr. Nathaniel Erskine-Smith: Let's pause there, because I think the challenge is slightly different.

Look, I'm more sympathetic to your articulation of the defence in some ways, but the challenge is not that they take issue with the language. They're saying they do have a very strong market in diagnosis and repair, but what will happen with this is that there will be tools ostensibly listed for the purposes of....

An example I would be more familiar with is that you would have a certain grow light sold for tomatoes, when it was obviously being used for cannabis. In this case, there will be tools being sold for the purpose of diagnosis and repair, when that's not really at issue and they are being used for circumvention for ulterior purposes.

Are we able to respond to that challenge, or do we just say we accept some problems, but overall this is going to be better for consumers, and they can toughen up?

Dr. Alissa Centivany: The bill would have no impact with respect to legitimate uses of the anti-circumvention laws. As I stated in my comments, the claims or concerns that there are going to be security risks or that there will be a theft risk are really unfounded unless the code that we're talking about that's embedded in these machines that deal with and govern repair is the same code that also deals with reproduction, let's say, or making copies or controlling emissions, in the case of tractors. I can only assume that that's a technical design issue that would be easy for technologists to solve simply by separating those bits of code out from each other.

● (1715)

Mr. Nathaniel Erskine-Smith: Thanks.

Mr. Rosborough, if you want to add—

Mr. Paul Fogolin: I'm sorry. Can I...?

Mr. Nathaniel Erskine-Smith: I'm sorry. I have only limited time, unfortunately. Maybe you can find time with someone else.

Mr. Rosborough, I would be interested in your response as well.

Mr. Anthony D. Rosborough: This demonstrates, maybe, some of the limitations in hinging lawfulness on a defined set of activities. Whether an activity is repair, maintenance or diagnosis would require some inquiry that might be difficult to discern in some cases. For example, if restoring features that have been disabled through a rollback or an over-the-air update, whereby your treadmill no longer plays videos like it used to on its screen.... If you restore that, is that an act of repair, or is that maintenance? Is it indistinguishable from repair in some respects? Maybe yes.

I guess my position is that there's more flexibility in a regulatory process that would exempt certain implementations of TPMs from protection altogether, so where a TPM—

Mr. Nathaniel Erskine-Smith: That may be the case, and I take your point about regulations, but with the language as it is.... Say we were faced with an upvote-downvote on the language as it is, there are certainly some potentially unintended consequences, but overwhelmingly it still seems to be pro-consumer and a net benefit.

Would you agree with that?

Mr. Anthony D. Rosborough: I would agree with that.

Mr. Nathaniel Erskine-Smith: Okay. Thanks very much.

The Chair: Thank you very much.

[*Translation*]

I now give the floor to Ms. Desbiens for six minutes.

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

Thank you to the witnesses for all of this information. I have to admit, I'm a bit new to all this, so the witnesses are really educating me.

I'd like to share a little story with you. About 50 years ago, my father, a restaurant and hotel owner, installed a dishwasher. The fact that I can remember shows my age, on this day of birthdays. The dishwasher was fully mechanical—so no electronic parts. It worked on a pump, which distributed the hot and cold water to reach the right temperature, in accordance with health and safety standards. When my father installed the dishwasher, he told me that I should keep it as long as it kept running because the next one would last four or five years at most. He said I wouldn't be able to get another dishwasher like that one.

One thing that tends to help a business improve its bottom line is to save money on equipment. That's where a business can really make gains.

I'll tell you the connection to agriculture.

My question is for Ms. Sereda.

[*English*]

Ms. Shannon Sereda: I'm not sure how to....

[*Translation*]

Mrs. Caroline Desbiens: Is the interpretation coming through on your end?

[*English*]

Ms. Shannon Sereda: It's not working. Sorry.

[*Translation*]

Mrs. Caroline Desbiens: Should I retell my dishwasher story?

Is everything working now?

[*English*]

Ms. Shannon Sereda: Yes. Thank you. Sorry about that.

[*Translation*]

Mrs. Caroline Desbiens: I should take this opportunity to thank the interpreters. The service they provide is always invaluable.

Can I retell my dishwasher story now, Mr. Chair?

The Chair: As you wish, but I'm not sure what the connection was to your question.

Mrs. Caroline Desbiens: The connection is actually obsolescence.

As I said, my father installed a dishwasher 50 years ago in his restaurant. His advice to me was to keep it running as long as I could, because it was the last of its kind. He said that, going forward, all dishwashers would be electronic and would need to be replaced every four or five years. His view was that the new electronic dishwashers wouldn't last any longer than that and would not be repairable for all sorts of reasons.

Our dishwasher is still there. It functions quite simply using a pump that distributes the hot and cold water and the detergent. The dishwasher is fine and works quite well even though it's antiquated. Quite the restaurant relic our dishwasher is.

My father was actually teaching me a lesson in cost-effectiveness and profitability. As a business owner, the way to improve your bottom line is by saving on equipment. The more you can save on your equipment—upgrading and repairing it to prolong its useful life as long as possible—the better it is for your bottom line.

It's a bit like that in agriculture. Equipment is very expensive and is usually what makes the difference when balancing revenue and expenditures.

I'm wondering whether it would be a good idea to consider a particular option under this bill. I'm talking about giving people in remote regions who don't have access to authorized repair centres access to certain repair services. What do you think?

● (1720)

[*English*]

Ms. Shannon Sereda: Again, it goes back to what we were talking about earlier. If, within this bill, there is an ability for these third party dealers to be able to access the equipment, then yes, there is a benefit to farmers. This is because it comes down to timeliness and their ability to have somebody get to their farm within an hour to fix the machinery, or to be able to do it themselves, as I mentioned before.

We're seeing farmers move toward less complex systems, much like you're referring to with your father's great advice on the dishwasher, because they have the right to repair them themselves. While they lose some efficiencies by not running the most state-of-the-art equipment, they are more interested in not losing downtime during what can sometimes be only eight weeks to harvest their crops.

Yes, I think we would want to see that accessibility embedded into the right to repair for the independent service providers as well.

[*Translation*]

Mrs. Caroline Desbiens: It's safe to say, then, that cost-effectiveness and profitability come into play.

[*English*]

Ms. Shannon Sereda: Definitely, cost is an implication for farmers when they have this type of downtime. Even just bringing in any dealership to conduct their repairs is a cost to the farmer. If they can do that of their own accord by having access to the tools, then, of course, that reduces their costs.

[*Translation*]

The Chair: Thank you, Mrs. Desbiens and Ms. Sereda.

[*English*]

We will now turn to Mr. Masse for six minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and *bonne fête* to you and my colleague.

I want to start with Mr. Bernard.

It was my legislation for the original right to repair for the auto sector. It resulted in the voluntary agreement for cases, as you well noted. It didn't anticipate some of the.... We knew that one of the weaknesses of the bill was that when digitalization came into place, it didn't have that component.

Some of the OEMs have agreed that maybe this shouldn't be a voluntary agreement anymore. Right now, we have Tesla, which hasn't opted in, and there are others.

I wonder where your associations are with that. I am getting a lot of mixed signals about it. You may not be hearing as many of the issues or problems, but the consistency is there. Maybe you can highlight a bit more what you think is working and potentially what isn't working, in your opinion.

I've been around this enough to know that when we're hearing enough noise, there is usually something going on. Perhaps you can provide some input there, please.

[*Translation*]

Mr. Charles Bernard: Thank you for that important question.

First off, I want to point out that the Canadian Automobile Dealers Association is not a signatory to the agreement, so I can't really comment on what the future of the agreement looks like or where it's headed. I know that CADA supports this avenue and continues to work to that end because the agreement has delivered measurable results.

The Tesla problem is significant and worth mentioning, but the fact is the problem is specific to Tesla. We encourage government officials and parliamentarians to examine the issue carefully. This is an excellent opportunity to get an opposite perspective on why Tesla, as a company, has such a rigid approach when it comes to security. Everyone agrees that these vehicles are really computers on four wheels. As my colleagues mentioned, there may or may not have been errors in the coding. It's hard to say, but there are still associated risks.

We haven't heard very many complaints from consumers about access to repair. Automakers may have some frustrations, but because our association isn't a signatory to the agreement, it's hard to have a clear position on the matter. From our interactions with consumers, I can say that their feedback has been quite positive, and they are not at all frustrated when it comes to repair access.

I don't have the numbers for Canada, but in the U.S., 4.2% of vehicles are no longer in use and are ready for the scrap heap. We are talking about an all-time high. In Canada, the average useful life of a vehicle is 13 years, which is still a record. Cars or vehicles are repaired, and it's all thanks to the agreement you mentioned, in our view.

That's what I would say.

● (1725)

[*English*]

Mr. Brian Masse: I have to go to the other witnesses for now; I'll try to come back later.

I guess my concern is that the United States has several states going on a different path. We have provinces considering this too, and if we don't do anything ourselves, we're basically going to be putting ourselves in a dog's breakfast on the issue for automobiles, which is a public safety issue.

I want to go to Mr. Fogolin. It's correct that the entertainment software industry hasn't gotten much attention in this. Being a gamer myself, with my PS5, I can tell you that it is something that still can be hacked and so forth.

At the same time, you're trying to make a distinction for your association to be different. I think you need to articulate the reasons for that a little more strongly. It's not that it was weak. I understand where you're coming from with regard to security updates, automatic downloads and different things you can put on.

I guess a concern I also have is that from a consumer standpoint, it has less to do with the video game industry; it's often more associated with Microsoft releasing products that aren't even completed and need updates before you even put them in your system.

Perhaps you can distinguish a bit more why you think you need a special provision for the sector on this.

Mr. Paul Fogolin: Thanks, Mr. Masse. Thank you as always for being an avid player.

I think the best way to describe this is to use a quote from the U.S. Copyright Office. Mr. Rosborough mentioned the triennial review of the Digital Millennium Copyright Act, whereby they assess different classes and there's an opportunity to open them up and allow for certain products to circumvent TPM to repair.

In its 2018 rulemaking report, the U.S. Copyright Office noted that there was “compelling, uncontradicted evidence” that circumventing video game console TPMs would harm the market for such consoles, because they would no longer be able to “serve as a secure [distribution] platform”.

In light of these console-specific concerns, the Copyright Office recommended against allowing the circumvention of video game console TPMs. I think it was during that same triennial that other products such as cars and other devices were allowed the opportunity.

I want to point out that other jurisdictions have looked at this and, for the reasons I'm mentioning, it's a unique space that we're in. As a gamer, you'll know that it's the convergence of creativity and technology. These consoles are closed systems, and if you can't secure the platform and the platform is put at risk, you have some unintended consequences.

Mr. Brian Masse: Thank you for that.

If I have time, Mr. Chair, I'll quickly go over to Dr. Centivany.

One thing you raised, which I think is important, is that we have built our society on the freedom to recreate, to some degree, with fixing and adapting. My concern is that if we don't deal with this, how far do you think we're actually going to stymie innovation, arts, culture and expression? When you look at some of the most modern advances in society, they're accidents of experimentation. I don't think that gets a lot of attention.

I'd ask you, and perhaps even Mr. Rosborough really quickly, for your thoughts on those two elements.

Dr. Alissa Centivany: I'll keep it short so that Mr. Rosborough has an opportunity, hopefully, to respond as well.

The process of creation involves iterating on things that already exist. Nothing is created out of whole cloth. This is the way creation and innovation happen—having the opportunity to explore, be curious and learn. In my interviews, what I heard a lot of people say is that actually breaking things was part of the way they learned not only how things were put together, but how to fix them. You're absolutely right. Having this ability to play and tinker is critical.

The other point that I just really want to quickly make is in the case of health care devices, in particular. We have situations where people's mobility depends on the functioning of, let's say, a powered wheelchair. Sometimes they'll even have medical devices implanted in their bodies. These, too, are being restricted by TPMs and repair restrictions.

I just really want to emphasize the fact that we need to have this exemption that Bill C-244 offers.

Anthony.

● (1730)

Mr. Anthony D. Rosborough: Repair and innovation go hand in hand in a number of ways. There's evidence of that in this bill, in addition to Bill C-294, which speaks to prohibitions on innovation as implicated by TPMs.

The fact is that the process of repair requires a type of research and analysis. Product tear-downs are an example of this. If you look on iFixit's website, you see an entire library of, basically, research and discovery as to how things work.

When that becomes unlawful to do, we're restricting the flow of knowledge and information, which is really antithetical to the purposes of the intellectual property system. The reason we have IP is to bring ideas forward that we can share and benefit from. When we're putting an indefinite block on the flow of that information, we should have a really compelling reason to do so. Contorting copyright law to be a vehicle for cybersecurity or the theft of automobiles is probably not a sufficient justification.

The Chair: Thank you very much.

[*Translation*]

Over to you, Mr. Williams.

[*English*]

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you very much, Mr. Chair.

This is a fascinating discussion. Thank you to all of the witnesses for joining us today.

I really want to focus on two aspects. The first is competition, ensuring that we have more competition in our marketplaces. The second is looking at exemptions and how they would work to be both flexible and agile, depending on certain situations.

Dr. Centivany, I went to Western for two years. I miss it—it was a great school, but I ended up graduating from Guelph. Thank you for all your comments so far.

I really want to focus on the challenging concern that I think the world's looking at right now. It centres around Taiwan. The reason for that is that about 90% of the world's superconductors are produced there. We just went through COVID-19. We saw what supply chain disruptions did to all of our markets.

I wonder if you could comment. If we were to see a disruption in supply chains, how important is the right to repair for our economy?

Mr. Rosborough, perhaps you could comment after that.

Dr. Alissa Centivany: That raises a really good point. Lots of the weak points in our systems surfaced during COVID-19, including in the global supply chain. We saw instances, for example, of hospitals not being able to have access to repair parts and biomedical engineers unable to fix equipment. In some cases they were printing 3-D replacement parts and using those. In many of those cases they were threatened with intellectual property lawsuits as a consequence.

With regard to semiconductors and microchips, the more we can centre that manufacturing at home, the better. Creating more robust manufacturing capacities here in Canada is going to be critical.

Anthony, would you like to contribute?

Mr. Anthony D. Rosborough: Certainly.

I think what the COVID-19 experience showed us with semiconductors is the reliance on centralized systems of manufacturing and specific geopolitical sources of manufacturing, which can be a challenge. Repairing enables us to claim some sovereignty over the technologies that we have around us and to decentralize some of our reliance on these supply chain systems.

Greater repairability would definitely help us, should we experience another semiconductor shortage, for example.

● (1735)

Mr. Ryan Williams: Mr. Rosborough, you talked about what the U.S. is looking at every three years—at the exemptions for TPMs. It's a thorough process. In the U.S., they also have a copyright librarian who approves that. We don't have that in Canada.

What specific recommendations would you make for an exemption process in Canada?

Mr. Anthony D. Rosborough: For an exemption process in Canada to have effect, it would first of all have to enable the circulation of circumvention tools, and that's not currently available in the United States.

The second is that under section 41.21 we could essentially have a panel of experts, an administrative body, that would review certain implementations of TPMs and exempt them from protection where they impede certain conduct or acts that we think are in the public interest—repair being one of them.

This would offer a number of benefits, because it would be more responsive. We wouldn't be worried, for example, that the mod chips would be under the auspices of repair, because we would be looking at the implementation of TPMs in specific devices and products with the necessary technical expertise and would be judging that implementation on its connection to copyright.

Mr. Ryan Williams: Would you recommend the same time frame of three years, or is there anything that could be a little more agile? Are there benefits to two or three years or less?

Mr. Anthony D. Rosborough: Obviously, from a user rights perspective, the longer the period, the better. Often there's a substantial amount of evidence that has to be produced to conduct these studies and to have these exemptions.

It may be the case that we're not looking at time-limited exemptions at all. Perhaps the approach we would take in Canada would be indefinite, unless there's an appeal or some grounds to challenge the exemption. Perhaps it would be indefinite.

Definitely, a two- or three-year exemption period is probably not sufficient.

Mr. Ryan Williams: Do you think, as a fail-safe, that we should be giving the minister any power to exempt or tinker with that list at all? We've done this with other bills.

Mr. Anthony D. Rosborough: I do not.

With respect to the expertise of the minister, I think we're dealing with, obviously, a subject matter that spreads across many industries and technologies. It could have different impacts on the public interest that would require the expertise of a committee of experts, in my opinion.

Mr. Ryan Williams: How long do I have, Mr. Chair? Am I out?

The Chair: You're out of time, but I'm feeling generous, if you have another question, Mr. Williams.

Mr. Ryan Williams: I'm going to ask for this one in writing, Mr. Rosborough, just to give the committee some more time.

In your paper, “Toward a Canadian Right to Repair: Opportunities and Challenges”, you conclude that Parliament needs to use more of the “tools at its disposal” to enact right to repair reforms, including regulations “to better address the anti-competitive uses of TPMs”.

Could you please submit, in writing, what those potential regulations would look like? Once the committee gets them, we'll have them in the report.

Mr. Anthony D. Rosborough: Absolutely. Is this referring to section 32 of the Competition Act?

Mr. Ryan Williams: Yes.

Thank you, Chair.

The Chair: Thank you very much.

We'll now go back to Mr. Erskine-Smith for five minutes.

Mr. Nathaniel Erskine-Smith: Thanks. I actually want to pick up on Ryan's point.

We have a bill before us, and we have an opportunity to make amendments. Some of what you described sounds perfectly in scope, and other amendments you described may not be in scope. I'm not sure.

What I would find helpful, Mr. Rosborough, is not for you to specify exact detailed regulations, because that would be for a further process down the road after we pass the legislation, but for you to send in writing to us what amendments you would want to see, with some clarity. It doesn't have to be the exact wording, but just give us some direction so we can then have a conversation among ourselves.

I have a general sense in terms of what you described, but it would be helpful if you could put it in writing to us.

Mr. Fogolin, I cut you off earlier. I'm curious whether you want to finish your train of thought.

Mr. Paul Fogolin: I appreciate that. I actually had an opportunity, when responding to Mr. Masse, to reference the triennial review process.

However, if I have a bit more time, one of the things we're asking is to look at this from the most practical level possible and to try to weigh the pros and cons. Every industry is different. Looking at what they do in the United States, also in Australia, where they've looked at the right to repair, and the EU process, it's not easy work, but you have to do the work to look at the different classes because it's [*Technical difficulty—Editor*].

In the case of [*Technical difficulty—Editor*], anything you would need to do to get your console to work is possible. It's just something to mention.

● (1740)

Mr. Nathaniel Erskine-Smith: I didn't catch all of that, but I caught what you said to Mr. Masse.

In terms of Mr. Rosborough's proposal around a set of regulations, and presumably through those regs you would have different classes.... Would you be comfortable with what he's discussing today?

Mr. Paul Fogolin: I'd have to see it more closely, but in theory, yes. We sent a written submission that includes an amendment we prepared that's similar to the Digital Millennium Copyright Act, and I think that language is ideal. Certainly, any process that looks at amendments for classes is something we'd be in favour of.

Mr. Nathaniel Erskine-Smith: Okay. Ms. Centivany, we have Mr. Rosborough saying that we can manage this balance here between circumvention tools that are being used for improper purposes and also empowering consumers with the right to repair through a regulatory process. You, I think, were adamant in your opening remarks that we need to be firmly pro-consumer and this bill is just that.

Are you comfortable with the idea of a regulatory apparatus to maybe carve out different classes?

Dr. Alissa Centivany: I would defer to Mr. Rosborough on the classes issue. However, I would like to say that I would not be in favour of a sort of triennial review process, like what is happening in the United States. What we've seen there is that it's overly burdensome and that a tremendous amount of resources and attention and lobbying power and money goes into producing arguments every three years. The provisions, whatever might be produced in this three-year cycle, have to be readdressed in the next three years, so they don't necessarily carry over.

My preference would be to send a very clear statement, which I think this bill does, so there is certainty both for consumers and for manufacturers about the state of things, with the understanding that this can be revisited as the need arises in the future.

Mr. Nathaniel Erskine-Smith: I appreciate that.

My last question is for Mr. Rosborough.

Ms. Centivany doesn't have a financial interest in this. The Entertainment Software Association of Canada does. Most organizations that have come before us who are wanting to water this down clearly have a financial interest at stake and don't take the same consumer-centric perspective.

Do you not worry, if you have a regulatory apparatus or you have an ongoing review, that you have large lobby firms that bring their might to bear and consumers may be left behind?

Mr. Anthony D. Rosborough: I had some optimism that there is a way of designing an administrative body that may be somewhat out of the bounds of regulatory capture. I would hope we'd have some faith in our institutions to do so. However, I think part of the structure of that administrative body, the design of it, would be important for safeguarding that concern. Ultimately—

I'm sorry?

Mr. Nathaniel Erskine-Smith: No, no. I take your point, but I'm out of time. It can be done, but we have to be careful how we do it.

Mr. Anthony D. Rosborough: You have to be extremely careful, yes.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: Thank you very much.

[*Translation*]

We now go to Mrs. Desbiens for two and a half minutes.

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

This is for Mr. Fogolin.

Planned obsolescence is a big concern for us, in Quebec, and we have a bit of a head start. Guy Ouellette introduced Bill 197, which is making its way through the National Assembly. The principle underlying the bill received unanimous support in 2021, and the legislation is currently at committee stage. The bill deals seriously with the problem of planned obsolescence and establishes a goods sustainability rating.

Is a label indicating the good's sustainability rating an idea that resonates with you? Is it something you think is doable?

● (1745)

[*English*]

Mr. Paul Fogolin: Thanks for bringing this up. There's been a lot of talk of manufactured obsolescence throughout the debate on Bill C-244. In our industry, I like to think that we build our products with manufactured longevity. What I mean by that is—

[*Translation*]

The Chair: Mr. Fogolin, I have to stop you there.

[*English*]

Just one second. I think the translation is not working.

[*Translation*]

Mrs. Caroline Desbiens: The interpreters can't hear Mr. Fogolin. The audio isn't working.

[*English*]

Mr. Paul Fogolin: Okay, just let me know when I can proceed.

The Chair: Mr. Fogolin, I apologize. I think there's a latency problem with your connection, which explains why earlier in a previous moment you froze for the committee, which creates a problem for the interpreters. Maybe you could send in writing what you had in mind, but unfortunately I'll have to ask Madame Desbiens to move to another witness.

Mr. Paul Fogolin: Certainly.

[*Translation*]

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

Mr. Fogolin, I would be very appreciative if you could follow up with a written response.

I'll ask Mr. Rosborough the question.

Similarly, do you think a label indicating the good's sustainability rating is something the committee should explore?

[*English*]

Mr. Anthony D. Rosborough: For the purposes of the right to repair, absolutely. I think it may be beyond the scope of this bill, but a system of...maybe like a sustainability index under the Canadian Environmental Protection Act. If the government is serious about pursuing the right to repair at the federal level, some sort of system would be essential. We have seen in other jurisdictions similar indexes that have been very successful, France being the main example.

With regard to provincial efforts toward the right to repair, such as the bill proposed by Guy Ouellette, these jurisdictions provincially in Canada are waiting for federal leadership on the IP issue. Bill C-244 and Bill C-294 are the important starting point. These bills are starting at the right place to give provinces the leeway they need to move ahead with those types of systems.

[*Translation*]

Mrs. Caroline Desbiens: Do I have a bit of time left, Mr. Chair?

The Chair: Go ahead, Mrs. Desbiens.

Mrs. Caroline Desbiens: Thank you, Mr. Chair. That's very kind.

How much can we rely on these tools to move things forward? If Bill C-244 were implemented here, Quebec would be one of the places in the world where consumers were most protected against planned obsolescence. There's a keen interest in the issue in Quebec.

Do you think we can move towards that in Canada, or are we too far away?

[*English*]

Mr. Anthony D. Rosborough: We risk fragmentation by having independent provincial strategies that are inconsequential toward sustainability indexes or repairability indexes. To have meaningful effect across Canada, we should have a federal index for repairability. Absolutely, providing consumers with the information they need at the time of sale is essential for achieving the right to repair, because it creates a distinction in the marketplace. Consumers need to have that information.

Again, this allows for repairability, but it doesn't necessarily enable the right or ability to conduct repairs. That's what Bill C-244 looks to do. It starts at the source of the problem rather than looking just to solutions at the far end. This bill is starting at the right place. If we have enough movement in this direction on the IP file, we can move ahead with repair indexes and sustainability indexes and to arming consumers with the information they need at the time of sale.

[*Translation*]

The Chair: Thank you.

Over to you, Mr. Masse.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

While we're talking about obsolescence and that, Mr. Fogolin can't respond right now, but perhaps he can send this in.

I know, for example, on a lot of platforms there is reverse compatibility. If you upgrade your system, you can still play old games—those you've already invested in—without having to purchase them again as a consumer. Many platforms allow for that to be a continuation of what you've already purchased, and some are very successful at that.

That's the difference in that industry, which shows something that I think is different. In the auto industry, where I come from, they build the vehicles and create new tools that are necessary to fix them, which you have to invest in. It kind of creates planned obsolescence. Even our phones and so forth are changing—even though you charge your phone—and that creates a lot of electronic waste.

With my last minute, I'll go to Mr. Bernard.

We are hearing a lot about this from consumers and constituents. There's a reason there are three political parties that have three different bills in the House of Commons on this.

Does your association have a position...? If we don't act on this here, do you want, then, to just assume...? For example, in the United States, we have standardized bumpers, standardized processes for manufacturing.

We're probably going to get something imposed on us. What are your thoughts on that? If we don't do anything, do we just then have it imposed on us? It's just like we had emissions standards imposed on us from the United States. We used to work on those and set them together, and now we don't.

Please, that's for you, with my remaining time.

● (1750)

[*Translation*]

Mr. Charles Bernard: Thank you for the question.

It's a bit of a tricky one. Back in 2010 or thereabouts, Massachusetts passed a very progressive right to repair law, and it ended up having a negative impact on consumers. Companies like Subaru opted to remove certain electronic components from the initial vehicle models to bypass the law. At the end of the day, the approach had repercussions for consumers.

In CADA's view, CASIS is a great gateway for those discussions. As you say, it may also be a way to avoid having manufacturers impose standards in the future. I don't think the proposed amending legislation would solve that problem.

Ours is one of the only sectors fortunate enough to have been proactive on this, mainly thanks to your work, and to have a platform to help the discussion along. From CADA's point of view, that's really where the focus should be. We need to use the tools we already have, instead of running the risk of opening Pandora's box and unleashing consequences on consumers that are hard to predict.

The Chair: Thank you.

We now go to Mr. Vis for five minutes.

[*English*]

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair.

I'd like to thank our panellists today for, likely, the most informative discussion we've had on this subject so far.

One of the analysts' questions, provided to us in advance, number 7, is as follows. Bill C-244 suggests a “do-it-yourself” approach to the diagnosis, maintenance or repair of products in which technological protection measure-protected computer programs are embedded: it would allow a person to circumvent the technological protection measure for these purposes, and to use or offer equipment for these purposes. It would not, however, allow a person to offer or provide services for doing the same.

Professor Centivany, why does Bill C-244 seem to prioritize a do-it-yourself approach, considering that ordinary people may not have enough know-how to repair products such as motorized vehicles and personal electronic devices, and that allowing others to do it for them could bring new revenues to Canadian businesses?

Dr. Alissa Centivany: I would have to say that's not my understanding of the bill that's being proposed, in the sense that it would equally apply to consumers who are do-it-yourselfers and it would enable third party repair technicians and others to be able to circumvent the TPMs as well. Essentially, what we would be doing if this bill were to be passed is giving consumers the choice of either tackling these repairs on their own or choosing a service provider to do that for them.

Mr. Brad Vis: That's helpful. Thank you.

Another question the analysts provided to us is as follows. "Computer programs embedded in products are typically licensed to consumers. To retain the right to use the program, they usually must comply with licence, which may require that they do not circumvent TPMs for any reason. A person could thus breach the licence, losing the right to use the program, even if the Copyright Act otherwise allows them to circumvent the technological protection measure.

"Does Bill C-244 overcome the challenge of licences that restrict the diagnosis, maintenance or repair of a product even if it were allowed under the act?

"Given that provinces have legislative powers over contract law, should the federal government engage with them on the matter of restrictive licences?"

I'll pose that to you again, Professor Centivany.

● (1755)

Dr. Alissa Centivany: This is essentially a question of pre-emption. Does copyright law pre-empt provincial contract law?

I will defer to Anthony on this, since he has more familiarity.

Mr. Brad Vis: Yes, that would be helpful.

Dr. Alissa Centivany: In the United States, federal copyright law pre-empts contract law.

Anthony, do you want to speak to this?

Mr. Anthony D. Rosborough: Certainly.

I think this question evidences, as I mentioned in the Canadian right to repair Berkeley article that's forthcoming, that federal-provincial co-operation is essential here. This indicates an area where coordinated legislation targeting the consumer protection acts in the provinces is needed.

It would be nice if Bill C-244 also said that if you own a device with an embedded computer program, you have an implied licence to use the program to the extent that circumvention is necessary. We don't have that language in the bill. Obviously, that would conflict with provincial jurisdiction. This is where coordinated federal-provincial effort is needed.

However, again, this bill is starting in the right spot.

Mr. Brad Vis: Mr. Rosborough, would you be able to suggest any amendments to address the concern between the provincial and federal responsibilities in question here?

Mr. Anthony D. Rosborough: Do you mean amendments to Bill C-244?

Mr. Brad Vis: Yes. Could you suggest to us as a committee in future correspondence a possible amendment to get around this discrepancy between federal and provincial jurisdictions?

Mr. Anthony D. Rosborough: Yes, I'm happy to do that in writing, with the other requests I've received.

Mr. Brad Vis: Thank you so much.

Would any other panellists like to comment on the relationship between the Copyright Act and the dynamic between the province and the federal government on this? No.

Well, then, I have one more question, if I have time, Mr. Chair.

The Chair: You do.

Mr. Brad Vis: Under Bill C-244, circumvention of technological protection measures will be allowed only "for the purpose of the diagnosis, maintenance or repair of a product", as we've stated.

You touched on this a bit, Mr. Rosborough. How would this limitation be enforced in practice? Can you reiterate a couple of those points for me?

Also, could persons or companies that engage in the manufacture, importation, distribution, sale, renting and provision of technologies, devices or components to circumvent TPMs be held liable where these products are used for other purposes?

Mr. Anthony D. Rosborough: As for the second question, it's not clear in the act whether liability would extend that far. That's an ambiguity that would require some further research.

The first half of the question relates, essentially, to whether hinging the bill on a numerated list of acts—repair, maintenance and diagnosis—would be overly restricting. Is that the essence of the question?

Mr. Brad Vis: Yes.

Mr. Anthony D. Rosborough: In a broad sense, that's a pretty wide range of activities. That is inclusive of a lot of the activities that independent repairers need.

However, it's foreseeable that there are future uses of TPMs that impair other public-interest uses of technologies that the law should be able to respond to. It should be able to have a proactive approach, essentially.

This is where my suggestion that we move in a more regulatory direction comes from. It's not a concession from a right to repair perspective. It's actually a way of thinking more broadly about the issue and responding to the uses of TPMs that undermine the public interest.

Mr. Brad Vis: Okay. I appreciate that.

I was very apprehensive, however, at your earlier comment about the ability of our institutions to prevent big lobbyists from taking over the process, as we might have seen in the United States. Otherwise, I agree with your sentiment, but in practice, it would be very hard from a regulatory perspective. That's one of the big challenges we're facing: how broad in scope this legislation is.

I was hoping Mr. Miao would be here today, but I guess he didn't show up again.

Thank you to all of the witnesses for their time today.

Thank you, Mr. Chair.

Mr. Han Dong (Don Valley North, Lib.): On a point of order—

The Chair: I was about to intervene.

Mr. Han Dong: Okay. I'll listen to your intervention to see if I'll be satisfied with that.

The Chair: Mr. Vis, it is not customary for the sponsor of a bill to be at every committee meeting on the bill.

Mr. Brad Vis: He promised me. It's not in bad faith.

The Chair: I appreciate that, and it's perhaps because you didn't know, but Mr. Miao was here and answered committee members' questions before. I can assure you that he's paying close attention to your every word, Mr. Vis, and those of our witnesses in this committee.

With that being said, I'll now turn to Madame Lapointe for five minutes.

● (1800)

[*Translation*]

Ms. Viviane Lapointe (Sudbury, Lib.): Thank you, Mr. Chair.

[*English*]

Dr. Centivany, this committee has heard from a wide range of associations and companies about this bill. Many of them have raised concerns about health and safety. I'm thinking in particular about medical equipment suppliers—Meditech came forward—as well as automobile makers.

Would you see there being some reasonable exemptions to the right to repair?

Dr. Alissa Centivany: It's a difficult question to answer, to be totally honest with you.

Let me remark for a moment on the medical context, because I know that a brief was filed in opposition. Some of my current research projects right now deal with medical device repair, specifically in the global south. I would say that what we have in the health care sector is a situation in which biomedical engineers, who are highly trained specialists, cannot repair medical equipment in hospitals and clinics.

The Public Interest Research Group conducted a survey of biomedical engineers at the end of 2020. In the survey, 76% reported having been denied access to parts or service manuals for critical medical equipment in the preceding three months; 80% reported having equipment on site that they can't service, because either they don't have access to the digital keys to unlock the TPMs or they don't have the appropriate parts or services; and 97% said that removing barriers to the right to repair would immediately and directly benefit them in their work.

While there's a legitimate reason to be more deliberative and more sensitive, and perhaps thoughtful and hesitant, around certain kinds of industries like health care, where the well-being of people is immediately at stake, I still believe that the facts on the ground support strong right to repair protections in those industries as well.

Ms. Viviane Lapointe: I will tell you that I spent 20 years in the hospital system in northern Ontario. I saw first-hand how our biomedical engineers couldn't repair some equipment. Because we were away from large centres, we sometimes had to wait days or weeks before the technicians of the company could come and do those repairs. I certainly understand completely the point that you're making.

I would ask you the same question, Mr. Rosborough. Do you see any reasonable exemptions to the right to repair?

Mr. Anthony D. Rosborough: I'll have the same pause that Professor Centivany had. I think the answer would be, “Not really.” I can substantiate that by saying that Canadians are safer when the access to technical knowledge and repairability is not kept secret and the inner workings and functioning of devices can be discerned and understood lawfully.

The fact that device manufacturers see copyright as essential to the health and safety of Canadians should also cause us some concern. If the contention is that devices and products are inherently dangerous and repair activities pose safety risks, we should ask more of manufacturers through amendments to the Canada Consumer Product Safety Act or other regulations.

Again, just as copyright law is not really an appropriate framework for cybersecurity regulation, it is also not the appropriate forum for public safety, in my opinion. If we're talking about the right to repair to the extent that it relates to Bill C-244, I think the answer is no. There aren't really limitations here, in that respect.

Ms. Viviane Lapointe: Thank you.

I know my colleague Mr. Vis asked this question, but I will ask it of you, Dr. Centivany. Would you have any recommended amendments to the bill, or are there alternatives for providing a legally enforceable right to repair while mitigating the risks that we've identified of the unintended consequences that this bill could present?

● (1805)

Dr. Alissa Centivany: I see this bill as being a very important but incremental step towards the right to repair in Canada. As I mentioned, repair is impeded by a number of factors. Law is only one, and within that, TPMs are just one small slice. We have design choices that thwart repair. We have various business strategies. We have asymmetries in terms of not being able to access materials and information. We have social factors that are involved.

I would like to see, in an ideal world, a comprehensive approach to the right to repair. This would include intellectual property laws. It would include TPMs—this bill—but it would also include important changes in other areas, including competition and things like warranties.

Earlier a question was raised around whether we can create a code of durability, which I think was a really nice way to frame the question. That might come up in a situation with regard to warranty. Warranties are the promises that manufacturers or businesses make to consumers to give them confidence in their purchases. Right now, warranties are very thin. They include only the bare minimum. There's no reason that a warranty couldn't include such information as the anticipated time before the product breaks and needs to be repaired, or what the anticipated costs of those repairs might be, or how many claims are being made on a product. These bits of information would empower consumers.

This is the kind of comprehensive repair framework that I would like to see enacted in Canada.

Ms. Viviane Lapointe: Thank you.

[*Translation*]

The Chair: Thank you, Ms. Lapointe.

Over to you, Mr. Généreux.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being with us.

Mr. Bernard, you mentioned vehicle theft earlier. I have a 2009 Jetta. No one's going to steal it, I'm sure. It doesn't have any electronic components, and I'm glad.

My understanding is that, right now, areas all over Canada, especially in Quebec, are experiencing a spate of auto thefts. It's definitely not cars like mine that are being stolen. It's high-end luxury SUVs.

You said the safety of those vehicles was an important consideration. In many cases, the vehicles are put in containers and shipped halfway around the world.

What I'm trying to do is draw the connection between what you said and the bill before us.

Mr. Charles Bernard: Thank you for your question.

I do want to say, though, that if you saw what I drove, you'd understand why I'd consider stealing your Jetta.

Mr. Bernard Généreux: Oh, oh!

Mr. Charles Bernard: As for your question, I am here as an economist. I'm not a lawyer, but I can appreciate the legal expertise that's been shared. From my standpoint, the issue is simple when it comes to auto thefts. When CASIS came into force, dealers and those in the aftermarket sector had significantly better access to repair. The numbers prove it. Certain vehicle parts had to be removed or replaced to give aftermarket mechanics greater access. I'm talking about the on-board diagnostic, or OBD, port. Way back when, that port wouldn't have been accessible in vehicles like yours, Mr. Généreux. Today, in many vehicles, it is. You can plug an electronic reader into the port and obtain diagnostic information. There is clearly a correlation between access to that information and the rise in auto thefts.

I want to repeat that CADA is in favour of greater access to repair, but understands the importance of striking a balance. The market will always have bad actors. While improved access to vehicle data over the years has done a lot for repair, it has increased the risk of vehicle theft, and we are seeing the effects of that now.

Our understanding is that the purpose of the proposed amending legislation is to improve access to vehicle data for those in the automotive aftermarket industry. However, it's hard to imagine that auto thefts will decrease as information becomes more accessible.

Again, this is all hypothetical. CADA's view is that the existing platform provides an opportunity to discuss these issues in an unhurried and more nuanced way, as opposed to initiating a discussion, possibly going too far and having to rein things in down the road.

Mr. Bernard Généreux: As everyone knows, participation in CASIS is voluntary. At the end of the day, the agreement led to progress, as you said.

The committee has heard from a number of witnesses with a wide range of assessments and views on the bill.

I'm going to ask you a very frank question. If the entire auto industry were bound by the agreement, do you think it would improve the situation or lead to even greater progress?

● (1810)

Mr. Charles Bernard: It's hard to say. I repeat, our association is not a signatory to the agreement, so it's hard to know where exactly the negotiations stand. I wouldn't presume to speak to that.

On the access to repair front, what we've seen is that the more people who adhere to the agreement—dealers and automotive aftermarket players alike—the more a symbiotic relationship emerges. Sometimes, dealers don't have the labour or resources to meet demand, and that creates a symbiotic environment. It only makes sense that it's beneficial to have more people adhering to the agreement, especially new companies, whose focus is shifting to digital technology and the use of that technology or software in new vehicles. Another benefit is the fact that we have experience. We've been having these discussions for 10 years now. Some of the discussions have been tougher than others, but they've helped us make progress.

Mr. Bernard Généreux: My fear was that my neighbourhood mechanic would go out of business. We talked about that with the representatives of the Automotive Industries Association of Canada. They see this as a major threat.

Ever since electric vehicle manufacturers like Tesla arrived on the scene, it's become harder and harder to repair vehicles. Now it requires special equipment. What's more, accessing the information isn't necessarily easy, because it's not always shared. That makes it hard for regular people like neighbourhood mechanics to do this kind of repair work.

I think consumers should have the option of taking their vehicle to their neighbourhood mechanic. I had my Jetta serviced at the dealer for the four years it was under warranty. Then, I stopped going to the dealer. I took it to a bunch of other mechanics to give everyone business.

Mr. Charles Bernard: That's what is tough to balance. It is true that not all vehicles are as technology-driven as Teslas, but vehicles do use a lot more digital technology. Just look at the sales figures over the past few years, and you'll see that local garages weren't exactly short on business—quite the contrary. Over a 10-year period, aftermarket shop sales grew by 112%. For dealers, sales went up by 89%. There was clear, documented economic growth, and CASIS contributed to that.

I want to say this again: I'm not a lawyer, so I'm not familiar with all the legal mechanisms that would help achieve the desired outcome. However, I think we need to encourage new manufacturers or those who embrace digital technology, and look for ways to engage them in the platform. As we've seen, it has led to success. This type of approach saves consumers time and helps avoid situations like what happened in Massachusetts. As I mentioned earlier, after the state brought in pretty rigid legislation, manufacturers suddenly started playing by their own rules, removing certain parts from their vehicles, behaving in a more hostile manner and so forth.

I'm here to tell you that we did experience some success. I had the opportunity to read Mr. Rosborough's article. In it, he talks about the wins achieved through CASIS and the fact that it was ahead of its time, although it's not perfect.

In short, the concerns are certainly valid, but I think there are more ways to address the issue through CASIS than not.

Mr. Bernard Généreux: I'm going to ask you to indulge me one last time, for my own information.

You said earlier that the average age of vehicles on the road was 13 years. Is that correct?

Mr. Charles Bernard: It's around 12 or 13 years.

Mr. Bernard Généreux: Great. I'm right around the average.

The Chair: Thank you, Mr. Généreux.

We now go to Mr. Dong for five minutes.

[*English*]

Mr. Han Dong: Thank you very much, Chair.

I see Paul Fogolin there. He's an old friend of mine, and I haven't seen him in years. It's good to see you here.

Paul, your presentation early on gave me a visual memory for a moment. I'm sure everybody remembers the movie *The Cable Guy*. Back then, when analog was the system for TV entertainment, there was a guy who went around and took money—cash—and played around with your system and gave you extra channels. We all remember those days.

Then, to eliminate these types of leaching out of the system, the companies came out with the digital system. Now we have pirate sites offshore, which are cashing in billions of dollars off the industry. They have become a true problem. It's no longer a parasite; it's a giant monster.

My point is that as technology evolves, if we rely solely on intellectual property—or, in this case, TPMs—to safeguard the profit or the revenue of the industry, I don't think it works.

You just mentioned that there are hackers and people who [*Technical difficulty—Editor*]. I would argue, actually, that if we give the consumer the right code, or whatever they need to perform their own repair, we're actually taking away the market from these hackers and so on.

I just want to hear your thoughts on this. Would it be a fair assumption that if the only thing that is stopping consumers from fixing—or, in this case, being creative with—their console is the TPM, wouldn't taking that away and allowing them to be creative with their console be taking business away from the hackers? Wouldn't that be better for the industry?

● (1815)

Mr. Paul Fogolin: I'll try to respond.

Can you hear me? I'll try to speak as slowly as possible.

Thanks, Han. It's always good to see you.

What we have concerns with here is, as I mentioned earlier, that the vast majority of repairs that would be necessary to fix or make a console work can be done without circumventing a TPM. To get a bit more technical, the TPMs really deal with the firmware in a console. That is the device, the software, that will recognize the disk, cartridge or digital game, affirm it and say, "Okay, this is a Nintendo game," or, "This is an Xbox game," etc., and allow it to be played. This firmware not only does that, but it's also the software that encrypts some of the data, data points or personal information that might be used when you set up a profile on a console. It's also part of the technology in software that allows for updates, as I said earlier, for the game experience. As players play the game, they will discover issues and bugs, and developers will try to patch them. It all runs through the firmware. The problem is not with repairing the console and making sure it works; it's just protecting those specific protection measures that allow for a secure environment for updates to happen and to catch bad actors, like cheaters.

If you ask Mr. Masse, who is a gamer, nobody likes a cheater and nobody likes the ability, if you hack a TPM, to put in what's called a dropper, which allows you to put in malware. Sometimes it's disguised as a cheating device that gives you an advantage, but sometimes these bad actors put it in a console and it ends up taking personal information through that.

These are the kinds of things we're concerned about.

Mr. Han Dong: Paul, I'm also a gamer, but I'm more of a PC CS type of guy.

Mr. Paul Fogolin: That's okay, too.

Mr. Han Dong: I never got into Switch, but I do have Nintendo Switch at home.

If this legislation passes—if—are you saying there will be more cheaters in the gaming world?

Brian, that's bad news for us, eh?

Mr. Paul Fogolin: It's not good news.

Our concern is on several fronts. Cheating is bad news, but again, it opens up the opportunity for bad actors to hide behind the auspices of repair for piracy and infringement. Yes, it includes cheating. It includes the copying of games—

Mr. Han Dong: Okay. Thank you.

I want to use the rest of my time to question Professor Centivany.

We heard the medical equipment experts about how, if this bill passes, it could pose a risk in terms of those who don't want to fix these medical devices, and that they may no longer be precise anymore.

What do you say to that? Are there other provincial laws that have to be satisfied before anyone can do this, or is there a legal requirement to fix this equipment?

Dr. Alissa Centivany: I would say that biomedical engineers are highly trained experts in their field. Being highly skilled, they can do critical work with high quality.

I'm sorry. Can you repeat your question?

● (1820)

Mr. Han Dong: If this law passes, do you see an increased risk in maintaining the precision of medical equipment?

Dr. Alissa Centivany: The only risk that would be likely to increase would be if this bill is not passed or if the medical equipment sector is exempt from this bill. The reason is that, similar to the farming or agriculture industry, timeliness is of critical importance in the delivery of health care. When physicians, nurses and other health care workers don't have access to working equipment, they can't provide patients with the care they need in a timely fashion, and that really risks the health of patients.

Mr. Han Dong: That's my time.

Thank you very much.

[*Translation*]

The Chair: Thank you.

Go ahead, Mrs. Desbiens.

Mrs. Caroline Desbiens: Thank you, Mr. Chair.

I think Mr. Fogolin's audio is working again, so I'm going to try asking him a question.

How much does your industry work to limit electronic waste from game consoles? The equipment has a short window before it's outdated and another console comes along.

[*English*]

Mr. Paul Fogolin: I will try to speak as slowly as possible to allow for translation.

As I mentioned earlier, the game console industry and the gaming industry have a different approach to devices and how we make our consoles, and they are manufactured to be as durable as possible. If you go on eBay and search for older game consoles, you'll see a robust market for consoles from my childhood in the 1990s.

During the Christmas holiday, I did some housecleaning, and I found my old Super Nintendo. I got the right cable to connect it to an HDTV, and it worked. I'm not saying everything would work, but they are built to be durable.

Our members want to create a positive experience and create players who love their games, keep buying new consoles when they come out and try new experiences. For that reason, it's a bit of a differentiator. These are very durable products.

On top of that, if you want to get rid of an older console, you can send it to the manufacturer, and they have robust recycling programs. GameStop is one of the large retailers, and they do the same thing.

The final thing I'll mention is that there are some—and I believe Dr. Rosborough may have mentioned this earlier—voluntary agreements when it comes to things like environmental stewardship in the EU. I know that our three major console members have signed on to an SRI when it comes to building in a sustainable fashion, energy efficiency and full life cycle. I'm not sure if there's an equivalent here in Canada, but those are the sorts of things we do.

[*Translation*]

Mrs. Caroline Desbiens: Let's say I have a PlayStation 4, and then PlayStation 5 comes out. Does the exclusion you proposed not require you to supply parts so the PlayStation 4 can be repaired?

[*English*]

Mr. Paul Fogolin: That's a good question. Again, our industry is somewhat unique in this regard. Even when a console is discontinued and is no longer for sale, the parts will be available. I'm not saying they will be in perpetuity, but again, our three major console makers.... There are still people playing PlayStations 1 and 2.

Furthermore, to my earlier point about the ease of repairability in general, most of the issues you might have playing an older console you can fix on your own. There's a tri-wedge screw, something you could use to deal with most of these electronic repairs, and that's something you can do. Again, it's in our members' best interests to make sure that consoles work for as long as possible and that manufacturers retain some of the parts needed to repair these consoles for many years after they discontinue selling them.

[*Translation*]

The Chair: Thank you, Mr. Fogolin and Mrs. Desbiens.

Over to you, Mr. Masse, for two and a half minutes.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

Dr. Centivany, did you do any work with the medical sector with regard to ventilators during COVID, with which we still obviously have issues? There were a number of stories of doctors changing some of the ventilators to adapt them to be more productive on patients. Do you have any information on that? Can you provide that to the committee?

I'm aware of a few cases that came out through the media, but I'm just wondering if you have had experience with that as well.

● (1825)

Dr. Alissa Centivany: I don't have any experience with that in the Canadian context. It's certainly something that's come up in a global context, not just with the ventilator parts but with other basic, foundational medical equipment, like the tubing on a stethoscope. Just being able to replace those can be very difficult and was very difficult, prohibitively so, during the COVID epidemic, when supply chains were so disrupted.

Mr. Brian Masse: I guess there are departures from the use of the device in the medical field. There's a very robust process to do that. You just can't be a doctor and do that on your own. You have to follow a full ethical process, from what I understand, that takes place when there are adaptations or potential uses of medical devices in a way different from what they were originally purposed for.

Dr. Alissa Centivany: That's exactly right. There are thorough standards and ethical guidelines that apply to the health care sector.

Mr. Brian Masse: To conclude here, I guess my point with that is, if we don't have any type of flexibility in these standards, we would open ourselves up to more lawsuits. Innovations and changes can help the manufacturer in many respects. That goes to relationships and trust, because those types of innovations come back from users, which we sometimes forget, and the more robust companies adopt that as part of their practices, whereas others go to more of a restrictive practice that is not as progressive, in my opinion anyway.

Dr. Alissa Centivany: I'd like to just add one point to that, if that's okay.

With respect to the ventilator valves, I mentioned earlier in my comments the instance in Italian hospitals where volunteers essentially 3D printed replacement valves for the ventilators. Because of the threat of lawsuits based on intellectual property law, the sharing of that information so that people in other jurisdictions could also 3D print replacement valves was blocked.

It's exactly right that those innovations were pre-empted in unfortunate ways.

Mr. Brian Masse: Thank you, Mr. Chair, and thank you to the witnesses.

The Chair: Thank you very much.

Mr. Patzer, we'll finish where we started, with your questions.

Mr. Jeremy Patzer: Thank you very much. I want to touch on a point that has come up in many of the briefings sent to the committee. A few of the witnesses have touched on it.

Because of how technical the conversation is around technological protection measures—even the implementation of the Copyright Act—there seems to be this general misunderstanding about what the act does, what it would mean and how it's interpreted.

When I read the bill and when I read other bills similar to it, there's a lot of very specific language in it. This one in particular says, “circumvention is solely for the purpose of the diagnosis, maintenance or repair of a product”.

I guess this question is for Mr. Rosborough and Ms. Centivany.

In law, how important is it that we have very specific language around what the intent is with these bills?

Dr. Alissa Centivany: It's really important. This bill actually does a great job of being specific. It's very clear that the exemption applies to three sorts of behaviours, which are diagnosing, maintenance and repair, as you said.

I would also say that it helps us distinguish between the kinds of activities that we want to promote here—repair—which extend the longevity and useful life of goods, keep them out of landfills and support local economies in terms of having third party repair technicians have ample work.

However, it doesn't include things like environmental controls and emissions. It doesn't include things like parts of the system that might affect cybersecurity. It doesn't include things that might affect consumer safety or modification.

I think that the clarity of language is essential. It's very clear here that the types of activities that are being permitted are really related to repair.

● (1830)

Mr. Jeremy Patzer: Thank you.

Ms. Rosborough, do you have anything you want to add to that or does that sum it up?

Mr. Anthony D. Rosborough: When we're talking about the potential for other activities outside of repair, diagnosis and maintenance to be colourable or under the auspices of repair, the more relevant question to ask is whether the default is to allow TPMs to be used in a way that is under the auspices of copyright, but that has nothing to do with copyright.

I think we need to flip the definitional question around and ask to what extent TPM implementations are actually connected to the exercise of copyright.

Mr. Jeremy Patzer: Thank you very much.

I have a question for Mr. Bernard. I did a tour of an auto body shop back home in my riding. One thing they were talking about in terms of why the right to repair is an important thing to them was completing the repair of a vehicle after it's been in an accident. They're trying to return the vehicle to its original state. They're not trying to modify it. They're not trying to make it greater than or less than it was. They are trying to get it as close to the exact state it was in before it was in the accident.

A barrier for them is access to certain datasets from certain manufacturers, although certainly not all of them. The issue still exists that they cannot complete their repair, which then has an impact on insurance and on who's liable if an owner drives that vehicle off the parking lot and something fails on the vehicle. It's going to fall back on the auto body shop, but it's not technically their fault, because they couldn't get the information.

I'm just wondering what you would have to say in regard to that.

Mr. Charles Bernard: I'll try to answer in English.

It's interesting, because it can quickly become, especially in the case you mentioned, a specific case where it highlights a bit more of the complexity of where it can go.

Like I mentioned in terms of overall access to repair, the auto industry has been pretty good. People have been able to repair their cars either on the aftermarket or through the dealerships. I think the situation you mentioned can quickly become a situation of cat and mouse. If we're to bring back a vehicle to its original state, I'm pretty sure there's strong interest from the manufacturer to make sure that the repaired vehicle meets, once again, all the specific criteria and regulations that have been implemented in the car, through not only the manufacturer but also the dealership's extensive approval and qualification process.

Your question is fully legitimate, and I think CASIS.... Once again, I don't want to repeat myself, but I think it's a perfect environment in which to have these discussions.

However, the question you asked can come from both ways. When you have a vehicle that is basically being brought back to life, should we be a bit more prudent? I think that would be the standpoint of manufacturers. I don't want to speak on their behalf, but I know dealers go through an extensive process with techniques and tools to make sure the vehicle meets those criteria. Another question is more about liability, like you said, enforcing and making sure that the new vehicle meets those criteria. It's a complex issue.

The Chair: That's about it, Mr. Patzer, unless you have a very short question.

Mr. Jeremy Patzer: No, all I would say is thank you so much to all the witnesses. I really appreciate it. It's a highly technical and complex issue, and I appreciate how eloquently everybody has spoken on the issue today.

The Chair: Well, you've made my job easier, because I was about to say the exact same thing, Mr. Patzer, so I appreciate that.

Mr. Ryan Williams: All right. It's your birthday gift.

The Chair: Yes. It's a nice birthday gift.

Thank you to all of our witnesses. It's much appreciated, and you can be assured that your testimony will factor in our deliberations going forward. Thanks to all of you for taking the time.

[*Translation*]

Thank you to the interpreters, the clerk, the analysts and all the support staff.

The meeting is adjourned.