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# Standing Committee on Industry and Technology

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Chair: Mr. Joël Lightbound





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• (1105)

[*Translation*]

**The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)):** I call the meeting to order.

Good morning, everyone. Welcome to meeting number 49 of the House of Commons Standing Committee on Industry and Technology.

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

Today's meeting is taking place in a hybrid format, pursuant to the House order of Thursday, June 23, 2022.

[*English*]

I want to thank the numerous witnesses we have with us today. Thanks for taking the time to join us on this Monday morning.

We have, from the Agricultural Producers Association of Saskatchewan, Mr. Ian Boxall; and from the Auto Care Association, we have William Hanvey.

[*Translation*]

We are also hearing from Joshua Dickison and Alexandra Kohn, from the Canadian Federation of Library Associations, as well as Catherine Lovrics, from the Intellectual Property Institute of Canada.

[*English*]

From OpenMedia, we have Matthew Hatfield.

[*Translation*]

We are also welcoming John Lawford, from the Public Interest Advocacy Centre.

Without further ado, I give the floor to Mr. Boxall, from the Agricultural Producers Association of Saskatchewan.

[*English*]

Mr. Boxall, the floor is yours for five minutes.

**Mr. Ian Boxall (President, Agricultural Producers Association of Saskatchewan):** Thank you, Mr. Chair.

APAS is Saskatchewan's general farm organization, representing farmers and ranchers across the province.

Saskatchewan farmers have the largest farm sizes in the country. We need access to modern equipment to be able to grow our crops.

In the last decade, farm equipment has gone through a significant amount of modernization. This modernization has been part of the story that has made Saskatchewan the world's most sustainable place to grow food, fuel and fibre. With the integration of digital and mechanical tools, we can do so much more with less, and we are 30 years ahead of the rest of the world when it comes to section control, zero till and precision agriculture.

Being world leaders in sustainability comes with added costs. Producers will spend millions of dollars this year on new pieces of equipment. In 2021, 5% of all farm expenses were for equipment, which does not include the fuel to operate them.

Saskatchewan has a very short growing season, which means that farmers' work is very time-sensitive. During harvest, seeding and other critical production times, if a farmer misses a single day of work, that can affect the quality, quantity and value of their crops. This can result in thousands of dollars of loss to the producer.

Being able to repair a piece of machinery in a prompt manner is extremely important. Typically, most of this work can be done on the farm by producers. A farmer can also go to a dealership or get work done by a third party or aftermarket repair shop. The current Copyright Act, however, limits what producers can do on the farm and what aftermarket repair shops can also do. Instead, farmers are required to go to the dealership for these repairs, adding additional delays and expense to getting the work done.

Ultimately, this adds an extra barrier and constraint to getting repairs done in a fast and efficient way. In fact, this can be so extreme that some producers will move to purchase replacement equipment just to keep production going, so when equipment breaks down, unable to get it repaired, they will have an added cost at that time to replace that piece of equipment.

Amending the Copyright Act to extend the work that producers and the aftermarket can do is essential to keeping the market transparent and competitive. Producers aren't looking for ways to get out of safety control features or emission controls. We want to be able to repair our equipment in the most efficient and cost-effective way for our farms. Producers instead are looking to see amendments that will update the Copyright Act for 21st century agriculture and bring us in line with our international counterparts.

Saskatchewan producers continue to have a good relationship with their equipment dealers, and we value the knowledge and experience that they bring to the industry. We value the innovations manufacturers are continuously making to help make agriculture successful. Producers, however, want more flexibility and ability to control their costs. Changes to the Copyright Act would facilitate this. Our machinery and equipment have allowed us to achieve this, but that also means that our expenses are high, and we need to have the ability to control the costs in all ways.

I thank you for the time to be able to speak on behalf of the agriculture industry on this important matter. APAS intends to submit a brief to this committee before the end of your discussion.

Thank you, Mr. Chair.

**The Chair:** Thank you very much, Mr. Boxall. It is much appreciated.

We'll now turn to the Auto Care Association.

Mr. Hanvey, the floor is yours.

I believe you are on mute.

**Mr. William Hanvey (President and Chief Executive Officer, Auto Care Association):** I made a mental note not to do that.

Thank you, Mr. Chair.

Thank you, honourable members of the committee, for the opportunity to speak before you on Bill C-244.

My name is Bill Hanvey. I am president and CEO of the Auto Care Association, which is based in Bethesda, Maryland, just outside Washington, D.C.

The Auto Care Association is the voice of the approximately \$400-billion United States auto care industry. We provide advocacy, education, networking, technology, market intelligence and communication resources to support the collective interests of our members, which are companies that provide quality parts, products, services and repairs for all 290 million vehicles on the United States' roads today.

The vehicle service and repair industry is an essential service that includes the manufacturing of replacement parts, distribution networks, and service and repair shops. Around the world, our industry is responsible for keeping over a billion vehicles on the road in safe condition. Independent auto repair shops are in every jurisdiction and constituency worldwide. These independent shops ensure that motorists in every community, including small and remote ones, have reasonable and timely access to essential vehicle services.

Across the globe, consumers are facing a significant threat to their right to repair their vehicles at the auto repair shop of their choice. Vehicles are increasingly becoming like cellphones, connected wirelessly at all times. These connected vehicles collect thousands of data points on the health of vehicle systems. The automakers then transmit these data to themselves wirelessly, precluding access to the data by independent repair shops.

Without access to these data, there are significant risks to the automotive aftermarket. For example, without access to data, independent auto repair shops cannot service a vehicle. It becomes more difficult to ensure that vehicles are operating as efficiently and safely as possible. Moreover, consumers will lose the right to repair their vehicle at the auto repair shop of their choice. In the United States, approximately 70% of post-warranty repairs are currently handled at independent repair shops. This open, fair and competitive automotive aftermarket needs to be protected to meet consumers' needs.

The Auto Care Association supports the intention and principles behind this bill. Bill C-244 is a step in the right direction when it comes to levelling the playing field for the service and repair of consumer goods, something that is of importance not just to the automotive sector but also to many others. The bill comes at a critical moment, as manufacturers of goods, including vehicles, have become increasingly sophisticated in their ability to create a closed loop for service, diagnostics and repair.

The Auto Care Association supports the proposal to expand exclusions from software circumvention prohibitions for the purpose of repairing or diagnosing a product. While the exemption is similar to one available under its sister law, the Digital Millennium Copyright Act in the United States, we believe this provision is superior, since the current U.S. law requires industries to seek a product-specific exemption every three years. Further, it appears the exemption in this legislation also includes the availability of circumvention tools used by independent repairers to diagnose and repair a product. The inclusion of this provision should increase the effectiveness of this legislation in preventing manufacturers from using software to impede competition in the repair industry.

In addition, the Auto Care Association recommends that legislative bodies around the globe include unambiguous statutory language that eliminates manufacturers' ability to prevent independent shops from obtaining diagnostic, repair or maintenance information for the purpose of legitimate repair for any devices—cellphones, farm equipment, automobiles or heavy trucks.

• (1110)

To that end, we support the amendments discussed by our sister organization, the Automotive Industries Association of Canada, otherwise known as AIA Canada. These amendments, which include parallel changes to the Competition Act, would help reinforce a manufacturer's requirement to allow access to diagnostic and repair information.

The right to repair consumer goods, including motor vehicles, is necessary for a truly open, fair, and competitive automotive after-market to continue to exist. Right to repair is a global movement. In the state of Massachusetts, 75% of voters supported state legislation for right to repair. In March 2021, the first ever right to repair laws in the European Union came into effect that require manufacturers to make parts and repair information for products available to third parties, and I understand that 83% of Canadians agree that automakers should be required by law to share data with independent auto repair shops.

It is critical that vehicle owners—and not automakers—are the owners of their vehicle data. If our industry is to remain competitive, automakers should be required to provide access to this data so that consumers can continue to choose where to get their vehicle repaired.

Thank you again for the opportunity to present today. I look forward to answering your questions.

[*Translation*]

**The Chair:** Thank you very much, Mr. Hanvey.

I now give the floor to Mr. Dickison and Ms. Kohn, from the Canadian Federation of Library Associations.

• (1115)

[*English*]

**Mr. Joshua Dickison (Copyright Officer, University of New Brunswick, Canadian Federation of Library Associations):** Good morning.

Thank you, Mr. Chair.

My name is Joshua Dickison. I'm a member of the Canadian Federation of Library Associations on the copyright committee, and a copyright officer at the University of New Brunswick. With me here today is Alexandra Kohn, also a member of the CFLA's copyright committee, and a copyright and digital collections librarian at McGill University.

We greatly appreciate this opportunity to meet with you today regarding Bill C-244.

The CFLA is the united, national voice of Canada's library community. We represent the interests of public, academic, school and special libraries, and all of those concerned about enhancing the quality of life for Canadians through access to knowledge and literacy.

The CFLA applauds the Government of Canada for the introduction of Bill C-244, and supports the right to repair. As noted in our brief, the CFLA believes that additional and critical modifications are required if the legislation of technological protection mea-

sures—TPMs—is to ultimately succeed in being both balanced and technologically neutral.

Libraries, archives and museums—LAMs—believe that all Canadians should be able to circumvent TPMs for all non-infringing purposes, including the right to repair products. The right to repair should be a user right in Canada. It is essential for preserving balance in the law.

TPMs prevent our communities from fulfilling our socially beneficial mandate to preserve and maintain access over time to our collections. Libraries and archives play an essential role, providing access to many objects and devices that control access to information, such as printers, scanners and digitization equipment, and enable innovators with our maker spaces, tool lending libraries and 3-D printers. Our collections increasingly include software-enabled products, devices and applications, such as e-books, datasets, video games, computers, Wi-Fi hot spots and more.

Without a right to repair, the ability of libraries and archives to provide access to services and collections is threatened. For example, some Canadian academic libraries purchased Espresso Book Machines. It is print-on-demand technology. These machines were over \$100,000 apiece. As a result of licensing terms restricting repair to the physical equipment, many of these machines are now rendered useless and sold for parts because of prohibitive software licensing costs and the inability to fix or adapt software for continued use.

Archives need the right to repair software-enabled products, for example, as part of their preservation activities and, in some cases, to simply correctly identify their holding. U of T libraries lost access to 55 discs of purchased case study teaching material due to obsolete file formats and a lack of documentation from the proprietary software source.

Information professionals are concerned that once devices and software are rendered obsolete, are no longer supported or are deemed unprofitable by a vendor, irreplaceable knowledge will be lost or made inaccessible if repairs and modifications cannot be legally made to preserve this content and access.

Canadian TPM legislation goes beyond our international treaty obligations and has far-reaching and detrimental consequences for the preservation of our cultural expression. The current language distorts the intended balance of rights, increasingly stifles access and innovation and is at odds with the principles of technological neutrality. Libraries are stewards of the cultural record and teachers of copyright protection for creators and users. Denying users rights simply because of the medium creates a culture of copyright chill.

The CFLA and the entire library community understand and acknowledge the complexity of the issues related to the right to repair. We also welcome efforts to improve upon the interoperability exception in Bill C-294. We applaud the Government of Canada's attempt to find balance between the concerns of rights-holders and those of users as a key goal of continuing copyright reform.

The library community plays a vital role in providing Canadians access to all forms of material. That access to information is integral to ensuring that Canadians are regular contributors to the economic, social and cultural well-being of our communities.

• (1120)

We would like to thank you once again for this opportunity and we're happy to respond to any questions you might have.

[*Translation*]

**The Chair:** Thank you very much.

I now give the floor to Catherine Lovrics, from the Intellectual Property Institute of Canada.

[*English*]

**Ms. Catherine Lovrics (Chair, Copyright Policy Committee, Intellectual Property Institute of Canada):** Mr. Chair and honourable members, on behalf of the Intellectual Property Institute of Canada, thank you for the invitation to appear as part of INDU's study.

IPIC is the professional association of lawyers and patent and trademark agents practising in all areas of intellectual property. My name is Catherine—or Cat—Lovrics, and I am here as the chair of IPIC's copyright committee and our subcommittee on the right to repair.

IPIC recognizes that the 2021 mandate letters reflect the policy objective of implementing a right to repair to extend the life of home appliances and amending the Copyright Act to allow for the repair of digital devices and systems, a pursuit that led honourable member Wilson Miao to table Bill C-244.

We are pleased to hear the openness to amend the bill, including from MP Wilson Miao himself. IPIC's written submissions will follow and include specific proposed amendments to the bill for you to consider, which are aimed at helping the government achieve its objectives.

To that end, our subcommittee focused our efforts on the specific wording of Bill C-244, considering the entire scheme of the Copyright Act, a comparison with approaches of our trading partners, as well as compliance with Canada's treaty obligations. I will provide some highlights today.

From a copyright perspective, the right to repair concerns exceptions that permit technological protection measures—or TPMs—to be circumvented. Since 1997, Canada has recognized that adequate legal protections for TPMs are indispensable to protecting copyright. Since then, reliance on TPMs has become integral—

**The Chair:** Excuse me, Madam Lovrics.

Can I ask you to slow down a little bit? The translators must be having a really hard time. Please slow down a little bit.

Thank you.

**Ms. Catherine Lovrics:** Okay.

Since 1997, Canada has recognized that adequate legal protections for TPMs are indispensable to protect copyright. Since then, reliance on TPMs has become integral to the digital economy.

Today, TPMs not only play an important role in IP protection but are relied on for safety and security. For example, TPMs help to ensure health, privacy, safety and environmental standards are maintained once products are in the hands of consumers.

Through various copyright treaties, Canada not only has agreed to protect TPMs but has agreed that any exceptions to TPM protections should be very carefully crafted, supported by evidence and focused narrowly to ensure TPMs remain effective. IPIC believes amendments are needed to comply with our treaty obligations, including the WIPO Internet treaties and CUSMA.

We are concerned with the blanket approach taken in the current bill and unintended consequences that may follow. We heard honourable member Wilson Miao, among other witnesses before the committee, discuss the need to develop a right to repair framework. We agree: A framework is required.

In particular, IPIC supports evidence-based exceptions that permit circumvention of TPMs to enable a right to repair. We recommend that goods that benefit from the exception be specified in regulations, subject to a framework that assesses the specific use case.

We've proposed a regulatory framework that would consider factors including that the TPM is indeed demonstrated to have an adverse impact that warrants circumvention; that enabling access to computer programs would enable repair and not copyright infringement; and that circumvention does not carry risks to health, safety, privacy and security. Such a framework would comply with our treaty obligations, better align with our trading partners and manage other risks, all while aiming to achieve the policy objectives set out in the mandate letters.

Further, and importantly, IPIC is of the view that the exceptions should not enable distribution or trafficking in circumvention tools. We recommend that the bill be amended accordingly to instead enable service providers to exercise the right to repair on behalf of consumers.

Any exception that would permit distribution of circumvention tools raises serious concerns. For example, as stated in the WIPO guide on the Internet treaties, once placed on the market for a specific purpose, such tools would then become available for all to use with impunity. Permitting sale of circumvention tools is not only out of step with our trading partners but also inconsistent with the evidence before this committee.

Many witnesses have discussed the importance of this bill's enabling a robust aftermarket repair service industry. Those comments appear to misunderstand the bill. The bill as drafted does not introduce an exception for service providers, and IPIC proposes that the bill be so amended.

IPIC also recommends amendments to ensure that what constitutes a repair is understood to be the proper functioning of a product according to its approved specifications. We believe it's important to be clear that the bill enables repairs and not modifications. Manufacturers' specifications aim to comply with standards to protect the environment as well as the health, privacy and safety of Canadians.

IPIC also encourages studying the right to repair in the context of the commercial rationale for manufacturers disclaiming liability and voiding warranties if a product is tampered with and/or updated with unauthorized aftermarket parts.

As TPMs are an essential safeguard to the digital and connected economy well beyond IP, circumvention should ensure repairs are safe: that they do not risk health, personal injury or property damage and that they maintain security, such as protecting the personal information of Canadians and preventing interception to gain unauthorized control over a consumer product. This is particularly important given the explosion of the Internet of things and computer-controlled products like self-driving cars, and in a time when hacking and ransomware are pervasive, along with state-sponsored terrorism.

Finally, we also recommend small technical amendments to the bill to address a redundant reference to "computer program" in clause 1 of the bill: A "computer program" is a work.

In sum, our proposed amendments provide a framework for case-by-case assessments that would consider the risks and benefits. IPIC recognizes that Bill C-244 is only one piece of a framework and that a robust framework would involve other areas of law, with provinces at the forefront of facilitating a meaningful right to repair.

I thank all of you for your time, invite any questions you may have and direct you to our brief and proposed amendments, which will follow shortly.

● (1125)

**The Chair:** Thank you very much.

We'll now turn to Mr. Hatfield from OpenMedia.

**Mr. Matthew Hatfield (Campaigns Director, OpenMedia):** Good afternoon. I'm Matt Hatfield and I am the campaigns director of OpenMedia, a grassroots community of nearly 300,000 people in Canada who work together for an open, accessible and surveillance-free Internet.

I am speaking to you from the unceded territory of the Stó:lō, Tsleil-Waututh, Squamish and Musqueam nations.

I am thrilled to be here to tell you that Copyright Act amendment Bill C-244 is critical and common-sense legislation that you should pass immediately. Canadians need full ownership of the products we buy, and that means being able to get them diagnosed and appropriately fixed by anyone we choose, including ourselves. Bill C-244 will help us do this.

Digital technology is increasingly built into everything. Not just computers and phones but also cars, appliances and even clothing are now digitally intelligent and connected. We're seeing the birth of the Internet of things, a world in which everything we own can digitally communicate. If we can make citizens and consumers the full owners and primary beneficiaries of that world, we're looking at a very exciting future; but if we allow the Internet of things to wrest control of our possessions from us, leaving us stranded by fridges, farming equipment and everything else that requires constant approval from the original manufacturer's data centres to perform their basic functions, we're on the threshold of a nightmare.

Sound rights-reinforcing legislation like Bill C-244 will make the difference in what comes next.

In the pre-digital world, producing an excellent product and selling lots of it once was considered good business. In the digital world, many companies see that as a fool's game. Why charge a one-time price when you can transform your product into a service and collect perpetual fees for the life of the consumer? Some ways of doing that are relatively benign and consumer-friendly, like most streaming services, but some are plainly unfair and parasitic.

The digital locks that Bill C-244 will prevent are a clear example of parasitic abuse of power by manufacturing companies. Digital locks force consumers out of the competitive market and into a monopoly market in which the manufacturer sets the cost of repair parts and services. Sometimes they even lock customers into a repair market that no longer exists, as the manufacturer goes out of business or stops supporting their devices well ahead of schedule.

Not surprisingly, customers often find that repairs in this system somehow cost nearly as much as a new device and wind up buying a new product rather than repairing the otherwise functional device they have. A public survey we commissioned in 2019 showed that 76% of Canadians had thrown out a digital device that could be repaired to be fully functional due to fixable problems like dead batteries, cracked screens or lack of security software updates. Electronic devices frequently contain rare minerals and compounds—some toxic—and represent a spiralling share of our societal waste, with net global e-waste growing by an estimated three to four per cent a year.

That is bad for the consumer, bad for society at large and bad for the environment—bad for everyone except the manufacturing company in question. Preventing a net social loss due to bad incentives is exactly the kind of problem on which we need the government to intervene.

Bill C-244 isn't going to get us all the way there by itself. I hope our government will also adopt the interoperability changes in Bill C-294 and introduce full right-to-repair legislation soon thereafter. We also agree with the speakers from CFLA, who flagged the importance of archival copyright exceptions.

The big picture is that it isn't enough to stop manufacturers from suing repairers or customers who break their software locks to repair their devices. Much more is needed to right the growing imbalance between what manufacturers choose to provide and what Canadians need for an affordable green future. To name just two common-sense changes, I hope we will soon see an obligation for manufacturers to provide replacement parts, instructions and software security updates for their products for a healthy five to 10 years after purchase, as exists in the EU; and I hope that we will see legislation requiring products to display a repairability score at purchase so that manufacturers are incentivized to compete on durability and long-term performance, not just initial price.

I was privileged this year to work with the environmental non-profit Équiterre on a deeply thoughtful report studying how to implement the right to repair in Quebec and Canada. I encourage all of you who want to see this right fully implemented to give it a close read.

OpenMedia has collected nearly 20,000 petition signatures from our community asking you to fully legislate the right to repair. Passing Bill C-244 is a critical and necessary step to fulfilling that request. We have been truly heartened by the level of bipartisan consensus shown around Bill C-244. It proves that the wheels of democracy continue to turn, and that you, our representatives, can still come together to support measures that are plainly in the public interest. We hope to see that consensus continue to move forward, both on Bill C-244 and on full right-to-repair legislation.

Thank you. I look forward to your questions.

• (1130)

**The Chair:** Thank you very much, Mr. Hatfield.

Finally, we'll turn to the Public Interest Advocacy Centre's Mr. Lawford, in person in Ottawa. The floor is yours.

**Mr. John Lawford (Executive Director and General Counsel, Public Interest Advocacy Centre):** Thank you, Chair.

Honourable members, my name is John Lawford. I'm executive director and general counsel at PIAC, a national not-for-profit and registered charity. We provide legal and research services on behalf of consumers and, in particular, vulnerable consumer interests concerning the provision of important public services. PIAC has been active in the digital consumer protection world for over 20 years.

PIAC supports Bill C-244's creation of an exception to technical protection measures under the Copyright Act to allow consumers and businesses to circumvent TPMs for the purposes of diagnosing, maintaining and repairing a consumer product in which a computer program is embedded. PIAC believes that consumers should have the option to repair their own products or select repair providers of their choosing.

The fact that mechanical or electrical parts have been replaced by software in many consumer goods, such as household appliances, medical devices and vehicles, must not impede that possibility. Currently, consumers cannot legally circumvent TPMs, and as a result they are forced to use manufacturer repair services or manufacturer-endorsed, authorized repair shops when something goes wrong.

This restricted access makes it possible for manufacturers to set inflated prices, extend timelines, disconnect users' access when TPMs are circumvented, prevent users from accessing their own data, and create other unfavourable conditions for product utility and use, which can harm consumers financially, emotionally, and even physically. If the product needing repair is a tool required for work, such as a vehicle or a table saw, then manufacturer-imposed repair restrictions can potentially lead to job insecurity.

Consumer inability to circumvent TPMs can also create life-and-death situations. Under the current regime, many people who own software-integrated medical devices, such as insulin pumps and oxygen machines, cannot fix the medical equipment themselves or have qualified technicians service their devices without authorization from the manufacturer. This inability to seek out quicker or more cost-effective solutions places strain on those consumers and may result in their underservicing or needlessly replacing incredibly vital, expensive medical equipment.

The effects of limited repair options have only been exacerbated by the COVID-19 pandemic, which is creating workflow disruptions, supply shortages and reduced access to in-person services.



The expression of the repair right in Bill C-244 indeed covers a wide and generic range of software-enabled products. This aspect of the bill is a strength and is not over-broad. This means it applies to a piece of farm equipment, a thermostat, a medical device or a gaming console. This wide scope is needed to avoid siloing variable consumer rights in particular products.

Diagnosis, maintenance and repair are all related acts that further the public interest, the aims of which are: consumer freedom and the right to use their own, legally owned items; extension of the useful life of these products; avoidance of the consumer costs and the environmental harm from needless disposal of workable products, which often contain, as mentioned, toxic or precious, expensive-to-obtain materials and minerals; and increased control of the timing and expression of consumer demand, which can lead to increased competition, consumer choice, lower prices, improved customer service, greater innovation, and support of small, local repair businesses.

I'll speak briefly to what is missing in the bill—both interoperability, which, as has been mentioned, is the subject of another bill; and consumer manuals.

The bill lacks an exception to copyright infringement that allows consumers to find, reproduce and disseminate information such as diagnostic codes and repair manuals for the purpose of facilitating repair. This exception would be complementary to the TPM exception at issue in this bill and would better support the development of a repair market.

The new repair information right would be a species of fair dealing. Repair information requirements could be limited to personal, non-profit or commercial contexts, depending on where Parliament draws the balance between original equipment manufacturers and repair rights.

Without dealing in detail with interoperability, I'm happy to take questions. It could be either in this bill or in Bill C-294. The scope of interoperability is, I think, the issue, and whether we put a definition of "interoperability" into the Copyright Act in the section under consideration here, or in a different bill or act is something that we can discuss.

• (1135)

In conclusion, PIAC supports Bill C-244 as a necessary consumer protection in the digital economy.

I thank you and look forward to your questions.

[*Translation*]

**The Chair:** Thank you very much, Mr. Lawford.

We will now go to questions.

Mr. Perkins, you have the floor for six minutes.

[*English*]

**Mr. Rick Perkins (South Shore—St. Margarets, CPC):** Thank you, Mr. Chair.

Thank you witnesses for appearing on this important bill. Thanks to Mr. Lawford in particular for coming in person. We appreciate that.

Perhaps I could start with Mr. Boxall.

We've heard testimony here at this committee from the Association of Equipment Manufacturers and a couple of other representatives from that industry that about a third of the farm equipment that comes in for repair to dealerships and repair shops has had alterations done to it. The owner, or somebody before the owner, has already gone out and altered it. That's because the repair manuals, the codes and all of that equipment is available for farm equipment, as I understand it. It's a modest price for buying a diagnostic tool.

The two primary things that this has been used for are to up the horsepower of the motor, which puts it out of sync with the transmission and causes issues, and the removal of the emission control devices. That causes it to use less fuel, but obviously without any emissions controls, that causes other impacts on the environment.

While this bill is well-intended, some industries, like the farm equipment industry, actually show what may happen if there aren't restrictions on alterations.

Could you comment, first of all, on the alterations that happen currently?

**Mr. Ian Boxall:** Sure.

I think there probably are some alterations done when it comes to some of the emissions stuff. From my experience on my own farm, it is because they give lots of trouble. They give lots of software trouble. They give lots of trouble that is hard to fix. We lost days at one point on a combine that was giving us emissions issues.

I understand the frustration from the producers' standpoint on altering it. I also think that within the act there's an opportunity to limit that. We're not asking to be able to increase horsepower or reduce emissions, but to do simple diagnostics when we have fault codes. When we have issues, we should be able to do that on our own.

Yes, manufacturers have put in ways to do it remotely. That's all fine and dandy if you live in Toronto. It doesn't work too good in rural Saskatchewan where you don't have Internet or cell phone service for these dealers to dial in to see what is wrong with our equipment. Giving the producer or the third party—local people—the opportunity to do that is great.

Do I believe we can put some limits in there when it comes to horsepower and modifying the equipment so that it would void the warranty? Absolutely, but simple diagnostic and maintenance of that equipment should be available to who ever wishes to have it.

**Mr. Rick Perkins:** Ms. Lovrics, perhaps I could get a comment.

The question I put forward is that...obviously having the right to repair now allows individuals to alter equipment through the current technology that's available. That's a problem in terms of not only warranties, but what may happen if you're in an autonomous vehicle and...other issues.

Could you explain to me what that might do to innovation if that kind of proprietary technology is available to anyone who wants to use it or access it?

• (1140)

**Ms. Catherine Lovrics:** I think there's a natural concern surrounding disclosure to the extent that this bill may result in confidential information being disclosed in a way that is unfettered. There's a natural concern when it comes to innovation. I don't know if that's a concern uniformly across the board.

IPIC is proposing that there be a framework developed to address those types of concerns specifically.

I think the main concern that we have with respect to what we've heard before the committee and with respect to the bill is that it takes a one-size-fits-all approach. In our view, a one-size-fits-all approach isn't appropriate. Different products raise different concerns, including on the innovation front. To the extent that the bill can be amended to develop a framework that weighs the risks and benefits for specific use cases, that's what we would encourage. One of those considerations would be the impact on innovation.

To be clear, part of our proposal as well recognizes that copyright is only one part of a framework to the extent that the goal is really to achieve a meaningful right to repair. The expectation we have as an IP community is that there would be other legislative amendments that would come forward in other areas of law. The province likely would be involved.

If we look at what's happened in other jurisdictions for example, the EU right to repair standards provide that manufacturers will have to supply spare parts for certain household appliances for up to 10 years and only professional repairers will be supported.

To the extent that we're looking at a framework, many of the concerns, including those related to innovation, can be addressed as part and parcel of a meaningful framework.

**Mr. Rick Perkins:** Mr. Lawford, I think you were suggesting, though, the need to perhaps put some fence posts around or more definition into this act in some of these areas. This is a starting point, but there are some areas, such as those we just talked about, that we should avoid allowing to happen, or protect against.

Could you add a little more to that?

**Mr. John Lawford:** I was referring in those somewhat disjointed remarks at the end to the interoperability, because interoperability means different things. It's interoperable to the extent of doing what? I'm saying "interoperable" to the extent of making repairs. I hear the corporate side saying they don't want people to modify their equipment and that this might affect innovation. I don't know; it might spur innovation.

In any case, all we're here asking for is the ability of consumers of mass market products to be able to fix them at third party, not necessarily authorized, shops. This is because most consumer items are low value and high volume, and for something like a cracked screen of an iPhone, there's no reason why that has to be done at the Apple Store for \$580. It can be done much more cheaply with parts that are just as good somewhere else.

The other parameters that we're talking about.... There's another model. You could go with a whole, full framework, send this back to the department and say, "Give us a full framework and see what other acts it affects".

At the moment, our experience has been that when you get an opportunity to discuss this software lock, if you will, you should take it off when you can. We had this debate when the Copyright Act was passed last time. There were comments then from consumer groups that we'd be back for the right to repair, and here we are.

**Mr. Rick Perkins:** Mr. Chair, do I have any time left?

**The Chair:** I'm sorry, Mr. Perkins. That's all the time you had.

We'll turn to Mr. Dong for six minutes.

**Mr. Han Dong (Don Valley North, Lib.):** Thank you very much, Chair.

I want to thank all of the witnesses for coming today virtually and in person.

I'm going to start my questions with Mr. Lawford and then Mr. Hatfield. The Competition Bureau has noted that the Competition Act enforcement could complement a right to repair exception under the Copyright Act as proposed by Bill C-244 in promoting competition in product repair markets.

To your knowledge, has the Competition Bureau conducted any investigation related to the right to repair? If so, what was the outcome?

I'll start with Mr. Lawford.

• (1145)

**Mr. John Lawford:** I'll start, because I don't know, and I'll pass it to Matt. I hope he knows.

**Mr. Han Dong:** Go ahead, Matt.

**Mr. Matthew Hatfield:** There hasn't been, to my knowledge. The Competition Bureau has a lot of limitations on its ability to do proactive studies under the current Competition Act, and we are separately advocating for them to have more power to be able to look at these broad consumer problems. They have a lot of trouble doing that currently.

**Mr. Han Dong:** Matt, since you're on the screen now, I went through the survey you did. It's quite extensive. Thank you very much for doing that.

I noticed that over 50% of Canadians said that they have tried to repair their devices or equipment, but they found that the repair was too expensive or not possible. How would Bill C-244 begin to help consumers with that problem?

**Mr. Matthew Hatfield:** A question people have been talking about here this morning is the broadness of this bill and the fact that it's a broad exemption, and I think that's a really important part of it. The reality of the situation is that manufacturers are finding a lot of different ways to throw obstacles in the way of consumers when we want to do this, so having a broad exception is a really important approach to having a broad right to act here.

In a predigital world, I don't think we would have ever been sitting here talking about whether people should have a basic right to repair their devices the way they want. I don't think it should be any different now. It's only because software has enabled manufacturers to push back against consumers and to take away a lot of our ownership of our devices that we're here today, and this bill helps redress that.

**Mr. Han Dong:** You're absolutely right. This bill covers a very broad range of products.

We've heard a lot of concerns from different industries, talking about the warranty as a major concern. If consumers tamper with their device, it may void the warranty. I want your comment on that.

The other issue is safety, both during the process of repairing it and as far as medical devices go. If it's not being done properly, it may not be as accurate, and a life-or-death situation may depend on it. I would like your comment on that, and perhaps Mr. Lawford's afterward.

**Mr. Matthew Hatfield:** Yes, there are certainly a lot of different use cases, some of which may raise safety concerns, as you mentioned. I think we are open to some modification of the text, just to further clarify some of the cases that could come up.

To be clear, this is for repair purposes. It's to be clear that, potentially, for some categories of devices, repair needs to be done to a certain standard, like what you're talking about in emergency situations. The current limitations on the right to repair cut in both directions, right? During the pandemic we had instances of breathing devices that couldn't be repaired by the manufacturer in the time available and couldn't be repaired by local staff in the hospitals affected, and that also raised a very serious safety concern for people.

I don't think we should interpret safety as only being a problem that benefits manufacturers here.

**Mr. Han Dong:** Do you have a quick comment on the warranty concern?

**Mr. Matthew Hatfield:** Maybe, I guess.... I don't think that's the primary barrier that most consumers are facing. In most cases, they're out of warranty when they're seeking repair, so I don't know that it's a major portion of this bill either way. I'm not sure. Other folks might have other views.

**Mr. Han Dong:** Okay.

I have same questions for Mr. Lawford.

**Mr. John Lawford:** On the last point, I'd say that consumers are fairly conversant with making unauthorized repairs voiding their warranty. I think they expect that. I think they'd make this trade-off in the ability to go aftermarket.

On your first point, for something like an insulin pump, I would hope that Health Canada would add any additional concerns through their legislation. I get the point, but again, if we're back to repair being the standard rather than modification, perhaps if there were a little more language in the bill that could lead to some more comfort.

**Mr. Han Dong:** That's great.

How much time do I have, Chair?

**The Chair:** You have 40 seconds.

**Mr. Han Dong:** Very quickly, Mr. Lawford, do you have any suggestions on a possible amendment to make this bill more focused, perhaps as a stepping stone for further legislative amendments to ensure the right to repair?

• (1150)

**Mr. John Lawford:** Yes, I'm actually.... I don't have the bill right in front of me, the text—that's my mistake—but the definition of "repair" would be the place to go to try to add additional detail.

**Mr. Han Dong:** Thank you.

Thank you, Chair.

**The Chair:** Thank you very much, Mr. Dong.

[*Translation*]

Mr. Lemire, go ahead for six minutes.

**Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ):** Thank you, Mr. Chair.

I thank all the witnesses for joining us today.

Mr. Lawford, you talked about interoperability. I would like to hear your definition of interoperability and how we can improve it or make it more accessible in the bill.

**Mr. John Lawford:** Thank you for your question.

[*English*]

I'm going to make reference to a paper that I'll provide the committee. It's called, "If a Machine Could Talk, We Would Not Understand It". It's from Anthony Rosborough. He discusses the fact that a definition has to be contextual.

I won't go into it, but effectively what he was saying was, as I said in my remarks, "Interoperable for what purpose?" If it's for the purpose of repairing the item, then you need as much interoperability and data as are necessary to repair the item. If it's for something else, then you need a different definition, and I think we get hung up on what interoperability is referring to.

[Translation]

**Mr. Sébastien Lemire:** So the bill we are considering now still gives us a significant foundation in terms of interoperability.

Are we going far enough? Do you have any suggestions for the committee members to go further during the clause-by-clause consideration of the bill?

**Mr. John Lawford:** I am hesitant to give you the text I would propose. However, I would like to submit it to you later.

As I said, the study I mentioned offers some ideas.

**Mr. Sébastien Lemire:** We will gladly accept them.

Mr. Hatfield, OpenMedia is often at the forefront of open data and the protection of the public, especially in terms of costs for consumers.

Do you have an opinion on interoperability and how the bill could be improved? How could we go further for consumers?

[English]

**Mr. Matthew Hatfield:** That's a huge question. I think in general I'll defer the interoperability discussion to both the Bill C-294 discussion and also looking at our Competition Act—and the privacy act, for that matter, in Bill C-27.

The big picture around interoperability is that many, many digitally savvy companies are locking their consumers within walled gardens. As many people on Twitter know these days, it can be very hard to leave a company once they get you locked in, no matter how you feel about that company. In general, we want to see our government passing legislation that gives consumers real ownership of our data and makes it easy for us to see our data, take our data out of a system and put it into another system. We want them to really facilitate that transfer, because people don't have the options they deserve in terms of who to do business with anymore. A lot of us are locked into commercial relationships that we are not satisfied by.

[Translation]

**Mr. Sébastien Lemire:** Currently, what are the consequences of not acting? If Bill C-244 is not passed and the status quo is maintained, what are the consequences for consumers?

[English]

**Mr. Matthew Hatfield:** We're seeing a world in which physical devices don't work like we think physical devices should anymore, right? Folks from farmers to auto workers are speaking about this. There's a whole followership on the Internet about the Internet of things misfiring and people who buy a refrigerator, a fryer, a car—and even, honestly, soon clothing is coming—where you might just find that, “Oh, this manufacturer has gone belly-up”. There was a change in investment. Maybe they changed their product line. With this important physical part of your life that you thought you would get five or 10 or 20 years of service out of, it turns out you got only a year and a half.

Fortunately, I think most of us don't have entirely smart devices households yet, but as we move to a world where more of us will, we need to get these kinds of pro-consumer bills passed so that we're not completely beholden to many manufacturers. If we find

ourselves in a situation where manufacturers are failing their duty to us, we can take action to redress that balance.

• (1155)

[Translation]

**Mr. Sébastien Lemire:** That's great. Thank you very much.

Mr. Boxall, you talked about the urgency of repairing farm machinery, given the consequences not repairing the machinery would have. Some people oppose this bill or want to frame it more to protect the repair “market”.

In an environment of labour shortages and scarcity of both resources and materials, is it still possible to provide full service repair in the regions, particularly when it comes to farm machinery?

Should we instead trust agricultural producers' creativity and ability to repair their own machinery to be fully efficient and avoid losing valuable work days?

[English]

**Mr. Ian Boxall:** Thank you for the question.

I think that's absolutely it. As the dealership network becomes bigger, with individual dealers owning more dealerships across, they close some. Areas become under-serviced. That is exactly why we're here today. It's to present the fact that we don't have the necessary dealer network that we used to have to support the equipment in those remote and rural areas. We need to be able to do it ourselves or we need to be able to allow third party people to do it for us. They need to have access to the software and the computers that they need to do it.

A combine costs a million-plus dollars right now. Are you going to tell me that we don't have the ability to fix it ourselves, after we spent a million dollars? There's something wrong with the system. I think we need to fix that.

[Translation]

**Mr. Sébastien Lemire:** Absolutely. Thank you very much.

**The Chair:** Thank you, Mr. Lemire.

Mr. Masse, you have the floor.

[English]

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair, and to all of our witnesses today.

Mr. Hanvey, about 10 years ago I worked with the AIA here, your sister organization—I still do work with them—on original right-to-repair legislation focusing on the automotive aftermarket. Since that time, subsequent bills have come forth, and I have another one. It passed first reading in the House of Commons. We got it to committee. It was going to go for a final vote, but then the automakers, at that time the OEMs, decided they could live with the voluntary agreement. The aftermarket association said, fine, we'll try that first. We knew there was a major hole with regard to the digitalization of vehicles coming up, but it was voluntary. Tesla has opted out now, and there have been ups and downs.

I'm curious to know what's happening in the United States right now and what your thoughts are about mandatory versus voluntary. I proposed new legislation to make it mandatory, because we just can't keep fooling around like this.

**Mr. William Hanvey:** Exactly. The voluntary agreement that was reached in Canada and the United States.... We signed a memorandum of understanding with the automakers in 2013. While these agreements are good in spirit, they're not necessarily good in enactment.

The first thing is the voluntary agreements do not address the telematics aspect, which is the wireless transmission of the data from the car. Thus, the current MOUs that are in place don't apply to the current technology that is on the road today.

Secondly, the voluntary agreements are not enforceable. There's no legally binding enforcement mechanism that requires the OEMs to comply. The automakers are not required to participate. You mentioned Tesla, and that's a perfect example. They're not providing data to anybody at this point, other than to their own network.

The MOU framework requiring OEMs to share the same data with authorized dealers and independent repair shops doesn't work in a direct sales model, so the OEMs are trying to actually shut out some of their own independent dealers and work with only their authorized dealers.

The fact of a voluntary agreement, as I mentioned, is that it's good in spirit; it does not necessarily work in the real world.

**Mr. Brian Masse:** Yes. It's something like a dog's breakfast over here with the OEMs: some are really good; others are not. It becomes like a carrot-and-stick approach? If you don't have a stick, then you're just feeding a carrot, and that's what Tesla is doing right now.

You're getting the same thing over there, then. Is that correct?

• (1200)

**Mr. William Hanvey:** Most certainly, yes....

**Mr. Brian Masse:** It's ironic, because they want the same standards from consumers and expectations, but they won't provide the same over here.

I'll go now to Mr. Lawford and Mr. Hatfield.

I find that over here, Canada is still treated as a colony in many respects with consumer issues, because our competition laws need to be updated. It's funny, because I hear these arguments. You could make the same arguments as some of the OEMs are making now

with a screwdriver and hammer: It's about public safety; we're too concerned that people will hurt themselves, and they're going to damage things.

Isn't there also a little bit of room here for innovation and ingenuity? I guess what I'm worried about is our culture in North America is about fixing things we buy. This is a cultural shift as well as it is a structural one in the economy. If we can't go back to where we were as purchasers who were allowed to actually do things with stuff that we bought, then we've actually shifted our culture.

This is for Mr. Hatfield and Mr. Lawford.

**Mr. Matthew Hatfield:** That's exactly right.

I think you need to look at the incentives here and what kind of system they produce. Our colleague, Ms. Lovrics here, is concerned about overly broad consumer rights that could be used outside of repair purposes. Maybe there's an opportunity to tighten a little bit of the language to be very clear that we're talking about repair here.

However, we also need to not give manufacturers an overly broad opportunity to deny access to consumers and to our repair agents. We now know across a very broad range of sectors that many of them will choose to freeze people out of basic, reasonable repair rights in telecommunications, in autos and in farm equipment. The more these digital technologies enable software lockouts in more and more devices, the more broadly this will affect our culture, and the more we consumers will find ourselves surrounded by things we don't really control and with no ability to step in and take the action we need to.

**Mr. Brian Masse:** Mr. Lawford, we can get a balance here without becoming a so-called rogue state. Is that not correct?

**Mr. John Lawford:** Yes, I think we can get it. I don't think we're being a rogue state at all to give consumers a repair right. It's being brought forward in New York State. It's already in Massachusetts and a number of other states in the United States, so this debate is happening actively there.

I'd also say that privacy has been cited against this repair right. Consumers have the right to look at their own medical data, and that's very sensitive. They have the right to have their own credit report and their own calling records from their own telecommunication service provider, and that's very sensitive information. Getting their own information on their own devices seems to me to be in the same ballpark, so don't use privacy against this.

**Mr. Brian Masse:** Thank you.

Am I out of time, Mr. Chair? I think I am.

**The Chair:** You're almost out.

Thank you, Mr. Masse. We'll have the chance to get back to you a little later on.

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

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

I'm sorry, but I'm having technical problems here.

To Madame Lovrics, you mentioned this law's ability to be in compliance with Canada's agreement with the United States and Mexico. A diagnostic maintenance or repair exception does not appear in the list of technological protection measure exemptions permitted under the Canada-United States-Mexico Agreement. CUSMA would allow Canada to adopt further exemptions, but only for non-infringing uses of specific classes of works and if an actual or likely adverse impact on those infringing uses is demonstrated by substantial evidence in a legislative context.

You mentioned that, in your opinion, Bill C-244 right now doesn't necessarily pass the test, and we might be liable to certain challenges from our trading partners if this legislation is passed. Is that correct?

**Ms. Catherine Lovrics:** That's correct. Article 20.66.4(h) of CUSMA provides that exceptions and limitations must be based on an actual or likely adverse impact on non-infringing uses, having been demonstrated by substantial evidence. As it currently stands, the bill would apply to any product without qualification. Therefore, in our view, a product-specific approach is appropriate under CUSMA.

Then, there's also article 20.66.5 of CUSMA, which provides that any new exceptions or limitations to circumvention laws shouldn't impair the adequacy of legal protections or the effectiveness of legal remedies against circumvention of effective technological measures. Our concern on that front is that the current approach—with respect to permitting devices and technologies, so the exception being focused on, basically, permitting anti-circumvention tools to be sold on to the market, as opposed to enabling a service-provider model—in our view, raises concerns under that provision.

• (1205)

**Mr. Brad Vis:** In your opening remarks—

**The Chair:** Mr. Vis, I'm sorry to interrupt, but it appears you don't have your headset mike selected.

**Mr. Brad Vis:** Let me run a test right now.

**The Chair:** I think that's better. I'm just looking for the clerk.

**Mr. Brad Vis:** Test. Now I'm working.

**The Chair:** Okay. You're good to go.

**Mr. Brad Vis:** Thank you.

In your opening remarks, you suggested that you were generally in support of the bill, subject to the amendments that you're going to bring forward to us. Is this bill salvageable, from a trade perspective, with certain amendments, or do you think we should be opposing this bill because of the trade ramifications it poses, as you just outlined?

**Ms. Catherine Lovrics:** We believe it's salvageable, provided amendments are made. We will be providing amendments that would aim for a regulatory approach. Then, should the government not proceed with a regulatory approach, we would be proposing amendments to the bill that would effectively address fairness factors generally speaking, some of which Mr. Hatfield spoke to: putting parameters around what "repair" means—diagnosis, maintenance and repair—blocking that in and setting out factors that would basically address what classes of products would benefit from the right to repair in a manner that is consistent with both CUSMA and the WIPO Internet Treaties, including whether there is substantial evidence to demonstrate that, in fact, circumvention is needed in order to facilitate the right to repair in a manner that does not result in infringement.

**Mr. Brad Vis:** Okay. One of the things that I, as a legislator, am struggling with is that every time we discuss this bill, I'm hearing from another set of witnesses with industry-specific concerns. If we're applying a regulatory framework for a bill with such broad-reaching implications—and I'm not necessarily opposed to this bill, but I want to get this bill right—that's putting a lot of work on the public servants responsible for the Competition Act and probably a whole host of other legislation that products are subject to in Canada. Based on your legal experience, what type of time frame would the government need to actually implement a regulatory framework to protect the right to repair if, indeed, we did go down that path?

**Ms. Catherine Lovrics:** It will depend on how quickly the government moves and what classes of products are identified initially for the purpose of regulation. In our submissions, we were very much aligned with a regulatory framework as being appropriate, but should that not be the direction the government opts for, we are providing alternate amendments to the bill to at least address the high-level concerns.

And the other thing to mention with regard to the framework is that the Copyright Act is not a full solution. We agreed with Wilson Miao, when he made comments related to this, that this is just one piece of the puzzle.

I think one of the other misapprehensions we're hearing here is that this will somehow force a handshake. In fact, it won't. The current approach under the bill, which is a major concern, is that it will enable a market to basically hack and create circumvention tools that will not necessarily be provided by the manufacturers. I think that the goal here is to facilitate a service industry that will enable the right to repair and then to look to other forms of regulation to support that right to repair in a meaningful way.

**Mr. Brad Vis:** Okay.

Mr. Chair, is Mr. Miao present in the meeting, by any chance?

**The Chair:** No, he is not.

**Mr. Brad Vis:** Okay. I really wish he were here, because this is essential discussion on his bill. I don't know why he wouldn't be present for the most consequential thing he'll likely ever be doing as a parliamentarian. That's unfortunate. I'd love to share my time with him so that he could respond to that, but unfortunately he's not here. Maybe we could invite him to attend future meetings.

How much time do I have left?

• (1210)

**Mr. Han Dong:** I have a point of order.

**The Chair:** You don't have—

**Mr. Han Dong:** On a point of order, Mr. Chair.

**The Chair:** Yes, Mr. Dong.

**Mr. Han Dong:** I have a lot of respect for Mr. Vis. I just wonder, because I don't think this was ever brought up, if we have the same standing order here that we cannot comment on [*Inaudible—Editor*].

**Mr. Brad Vis:** No, there is none.

**Mr. Han Dong:** There is none.

**Mr. Brad Vis:** Come on, Mr. Dong. I'm working well with Mr. Miao on this bill. I want to get it right.

**Mr. Han Dong:** Right.

**The Chair:** Mr. Vis and Mr. Dong, I don't think we do have the same standing order as in the House. But in any respect, MP Miao has testified before this committee, and I can assure you, Mr. Vis, that I'm pretty sure he's listening intently to the testimony, because he cares greatly about this bill and getting it right—as you do too.

**Mr. Brad Vis:** He does but [*Inaudible—Editor*].

**The Chair:** That is all the time you had, Mr. Vis.

We will now turn to MP Gaheer for five minutes.

**Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.):** Thank you, Mr. Chair, and to the witnesses for appearing before the committee.

My first questions are for Mr. Lawford. In the previous meeting on Bill C-244, the committee heard from manufacturer representatives about how TPM measures can be circumvented for unauthorized purposes, for example, to improve the performance of vehicles and equipment in a manner that may not be entirely safe. My question is to what extent, if at all, would Bill C-244 make this practice more common?

The reason I ask this question is because there's no way that the Copyright Act is the only thing preventing unauthorized circumvention of TPMs. There have to be other laws and regulations in place as well.

**Mr. John Lawford:** Right. I understand that there are occasionally safety regulations and other things that might also be covering the situation. But, Mr. Gaheer, I think the trouble is that the copyright TPMs are affecting real world products, and it's kind of an overreach, from our point of view.

When you're taking the copyright TPM violation out of repair, what you're really doing is removing the ability of manufacturers to sue people out of existence. Really, that's what we're here for today.

What we're saying is that there is more benefit to allowing more repair rights in consumer products and that having the TPM extend to software and computer programs as copyrightable things—and yet those computer programs are now in what we used to use as regular devices like combines—is causing consumer problems.

I'm focusing on the Copyright Act, because the Copyright Act is being used to squash consumer choice and innovation in product markets, although I understand there could be sectoral concerns with auto safety or health devices.

I don't know if that answers your question. That's my best effort.

**Mr. Iqwinder Gaheer:** That answers it partially.

I think my question is whether you think this bill will make it more common that unauthorized circumvention happens. In my understanding of this environment, it's probably already happening. This bill isn't the only thing preventing it not from happening.

**Mr. John Lawford:** In...?

**Mr. Iqwinder Gaheer:** Sorry—in the Copyright Act.

**Mr. John Lawford:** No, but I guess when people say that things are unauthorized circumventions, they're referring to the unauthorized part being circumventing the TPM or causing some other kind of harm to the manufacturer. I think that's where the discussion gets a little confusing. As long as people pull those two apart—and we're talking about whether it otherwise harms the market or safety, apart from violating the TPM—then I think we'll have a more beneficial conversation.

Again, I don't know if that answers your question.

**Mr. Iqwinder Gaheer:** Yes, I think that's exactly the point I was trying to make.

The second question is that under the Copyright Act it's up to the copyright holder to enforce their rights, including provisions related to TPMs: Is it common for rights holders to seek enforcement related to TPMs and circumvention of TPMs?

**Mr. John Lawford:** Well, they certainly spend a lot of effort on trying to defeat bills like this, but yes, there have been situations where manufacturers have gone after especially aftermarket providers of auto parts and medical device secondary market manufacturers. They do ask for either injunctive relief or for damages, which tends to knock those folks out of the market. I don't have examples for you in as many consumer product markets, or specific examples, but I can try to find them.

• (1215)

**Mr. Iqwinder Gaheer:** That's great. Thank you. You could provide that to the committee afterward.

**Mr. John Lawford:** I will.

**Mr. Iqwinder Gaheer:** My third question is about computer programs embedded in products, which are typically licensed to consumers because companies can get fees for them every single year. To retain the right to use the program, consumers usually must comply with the licence, which usually requires that they can't circumvent TPMs, for example. 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 TPM.

Do you think Bill C-224 goes far enough to overcome the challenge of licence restrictions?

**Mr. John Lawford:** It may not, and that's where we get into concerns about provincial jurisdiction. If you're talking about consumer items bought in a particular place, I'm not sure where you would put that: perhaps in the Competition Act to make sure the consumer has a right to in effect override that kind of stipulation in a contract or licence.

**Mr. Iqwinder Gaheer:** That's great. Thank you.

I saw Mr. Hatfield nodding as well.

Mr. Hatfield, do you have anything to say about that?

**Mr. Matthew Hatfield:** Yes. To your point, people are going to make modifications to their devices no matter what we say here. Some of those people are going to be contravening the rules, but we're not stopping the most sophisticated users by denying basic repair rights. We're denying repair rights to ordinary law-abiding folks.

The portion that I think you're speaking to, which goes beyond what we're doing here today but needs to happen, is that we need to reaffirm a reasonable, basic set of consumer rights and expectations over the things we own. It's the same way that if I owned a washer or a car or a phone 40 years ago, I would have had a pretty reasonable set of expectations about what I was entitled to.

That needs to be brought back into the law for the digital age, and part of what we're getting from Bill C-244 and from the broader right to repair is redressing that balance, because things are swinging further and further against an ordinary person around these devices.

**Mr. Iqwinder Gaheer:** That's great. Thank you so much.

**The Chair:** Thank you, MP Gaheer.

[*Translation*]

I now give the floor to Mr. Lemire for two and a half minutes.

**Mr. Sébastien Lemire:** Thank you, Mr. Chair.

I would like to follow up on what Mr. Hatfield just said and take advantage of the door opened by my colleague Brian Masse in relation to the broader context. I also see an opportunity for reflection.

Mr. Hatfield, is the Copyright Act ripe for an in-depth review?

[*English*]

**Mr. Matthew Hatfield:** Absolutely, and unfortunately, some things that are happening to it right now are in our view a disaster for consumers. The extension of copyright from a default of 50 years to 70 is a really bad thing for ordinary people.

It would be well past time for us to look at the act more generally and to see where it is or is not serving its purposes, because without a general interest lens on it, the act tends to be abused by companies to further and further disadvantage consumers.

[*Translation*]

**Mr. Sébastien Lemire:** Indeed, that is a legislative requirement.

Mr. Lawford, should the context of the Copyright Act undergo a broader review?

**Mr. John Lawford:** Of course. I believe the act provides for a review every five years.

**Mr. Sébastien Lemire:** Since that has not been applied in a long time, I think there is an opportunity here.

**Mr. John Lawford:** We can see that the current act is greatly inconveniencing consumers, especially in terms of the technical safeguards we are talking about today.

**Mr. Sébastien Lemire:** Ms. Lovrics, do you have an opinion on the general context of the Copyright Act?

[*English*]

**Ms. Catherine Lovrics:** The statutory review every five years opens up the entire act for review. The last review where the reports from the committees were issued was in 2019. I'm not sure what the current timing is, but I would expect it would be relatively soon that there would be a call for the next five-year review.

[*Translation*]

**Mr. Sébastien Lemire:** Absolutely.

Mr. Chair, since I went a little over my time in the previous round of questions, I'm going to stop here.

**The Chair:** Thank you, Mr. Lemire.

Mr. Masse, go ahead.

[*English*]

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

I was actually here on that committee. There's a lot of material in there if anybody wants to spend the next month going over it. We travelled across Canada and it was extensively discussed.

Mr. Lemire has a good point. Maybe we should get an update at some point.

Madam Lovrics, I want to give you an opportunity to respond. This has been going on for a while. Maybe you can reflect it through the OEMs and why there isn't more consensus to deal with this issue.



My bill was 10 years ago. Since then...we have now a Liberal bill in front of us. There's a Conservative bill. I know the Bloc Québécois have spoken about concerns about the treatment of consumers, so this seems to be gripping all political parties in Ottawa now.

What can it take, or how can we get a better response from manufacturers to get some reasonable improvements?

• (1220)

**Ms. Catherine Lovrics:** Again, I think the Copyright Act may not actually be the mechanism that will achieve that. The reality is that the Copyright Act deals with rules against circumvention of TPMs.

There are things like Bill C-231, which is an act to amend the Competition Act and focuses on making diagnostic information available as well as diagnostic tools. If you look to the U.S., there's a model right to repair act, which, I think, was the act you were referring to in New York as well as Massachusetts.

That type of a framework is outside of the scope of copyright. That's the punchline there. It's not under this umbrella.

**Mr. Brian Masse:** Okay. That's helpful.

Here's what my concern is. Those are good examples. Two other states are doing their own thing. Are we going to have every province in Canada doing their own thing and have 49 states doing their thing? It seems like a big mess.

From your association's vantage point, is there an understanding or a greater appreciation for the sensitivity of this issue across North America and particularly for Canada?

**Ms. Catherine Lovrics:** The Intellectual Property Institute of Canada obviously looks at things through an IP lens and not through another lens, so our focus really was on the IPP specifically on this bill.

What I can say is that when we were undertaking our research, we did look to the U.K. and the EU model, which I think I mentioned earlier. The EU really is aimed at a handshake. It's outside of the scope of copyright.

What I will flag there, and to underscore it, is our basic perspective on the bill is that even in that model, it is specific to certain categories of products. It's not blanket and across the board.

**Mr. Brian Masse:** Thank you very much.

Thank you, Mr. Chair.

[*Translation*]

**The Chair:** Thank you, Mr. Masse.

Mr. Généreux, the floor is yours.

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

I thank all the witnesses.

Mr. Hanvey, I would like a clarification on the data you mentioned.

I have a car from 2009 that does not produce data, unlike today's digital cars. Who owns the data associated with a million dollar tractor or a \$50,000 or \$60,000 car?

[*English*]

**Mr. William Hanvey:** That is the fundamental question before us.

I would highly recommend that you hang on to your 2009 vehicle, by the way.

**Voices:** Oh, oh!

**Mr. William Hanvey:** However, today's vehicles are technological wonder pieces. They generate 25 gig an hour of data that is received by the OEMs telematically. It's transmitted wirelessly. I wrote an editorial several years ago in The New York Times about how your vehicle knows how much weight you've gained. There are even data points for when you sit on your seat. Your seat is a scale in order to properly moderate the airbag deployment. That type of data is transmitted back to the original equipment manufacturers, unbeknownst to the consumers.

There are really two issues at play here. We are advocating for the consumer to be able to choose where their vehicle is being repaired by having the independent repair shop access repair and diagnostic data. The second is the awareness of the consumer of this data that could potentially be sold by the automakers, unbeknownst to the consumer.

Who owns the data? Right now, the consumer does not have a say in terms of where that data goes, so I would ultimately say that at this point, from an automotive perspective, that telematic data is very much owned by the original equipment manufacturer.

[*Translation*]

**Mr. Bernard Généreux:** I recently saw a news report about a Quebec car owner who had sold his vehicle, which ended up in the United States. The reporter went to see the original owner of the vehicle, as well as the new owner. From an application on his phone, the original owner was able to lock, unlock and start the vehicle, which was located far away in the United States.

That kind of a situation is why I decided to keep my old car. Given what these technologies do, shouldn't the information generated by the purchased asset also belong to the owner?

Witnesses have told us about the aftermarket parts industry, local garages and mechanics. Since my car is no longer under warranty, I can go to the local garage. Those witnesses are concerned that this industry will disappear.

Do you share that view?

• (1225)

[English]

**Mr. William Hanvey:** That's a significant threat to the independent repair shops today, and on the data, there are actually two issues, as you pointed out.

Number one is the ability to access the data in order to properly repair and maintain that vehicle, and then there is the second issue about parts utilizing software specific to that vehicle itself. In other words, will you be able to put into a vehicle a replacement part that is code-associated with it that the OEMs would not approve? They would actually reject that part, even though that part may be made by the same supplier. If the OEMs don't allow that access with that coded part to be put on, it would be almost like an organ rejection for an organ transplant.

There are two things going on: the access to the data and, secondly, part specifics that are coded to the specific automobile.

[Translation]

**Mr. Bernard Généreux:** Do you think the bill, in its current form, has any benefits or corrects what is currently happening? From the perspective of the issues we've just discussed, how do you see the bill?

[English]

**Mr. William Hanvey:** I think the view in many ways addresses some of the underlying issues that we as an industry have been advocating for on behalf of the consumer for a very long time.

Is there always room for improvement? Certainly from an industry perspective everybody would like to include their particular portions, but from an overall perspective, I think it's a very important piece of legislation for consumers in Canada.

[Translation]

**Mr. Bernard Généreux:** Do I have any time left, Mr. Chair?

**The Chair:** No, Mr. Généreux.

**Mr. Bernard Généreux:** Thank you.

**The Chair:** There may be some time left at the end. Thank you.

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

[English]

**Mr. Andy Fillmore (Halifax, Lib.):** Thank you, Chair.

Thank you to the witnesses for giving us your time and expertise today.

We heard from Mr. Hanvey that owners, not manufacturers, must be the owners of their own data. We heard from Mr. Dickison that owners must be able to circumvent TPMs to effect repairs, not modifications, where and how they choose. It's literally the right to repair. Mr. Hatfield had some powerful language about protecting the rights of consumers over the profit of corporations. I agree with each of these propositions.

I did disagree with one of the amendments proposed by Ms. Lovrics, which seemed to want to shift the burden of proof from the owner when it comes to circumventing a TPM. I believe the burden

really should be with the manufacturer to show why and when the TPM should not be circumvented.

In other words, the sovereignty of individual must always come before the sovereignty of the body corporate. That's where we need to get to with this bill. We want to get the bill to a place that achieves those things.

Mr. Hanvey and Mr. Lawford, how can we ensure that TPM circumventions ensure the right to repair, but protect against potentially dangerous modifications? What do we need to change in this bill to achieve that?

Mr. Lawford, you're in the room. Would you like to go ahead?

**Mr. John Lawford:** Again, I think you have to go back to what we're talking about in terms of what "repair" means. If the concern is that repairs that go beyond the original manufacturers' stipulations for how the product is supposed to operate so that it's over-clocked or modified in some way that's not in the original specifications, I can see that being offside.

That kind of definition of "repair" to restoring to the manufacturers specifications is a good modification, I believe.

Does that answer that part of the question?

• (1230)

**Mr. Andy Fillmore:** It does. Thank you, Mr. Lawford.

Mr. Hanvey.

**Mr. William Hanvey:** I would concur.

We're primarily interested here in the diagnostic and maintenance data. We're not necessarily interested in improvements or enhancements to the code itself or to the underlying code that's associated with the vehicle. We want the repair and diagnostic data specifically in this particular piece of legislation.

**Mr. Andy Fillmore:** Okay. Thank you very much.

Mr. Hatfield, does the bill as drafted ensure consumers will own and have access to their own data in absolute terms in the way that they want or do you feel that amendments are required right now?

**Mr. Matthew Hatfield:** I don't think this bill covers that in itself. I think we need changes under privacy reform with Bill C-27 to also guarantee that.

I do want to flag something in terms of the question of what a repair is. I think focusing on original functionality might be worth looking at, rather than the exact state that the manufacturer handed it off in. Looking at the use case where a manufacturer goes out of business or stops supporting a device, you might need to “modify” the device just to provide security protection or get it up to the standard that the device is intended to operate in.

We should be looking at the consumer's relationship to the device and making sure that looks more or less the same—not necessarily the manufacturer's code.

**Mr. Andy Fillmore:** Good. I was hoping to uncover some discussion around the distinctions between repair and modification. That's extremely helpful.

If there's a deeper dive on it that you feel you want to submit to the committee for the record, we'd be most grateful indeed, Mr. Hatfield.

Ms. Lovrics, you are seeking three amendments. I want to ask you about your exemptions first. Then if there's time, come back and list off the three amendments, if you could.

To start with in this question, which exemptions are you seeking? I think you mentioned several classes of products? Can you talk to us about the exemptions you're seeking, please?

**Ms. Catherine Lovrics:** We would set out a test for what products qualify. Under the proposal we were aligned on, that would be pushed to a regulatory approach. If that's not the case, we would recommend that the legislation minimally set out the factors that should be considered in exercising the right to repair, so that it's not a blanket.

To be clear, IPIC approaches this from a technical perspective. We're looking at treaty compliance and the language of the bill. We're not prescribing what products should or should not qualify. We are prescribing what factors should be considered in assessing what products should or should not qualify.

**Mr. Andy Fillmore:** Okay. Thank you.

Could you restate the three amendments that you mentioned in your testimony earlier?

**Ms. Catherine Lovrics:** We will be following up with a brief that encloses the amendments, but the first, from a 30,000-foot level, is to put parameters surrounding what it means to repair. The approach the committee aligned on was approved specifications, or original, or any changes to those specifications authorized for a particular product, as opposed to a focus on functionality.

Admittedly, the committee didn't look specifically at the issue of functionality versus specifications, so we could certainly take that away and weigh it.

The second, which is very important, is shifting from permitting technology or devices, so an amendment.... There are three types of prohibitions against circumvention. The first is direct circumvention—the consumer can do it. The second is service-provider circumvention. The third is whether or not you can put anti-circumvention technologies—basically, hacking devices—onto the market. The current bill is the first and the third, but not the second.

We would like the bill to be amended so that it pivots and does not permit circumvention technologies to be put on the market, but instead provides an exception for service providers, to enable the right to repair. The current approach, from our view, in terms of technologies, raises treaty compliance concerns and is also out of step with our trading partners.

Moreover, per the witnesses before this committee, most witnesses spoke to service providers, and right now the bill does not enable that at all.

The third is to put parameters, which I mentioned, around what it means to qualify as a consumer product, or as a product, under the bill. We set out various factors, aimed, really, at addressing treaty compliance, including.... I take your point about the way the approach is, but the reality is that our treaty obligations do require that the TPM be demonstrated to have a substantial adverse effect on non-infringing uses of copyrighted works. I do think that with the way our treaty obligations stand, at least currently, that is a requirement.

That is one of the factors, namely, that it would in fact be a right to repair and would not enable non-infringing uses; that the market for the work is not adversely affected; and that we would also encourage there being some general catch-all around not creating concerns surrounding consumer health, safety, and environmental concerns, cybersecurity risks, and impairing security safeguards or exposing confidential information, to the extent that that factor can be weighed.

● (1235)

**Mr. Andy Fillmore:** Thank you very much.

I think I'm out of time.

**The Chair:** Yes, you are, Mr. Fillmore. Thank you very much.

We'll now turn to Mr. Fast, for five minutes

**Hon. Ed Fast (Abbotsford, CPC):** Thank you very much to all of our witnesses.

Ms. Lovrics, you referenced the importance of the government's putting into place a broader framework for the treatment of TPMs and other related IP, including consumer information. Section 41.21 of the Copyright Act already gives the power to government to effectively make changes to Canada's anti-circumvention rules.

The government, so far, has chosen not to, and has effectively left it to individual MPs, such as *messieurs* May and Miao, to bring forward specific legislation.

When it comes to setting up a framework, I agree with you that there has to be a broader framework that more comprehensively addresses this challenge. Do you prefer that it be done through legislation as we have before us—Bill C-244—or that it be done through regulation, which the government already has the power to do?

**Ms. Catherine Lovrics:** First and foremost, the committee is aligned that this be done through regulation. However, if that doesn't occur—if the political will is not to move to a regulatory-making approach to what products qualify—we do think it is imperative that the legislation be updated to set out a framework that addresses many of these concerns.

**Hon. Ed Fast:** Your testimony, Ms. Lovrics, was that Bill C-244 may violate our CUSMA and WIPO treaty obligations.

Did I get your testimony right?

**Ms. Catherine Lovrics:** That is correct. We are concerned that, as currently drafted, Bill C-244 and the approach it takes would not adhere to our treaty obligations.

**Hon. Ed Fast:** Let me turn to Mr. Lawford.

Mr. Lawford, do you agree with that assessment?

**Mr. John Lawford:** I'm not as much of an expert as Ms. Lovrics, but I will say that this is the chickens coming home to roost. We have a very aggressive copyright protection scheme that we've agreed to internationally and that I believe the tide is turning on. Consumers and others are starting to see that it's too aggressive. For example, we have people today saying that the hard goods they need to grow food in this country can't be used, because they'll be bricked, and they can't lose those days. That's overreach.

Now, I can't change the international treaties, but what I'm seeing is that any threat to the technical protection measures is seen as some kind of existential threat to the entire copyright regime. There have to be limits somewhere. We're trying to find a place in this bill where it can give some more wiggle room to consumers and to small businesses to actually be able to use the products they paid for and not be tripped up by copyright law. Really, international treaty or not, I think we've got to have some scope here, or this gets ridiculous.

**Hon. Ed Fast:** Regardless of our international treaties, we know that countries around the world are grappling with this very same issue.

I have a question for both Mr. Hanvey and Mr. Lawford.

When you survey the global environment for this kind of legislation—for example, in places like Australia, the EU, the United States, the U.K. or Japan—what is the rest of the world doing, broadly speaking? Are we going to be left way behind in keeping up with the changes within the copyright environment?

• (1240)

**Mr. John Lawford:** I know that the European Union likes regulation. That's the way they're handling this. They believe it's outside for international treaties like WIPO. I think we can move to provide more of a repair right, and there is a middle ground here; there is a middle ground.

The other countries that you mentioned I'm afraid I'm not as familiar with. I know that this debate is mostly going on at the state level in the United States because of their gridlock at the federal level.

**Hon. Ed Fast:** Go ahead, Mr. Hanvey.

**Mr. William Hanvey:** Certainly. Thank you.

There are numerous initiatives around the globe. You've mentioned many of them. There's the EU. South Africa is another. Australia is another one. Obviously, there's Canada and the United States. We see this as a growing consumer issue as the vehicles become more technological on the automotive side. We are in the process of working with like associations around the globe to come up with a global positioning statement for right to repair. That's under review by some key associations. We should have that by the first of the year.

It is very much a global concern. We are working with our brothers and sisters around the globe in order to bring light to this very important consumer issue.

**Hon. Ed Fast:** Ms. Lovrics, I have just one last question. In your testimony, you suggested that you're looking for legislation to provide for case-by-case assessments. Would you care to expand on that?

**Ms. Catherine Lovrics:** That would be the regulatory approach. There would be a framework set out. Certain classes of products would qualify for the right to repair, weighing different factors set out in the framework.

From our perspective, and considering what witnesses have put before this particular committee, it's pretty clear that a one-size-fits-all approach is challenging, owing to the very different considerations that different product categories have. You've heard about medical devices. You've heard a lot about e-vehicles and vehicles generally. You've heard about farm equipment. You've heard a limited amount about household appliances. All of those categories, not to mention the swath of any other products that would potentially be subject to the right to repair, would be painted with the same brush.

Our concern is that basically that's an inappropriate approach. Leaving aside the fact that it doesn't meet our treaty obligations from a health, safety, environmental and cybersecurity perspective, all of those classes of products raise different issues and different concerns. Treating them all equally is a concern.

**The Chair:** Thank you, Mr. Fast and Madam Lovrics.

We'll turn now to MP Erskine-Smith for five minutes.

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

I want to start with Ms. Lovrics. My washing machine is broken. I've been at the laundromat. I don't mind being at the laundromat, because there is a nostalgia to it. I was at the laundromat on Concession Street in Kingston throughout my studying of politics and law—I studied there for seven years—so I don't mind being at my local laundromat. I see constituents and have wonderful conversations.

However, I'd like to get my washing machine repaired. It's a Whirlpool Duet, I think, and it's many years beyond its warranty. Surely, as a consumer, I shouldn't be restricted to contacting Whirlpool and not having some service repair person who can fix it.

I guess when I'm reading the legislation and it says specifically that a TPM would not.... It says:

Paragraph 41.1(1)(a) does not apply to a person who circumvents a technological protection measure that controls access to a computer program if the person does so for the sole purpose of diagnosing, maintaining or repairing a product in which the computer program is embedded.

Why in the world would we care about.... Maybe going in the opposite direction, shouldn't we care? Why would we want to prevent a marketplace where individuals would diagnose, maintain or repair their products?

**Ms. Catherine Lovrics:** My dishwasher is broken right now, so I can completely empathize with you.

I don't think we're proposing that the right to repair, especially given that this is part of the mandate letters, not be permitted. We're proposing amendments to that provision. You're dealing with the first provision, which is the direct right to repair. Our submissions, which will follow very shortly, are the very small changes to the language in that provision—

• (1245)

**Mr. Nathaniel Erskine-Smith:** What language? I want people to be able to diagnose their problem. I want them to be able to maintain or repair their device.

What language are we going to change?

**Ms. Catherine Lovrics:** I will read our current proposal as follows: "repairing such consumer product so that it performs according to its original specifications and any changes to those specifications authorized for that consumer product".

I think your question raises two issues. One is that we're talking about a washing machine and a dishwasher, but this particular provision would also apply to medical devices, as well as vehicles and the rest of it, and different factors raised.

One piece is let's figure out what categories of product should qualify, and the second piece is ensuring that it's abundantly clear that the right to repair is, in fact, just that. It's the right to repair the product and not to mod it.

Admittedly, a washing machine may not raise the same modification issues as vehicles that have emission controls or other—

**Mr. Nathaniel Erskine-Smith:** Hang on a second.

Copyright exists for a purpose, and it doesn't exist for consumer protection purposes. It doesn't exist for health protection purposes. Copyright exists for a particular purpose. It should protect those particular purposes. If there are other consumer protection issues to be resolved, they can be resolved in a different forum and via different regulations and legislation.

However, for this purpose, the core idea is that copyright protection—which exists for particular reasons—shouldn't get in the way of consumers diagnosing and repairing their goods—

**Ms. Catherine Lovrics:** We agree.

**Mr. Nathaniel Erskine-Smith:** I'm glad, but I would say those other ancillary issues should be resolved, and copyright is not designed to protect those ancillary issues.

The second piece I want to get to is.... I don't mind watching YouTube videos. I don't want to spend a lot of time watching YouTube videos to repair my devices. I don't have a lot of time in my life. I have two kids. I have a six-year-old and an almost-three-year-old. I don't have time. I'm generally a pretty busy member of Parliament. Many people are busy with their own lives.

I'm not going to repair my washing machine. I'm not going to repair my phone when the battery needs to be replaced. I'm going to go to a third party service.

When we look at the second section, proposed subsection 41.121(2), why do we not, as a matter of consumer protection and lowering costs for consumers, want to empower a repair market?

**Ms. Catherine Lovrics:** I think maybe you've misapprehended our submission. First, we agree with the right to repair. The problem is with the way this bill is currently drafted. Amendments are required, so that it doesn't apply to everything.

The second point is that the bill as drafted does not enable service providers. There are three types of circumvention prohibitions. One is for direct circumvention, two is for service providers and three is for technology or devices. The current bill does not permit a service provider. It permits you, as an individual, to tinker with your dishwasher and it permits third parties to come and hack it and try to figure out how to tinker with your dishwasher, and then put a device or tool on the market so that you can do it yourself.

We agree that there should be an aftermarket service provider industry. The bill doesn't actually accomplish that.

**Mr. Nathaniel Erskine-Smith:** It does, though, because proposed subsection 41.121(2) creates the possibility of individuals manufacturing, importing or providing technology, devices or components for the purposes of circumventing a TPM for diagnosis, repair and maintenance.

Proposed subsection 41.121(1) is specifically for an individual to do so. Of course, as an individual, I can contract that out—

**Ms. Catherine Lovrics:** It's a technical—

**Mr. Nathaniel Erskine-Smith:** The two provisions, read together, would absolutely create a repair market.

**Ms. Catherine Lovrics:** They don't, actually. This is a technical issue. To be clear, I'm speaking to you from a legal technical perspective.

There are three circumvention provisions within the act. One says you can do it yourself—direct circumvention. Two says service providers can circumvent. Three says you can sell devices that help to circumvent. The bill only deals with one and three. It does not have an exception for two. There's actually a gap in the bill—

**Mr. Nathaniel Erskine-Smith:** We should add an exception for two, to make it absolutely crystal clear.

**Ms. Catherine Lovrics:** Yes, and remove the exception for technology devices being put onto the market.

The challenge we have with respect to the current bill is that you're permitting anti-circumvention devices to be put on the market, purportedly for the purpose of facilitating repair, but once they're on the market they can be used for any purpose. We support shifting the focus to the other technical provision that would permit service providers to come into your home and to fix your dishwasher. The bill, as drafted, doesn't actually achieve that.

**Mr. Nathaniel Erskine-Smith:** I got you, so I think we're in agreement. I really appreciate the answers.

We want a situation where an individual has a wholesale right, so long as it's for repair, diagnosis and maintenance. We want a system where we are empowering a service market to deliver that repair market for maintenance, diagnosis and repair. We want to make sure there is technological innovation in this space, but we don't want that innovation to be used for anything other than diagnosis, maintenance and repair. But, otherwise, the way we're going in the right to repair is as fulsome as can be realized.

• (1250)

**Ms. Catherine Lovrics:** Please review our proposed amendments. There's a lot of nuance in what I'm saying.

The short answer is that we don't agree with technology being put on the market. We do agree to pivoting to service providers. We also agree with amending the bill such that it would facilitate a right to repair, but that there be some lens on what consumer products qualify. This committee has heard from various industries related to a series of different risks and concerns, based on the industry.

From our perspective, the bill should reflect some form of differentiation. There shouldn't be a one-size-fits-all approach. My dishwasher raises very different concerns from a self-driving vehicle—which I don't have, but wish I did.

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

Joël, I'm probably out of time here.

**The Chair:** You are, but we might have some more time at the end, Nate.

**Mr. Nathaniel Erskine-Smith:** I appreciate that. I have one other question if there is time. Thanks.

**The Chair:** We'll get back to you.

Monsieur Lemire.

[*Translation*]

**Mr. Sébastien Lemire:** Thank you, Mr. Chair.

Mr. Dickison, seeing you on the screen, I am noticing that your non-verbal language is especially communicative. I think you would like to respond to what has just been said or to some of the other comments you have heard today. So I'd like to give you the opportunity to do that.

[*English*]

**Mr. Joshua Dickison:** Thank you. I'm in the comfort of my own office.

I'd just like to speak on behalf of libraries. I don't think we're getting exactly our point across by saying that we just want to repair the services and the technologies that we provide access to, be they ebooks, computers or Wi-Fi. That's a very important part of what libraries need for access to right to repair.

We are also the grassroots, the foundation, of so much innovation that goes on. So, many times I'm sitting as the copyright officer back here, and a keen student comes up and says, "I have this great idea. I need to do X, Y and Z." We are conservative, a risk-averse institution. I have to provide the information about copyright owners as both users and owners of copyright content. I don't like being that pail of cold water on innovation.

That's a lot of what this bill has been doing. We have a decade of examples of squashing so much innovation or burying it in the YouTube videos, or wherever it is that people are finding it. We would like to give a framework for research, education—not just commercial or non-commercial, but outside that prescriptive regulatory process. We need something broader for our education.

I'm quite sure Alex Kohn from McGill has lots to offer here as well.

Thank you for the opportunity.

[*Translation*]

**Mr. Sébastien Lemire:** Ms. Kohn, are there other aspects of library science involving the Copyright Act that could be improved?

[*English*]

**Ms. Alexandra Kohn (Copyright and Digital Collections Librarian, McGill University, Canadian Federation of Library Associations):** Absolutely.

One thing that was brought up was the possibility of a regulatory framework for this exception. My concern, and I think the concern of our community, is that it's not going to get to those research and innovation possibilities that we have, that we provide to our users. We don't know where research and innovation is coming from next. For lots of the products and information that we provide access to, it's not large corporations that are providing us access to these products. Those corporations do go out of business. Those products do become unusable. They become damaged. Under current legislation we can't repair them to provide access to that information in the same way we would be able to if, for example, that information were available in an analog form, in a book or something similar.

I would like those concerns to be taken into account when we're talking about research and innovation and where the next big thing that's going to help consumers and users of all kinds comes from.

Thank you.

[*Translation*]

**Mr. Sébastien Lemire:** Thank you very much.

**The Chair:** Thank you very much.

Mr. Masse, go ahead.

[*English*]

**Mr. Brian Masse:** Mr. Dickison, it's ironic that a washing machine was brought up, which is one of the most modified devices that we use. Modification devices include everything from socks to toilet paper—a whole series of different things.

What's your concern about lawsuits and those types of intimidation?

We've had a lot of testimony on the Copyright Act with regard to students and other innovators. We have scare tactics when it comes to some of the safety and other things that are professed to be concerns out there, but we also actually have intimidation from a legal aspect.

Can you speak to that, please.

• (1255)

**Mr. Joshua Dickison:** Sure.

As a university and academic institution, we made great efforts to engage with our commercial community around us for innovation and research. We want to engage with major corporations to help fund our students and our research. That's what we need to make this research happen and be impactful. We are not going to have those relationships with larger corporations that are going to come into our institutional setting and see us as a risk.

We still need to make those innovations and research dollars impactful, but we need to draw in the dollars to help support that. On these types of technological protection measures, broadly speaking, section 41 in and of itself stifles that ability for us to reach out to major industry and innovate the way we should to compete with jurisdictions like Japan and the U.K. with their text and data mining for commercial purposes that have come in. There are lots of areas where we are being held back.

**Mr. Brian Masse:** Thank you.

I have a really quick question for Mr. Hanvey before I run out of time.

I have the United States right behind me: two miles behind me is Detroit, Michigan. Would it be better for us to have a uniform right to repair for auto and aftermarket vehicle servicing for all of North America for consistency, given the fact that we trade and go back and forth personally and economically?

Is that the position of your organization, or has that not even been reached in terms the aftermarket in of Canada and the United States?

**Mr. William Hanvey:** Ideally that would be a perfect world, sir. Just to have a joint agreement, legislation that specifies for the automotive industry, would be an ideal situation.

**Mr. Brian Masse:** Especially with data sharing coming, and some autonomous and non-autonomous vehicles, they're going to have to change service providers amongst the telecommunications companies as well to make sure of the consistency of safety in driving.

**Mr. William Hanvey:** That's correct.

Even with the rental car industry that goes back and forth between the borders, the personal information is carried over the borders as well.

I agree fully.

**Mr. Brian Masse:** Thank you.

Thank you, Mr. Chair.

**The Chair:** Thank you very much.

We'll now turn to Mr. Perkins for a very brief question, and then MP Erskine-Smith.

**Mr. Rick Perkins:** Thank you, Mr. Chair.

I have a quick question for Mr. Dickison and Ms. Kohn.

I understand obviously the speed and the obsolescence issue for libraries and archives across Canada. In a previous life I stored some three quarter inch floppy disks with the National Archives of Canada. So I don't know what they're going to do with those from a previous minister's time during the Mulroney years.

How do you balance, as Ms. Kohn called it, the analog—I call it the paper books—need for copyright in order to generate innovation so that people can profit from what they create? Whether it's the written word or music, or whether it's technological invention, all of that is innovation and creativity. Copyright and patent law protects that to allow for profit.

On the one hand, you are the keeper of books that have been generated through the profit motive and copyright protection; on the other hand, for particular types of innovation, you're asking for the ability to access it and go in and then basically, because of the way it works now, to be able to alter that innovation.

**Ms. Alexandra Kohn:** I would say that what we're looking for is a circumvention for non-infringing purposes that wouldn't particularly have an effect on those rights holders and their ability to enjoy the fruits of their labour and to enjoy the economic rights and benefits that come from that.

Josh, I don't know if you have something you would like to add?

**Mr. Joshua Dickson:** For me, that's the basic conversation with students who come in here or researchers who do come in here and ask for advice on how they are going to use...whether it be the book or the software behind my cellphone. That's where those books grew from; those books grew from those ideas. We were sharing those books in the same way we want to be able to share the information that's digital. Just because it's behind a digital barrier shouldn't mean that our innovation and [*Inaudible—Editor*] science and research should be stifled. It's following the same trajectory of what copyright has been and should be—not in regulating certain portions of what's been created or not created and not having access to that because of the medium.

• (1300)

**Mr. Rick Perkins:** Except in—

**The Chair:** Mr. Perkins, I'm sorry, but that's all the time we have.

I'll now turn it to Nate for one final question and answer.

**Mr. Nathaniel Erskine-Smith:** I just want to go back to Ms. Lovrics, specifically on CUSMA considerations. My understanding, having read CUSMA—but you could inform me otherwise—is that it's pretty specific when it comes to TPMs for artistic works. It says, really, “in order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights”. Is there a different reading of CUSMA that I should be applying?

**Ms. Catherine Lovrics:** Technological protection measures are aimed to protect any work, and a computer program is a work.

**Mr. Nathaniel Erskine-Smith:** Well, they do, but actually, subsection 1 of article 20.66 is the defining section as to what everything that follows is pursuant to. It's specifically in relation to what authors, performers and producers of phonograms use in connection with the exercise of their rights. To your point, it may be widely expansive, but it doesn't really seem that the right-to-repair legislation, Bill C-244, is really what article 20.66 is driving at.

**Ms. Catherine Lovrics:** I'm trying to pull it up quickly so I can comment on the specific language. In both CUSMA and the WIPO Internet treaties to which Canada has agreed, we have agreed to protect TPMs and to make any sort of exception or limitation on TPM protection carefully crafted, based on evidence and narrowly appropriate to whatever circumstances are dictated by the evidence. The concern with the current bill is that it takes a blanket approach without any sort of specific focus on what products would qualify.

It also doesn't require that it be proven that there's a substantial adverse effect on the ability of Canadians to make non-infringing uses. I think it's really the breadth of the current bill that is ultimately the concern.

I'm still trying to quickly find the opening wording of article 20.66.

**Mr. Nathaniel Erskine-Smith:** No, no, that's all good. We're out of time. I look forward to receiving your proposals and amendments.

Thanks, everyone, for the time.

**Ms. Catherine Lovrics:** Thank you.

**The Chair:** Thank you, colleagues, and to all of our witnesses today. It's been a very interesting discussion. Thanks for taking the time to share your thoughts with us.

Thank you to the analysts, the clerk and the support staff. Have a great week, everyone.

This meeting is adjourned.









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