

RIGHT TO REPAIR



Today's video game devices offer consumers high-end, state-of-the-art, multi-functional entertainment with the ability to connect to other players through high-speed broadband networks. The games played on these devices have unprecedented quality with top-of-the-line sound and graphics, often costing as much as blockbuster movies to develop and produce. Unlike other industries, video game device manufacturers must not only protect their own products but also the games played on their devices—often created by other video game publishers, large and small. That is why the major manufacturers of video game consoles include technological protections to safeguard their platforms from infringement, as well as network and piracy threats. To prevent compromising the integrity of consoles, and to ensure that players have access to safe and enjoyable game experiences, console makers provide consumers with easy, reliable and affordable repair services whenever repairs are necessary.

Right to Repair Mandates Present Unique Risks to the Video Game Ecosystem

Video game consoles are unique from other devices, appliances and consumer products in that they rely upon a secure platform to protect users, the integrity of the gaming experience and the intellectual property of game developers.

Allowing unauthorized parties to bypass the specialized software that protects video game consoles creates significant potential for security and piracy risks. Indeed, even using the manufacturer's specifications for repairs could allow an unauthorized party to modify consoles in a way that could compromise protections that are vital to providing a secure media environment. In fact, hackers and other bad actors are constantly attempting to modify (or "crack") consoles to enable piracy and to sell their illicit services to consumers both online and in physical storefronts. While most repair shops might not seek to use repair methods for illegal purposes (such as removal or disabling of a device's security features), publication of a console's security roadmap would allow bad actors to use this knowledge to undermine the entire console ecosystem. Accordingly, a "right to repair" mandate could have a rapid and severely detrimental impact on the video game industry and consumers alike, regardless of how narrowly tailored it might be.

Major Video Game Console Makers Provide Easy, Reliable and Affordable Repair Options

The major video game console makers—Microsoft, Nintendo, and Sony—provide easy, reliable, and affordable repair services. All three offer their own, unique, free, under-warranty repairs and affordable post-warranty repair options to ensure that their consoles remain in good working order. They also provide comprehensive online and offline support networks that help consumers to remotely troubleshoot issues that limit the need to send in devices for repairs.

The Video Game Industry Employs Robust Digital Protections for Consoles and Video Game Content

The integrity of the video game ecosystem relies on specialized software, including “technological protection measures” (TPMs), to prevent console hacking, deter unauthorized access to consumer information and protect video game content. TPMs also allow a console to be securely updated with software that provides consumers with new game levels, extended storylines and other immersive opportunities. In short, console TPMs are an effective deterrent against the use of illegally copied games.

The Federal Government Recognizes the Role of TPMs in Helping Foster Digital Video Game Content

Section 1201 of the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201, makes it illegal to bypass TPMs or to distribute tools to assist in that effort. This ensures that copyrighted works can remain secure. Section 1201 preempts state mandates that would permit TPMs to be bypassed through direct means or through the sale of tools that would enable such activity.

In passing the DMCA, Congress created a regulatory safety valve. It authorized the Library of Congress, in consultation with the U.S. Copyright Office, to create a list of temporary exemptions based upon evidence submitted in a rulemaking proceeding. In 2018, the Library of Congress considered proposed exemptions for repair. Although it granted an exemption for repair of motor vehicles and home appliances, it specifically excluded video game consoles because of the vital role TPMs play in safeguarding games and the harms that could arise if third parties were able to circumvent such protection measures.

Right to Repair Supporters Exaggerate the Environmental Impact of Legislation as It Relates to Consoles

Some right to repair supporters have argued that proposed legislation would have a positive environmental impact because more consumers would be inclined to fix their own devices rather than dispose of them. Unlike other devices that may have short life-cycles, video game consoles are played for years and often held on to for generations. This long life-cycle is likelier to continue if repairs are performed by the manufacturer. Older model consoles are still highly popular and available on online marketplaces. Moreover, Microsoft, Nintendo, Sony and the video game retailer GameStop have robust recycling programs for consumers who want to dispose of used consoles.