



March 12, 2019

The Honorable John Lesch
Chairman, Judiciary, Finance and Civil Law Committee
Minnesota House of Representatives
563 Rev. Dr. Martin Luther King Jr. Blvd.
St Paul, Minnesota 55155

Dear Chairman Lesch:

On behalf of the Entertainment Software Association (ESA) and its members¹, we thank you for the opportunity to submit written testimony in opposition to HF 1138, legislation seeking to create a “right to repair” mandate. The ESA is the U.S. trade association representing the publishers of computer and video games for play on consoles, personal computers, mobile devices, and the Internet.

The video game industry is a key economic sector that creates jobs, develops innovative technology, and keeps the United States competitive in the global marketplace. Last year, consumers in the United States spent more than \$43 billion on games, hardware, and game-related services, and video game consoles remain at the heart of this ecosystem. Additionally, the video game industry employs more than 220,000 people across the country.

We recognize that “right to repair” is an important public policy issue and appreciate the opportunity to provide the video game industry’s perspective. Our member companies share the desire for customers to get their broken game consoles repaired quickly and at a modest cost. Software sales are what drives our industry, but no one buys games for a broken console. Our member companies have a compelling financial incentive to help their customers get their consoles repaired as quickly and affordably as possible. It is for that reason that all three major console makers—Microsoft, Nintendo, and Sony—offer affordable, post-warranty repair options.

Large-scale, high-profile video games—what we in the industry call “Triple A” titles—take hundreds of artists, programmers, engineers, and other creative talent to bring to market. A new, original title can take two or more years to produce and cost as much as a Hollywood blockbuster.

These highly popular video games are prime targets for illegal copying and distribution. To preserve the incentive to create, the industry uses digital locks (“technological protection measures”) to protect those games. These locks involve a two-part system of protected software and an authentication mechanism on the game console. The game console checks the game to ensure that it is a legitimate copy. If it is not, then the console will not play that

¹ ESA’s members: 505 Games; Activision Blizzard, Inc.; Bandai Namco Entertainment Inc.; Bethesda Softworks, Capcom USA, Inc.; Deep Silver; Disney Interactive Studios, Inc.; Electronic Arts; Epic Games, Inc.; Focus Home Interactive; Gearbox Publishing; GungHo Online Entertainment American, Inc.; Intellivision Entertainment; Kalypso; Konami Digital Entertainment; Legends of Learning; Magic Leap; Marvelous USA, Inc; Microsoft Corporation; Natsume Inc.; NCSOFT; Nexon America, Inc.; Nintendo of America Inc.; NVIDIA; Outright Games; Phosphor Studios; Rebellion; Riot Games; Sega of America; SixFoot; Sony Computer Entertainment of America; Square Enix, Inc.; Take-Two Interactive Software, Inc.; Tencent, Inc.; THQ Nordic; Triseum; Ubisoft Entertainment, Inc.; Warner Bros. Interactive Entertainment Inc.; and Wizards of the Coast.

game, unless the console has been unlawfully modified with its security features disabled. Central to this system is the console “firmware”, the “nerve center” of the machine, and once third parties have access to an unencrypted version of the firmware, and can modify it, the security features become vulnerable to potential tampering. All in all, a video game console’s digital rights management systems are an effective deterrent against the use and play of illegally copied games.

ESA’s concern with “right to repair” is not with displacing industry revenue from repair services, as repairs are not a significant source of revenue for the game industry. Instead, ESA’s concern rests with permitting third parties, over which we have no control, from modifying the hardware and firmware in a way that could compromise the security features that are vital to providing a secure media environment for the playback of copyrighted games of various game publishers.

We recognize that the vast majority of repair shops would not use the provided tools and documentation for any illegal purposes (e.g., removal of security features). However, at the rate at which knowledge is spread via social media and other online communication channels, it would only take a few bad actors to have a rapid and severely detrimental impact on the industry.

In October 2018, the Librarian of Congress, upon the recommendation of the Register of the U.S. Copyright Office, published a rule permitting consumers to repair motor vehicles and home appliances under a new, expanded, exemption to the Digital Millennium Copyright Act (DMCA), a law related to copyright that protects digital locks from circumvention. However, the Librarian and the Register specifically excluded video game consoles from the newest repair exemption. In so doing, they recognized the industry’s long-standing concerns about the circumvention of the digital locks on consoles and highlighted the reasonable repair and warranty programs offered by console manufacturers.

The viability and success of the game console business is dependent upon a trustworthy and secure delivery platform. We believe that “right to repair” legislation would compromise the integrity of these platforms by forcing console makers to open up their hardware and firmware in a way that may expose the security features to tampering.

The ESA would gladly provide the Committee with any additional information they believe would be helpful in making an informed decision on this important matter.

Sincerely,



Thomas A. Foulkes
Vice President of State Government Affairs
Entertainment Software Association