



interactive games & entertainment association

Submission to the Productivity Commission

Responses to the Draft Recommendations
and Information Requests in the
Draft Report on Right to Repair

July 2021

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Responses to Draft Recommendations

Draft Recommendation 3.1 - Guidance on reasonable durability of products

The Australian Competition and Consumer Commission (ACCC) should develop and publish estimates of the minimum expected durability for products within major categories of common household products.

The estimates would be a guide only to support application of the acceptable quality consumer guarantee in section 54 of the Australian Consumer Law. It could use ranges to take into account lower and higher value products in each category.

The ACCC guidance should be developed in consultation with State and Territory consumer law regulators, consumer groups and business groups representing product suppliers and manufacturers, and should be updated over time.

Response to Draft Recommendation

We do not support this draft recommendation as far as it relates to video game consoles and devices.

While we recognise the intention of DR3.1 and its potential benefits in principle, such as to provide more clarity to stakeholders about the duration of some consumer guarantees, we see significant risks in its implementation, as least in relation to our sector.

Unlike products like toasters or fridges, which tend to be fairly homogenous, there can be significant differences from one model of gaming device to another, from design and price point to how they are played, with these differences often seen as defining features. For example, while some consoles are simply connected to the TV, others can also be handheld, with the latter likely to experience far more handling. These differences may be so significant that even providing a minimum expected durability over a range of years could be difficult, or would be so broad that it becomes meaningless to consumers.

We note that DR3.1 only calls for the ACCC to provide guidance in relation to “*products within categories of common household products*”. We therefore recommend that should DR3.1 be kept in the final report, that the Commission specify that these categories be precise, targeted, and limited to products that have been the subject of substantial complaints. As the draft report makes it clear that video game devices have not been subject to substantial complaints regarding their life span, we would not expect our sector to be included in these categories.

Should DR3.1 be kept in the final report, we also make the following further specific suggestions for the Commission to include:

- In its recommendation, the Commission should make suggestions around what the targeted “*products within categories of common household products*” should likely include. The identification of these products should be evidence-based and reflect products for which complaints of short duration or life span have been received or are known. The recommendation should direct the ACCC to be very clear in its guidance about the products to which the guidance relates. In order words, the categories should be described with specificity in terms of what products are covered by any regulatory requirements.

- The recommendation should specify that the lower or upper minimum expected durability of products should not be determined solely by product value, which we believe is an overly simplistic approach. The fact that a product is more costly does not necessarily mean that it will be more durable. A product may cost more because it has more features or a more desirable aesthetic, factors that are unrelated to durability. To use a related analogy, section 54 of the Australian Consumer Law outlines several factors for determining whether a good is of acceptability quality, of which price is only one factor.
- The recommendation should state that the ACCC guidance clarify that estimates of minimum expected durability do not extend to ordinary wear and tear, reasonable maintenance, or the replacement of consumables or other parts that are designed to be replaced periodically (eg. the replacement of spare bulbs or toner cartridges).
- The recommendation should also state that the ACCC guidance clarify that its estimates are an indicative guide only and that the fact that a particular item requires repair or replacement earlier than its minimum expected durability does not necessarily mean that the particular item is defective or has a fault. Consumer usage of various devices will vary: some devices will be subject to significant usage and other devices may receive only sporadic use. Exact usage factors will vary and will impact device durability. In other words, the guidance must not create an expectation that minimum expected durability is a rule rather than a very general reference point.
- Similarly, the recommendation should also require any ACCC guidance to be accompanied by a description of non-exhaustive circumstances where a product may not necessarily last as long as the expected durability range. As a minimum, this should include higher than average use and incorrect use, while other factors listed could include outdoor use, unintended use, commercial use, incorrect power supply use, tampering, and the use of counterfeit or low quality spare parts or consumables.
- The recommendation should require that the ACCC guidance, where possible and appropriate, differentiate between parts of an item that may have different expected durability ranges, or provide exceptions for certain parts of a product. For example, a TV remote would not be expected to last as long as the main TV unit without repair or replacement.
- In the recommendation, the Commission should avoid the word 'durability', which may be misconstrued by consumers to mean physical toughness (eg. ability to withstand being dropped). Instead, terminology like 'lasting' or similar meaning may more clearly and accurately convey a message around how long an item is expected to remain functional.
- The recommendation should require, and not just create an expectation, that the ACCC guidance be developed in close consultation with affected industries.

Draft Recommendation 3.2 – Powers for regulators to enforce guarantees

State and Territory Governments should introduce alternative dispute resolution mechanisms to better resolve complaints about the consumer guarantees, such as compulsory conciliation or direction powers (as are used in South Australia and New South Wales). To inform the most effective design and use of any alternative dispute resolution mechanism, appropriate cost-benefit analysis and sufficient regulator resourcing would be required prior to implementation

Response to Draft Recommendation

We note this draft recommendation.

We have received advice from some of our members that many consumers do not seem to have a strong awareness of existing complaint resolution procedures, and that there is confusion around the role of the ACCC and state and territory fair trading bodies. We suggest that if DR3.2 is kept in the final report, it should also include a recommendation for strong public messaging to accompany any new alternative dispute resolution mechanisms. Any new alternative dispute resolution process should also be accompanied by appropriate and accessible appeal or review mechanisms.

Draft Recommendation 3.3 – Enabling a super complaints process

The Australian Government should enable designated consumer groups to lodge ‘super complaints’ on systemic issues associated with access to consumer guarantees, with the complaints to be fast tracked and responded to by the Australian Competition and Consumer Commission (ACCC).

The Australian Government should design the super complaints system in consultation with the ACCC, relevant State and Territory regulators and consumer groups. The system should be underpinned by sound operational principles – including criteria for the assignment (or removal) of designated consumer bodies, evidentiary requirements to support a complaint, and the process and time period by which the ACCC should respond.

Response to Draft Recommendation

We note this draft recommendation.

Should DR3.3 be kept in the final report, we suggest that this recommendation be amended to clarify that the criteria for the assignment or removal of designated consumer groups should be sufficiently robust so as to only allow for genuine consumer groups and prevent non-legitimate or vexatious agents from being endorsed.

Draft Recommendation 4.1 – Evaluate motor vehicle information sharing scheme

The Australian Government should evaluate the Motor Vehicle Service and Repair Information Sharing Scheme that is designed to improve access to repair information, once it has been in operation for three years.

The evaluation should focus on compliance with the scheme, the costs imposed on manufacturers, the benefits to independent repairers and consumers, and any

implementation issues that require changes to the scheme, including consideration of whether the scheme should continue.

Response to Draft Recommendation

Nil response - not relevant to our industry.

Draft Recommendation 4.2 - Additional mandatory warranty text

The Australian Government should amend r. 90 of the Competition and Consumer Regulations 2010, to require manufacturer warranties ('warranties against defect') on goods to include text (located in a prominent position in the warranty) stating that entitlements to consumer guarantees under the Australian Consumer Law do not require consumers to use authorised repair services or spare parts.

Response to Draft Recommendation

We do not support this draft recommendation.

While we are of course supportive of improving consumers' level of understanding of their consumer rights, we are concerned that a mandatory requirement to include within a manufacturer's warranty text information related to the consumer's consumer guarantees under the Australian Consumer Law may cause confusion for consumers. Specifically, this additional text may erroneously cause consumers to believe that their entitlements under the voluntary warranty (as opposed to the guarantees) do not require consumers to use authorised repair services or spare parts (which may not necessarily be true). This is because while the consumer guarantees and manufacturers' warranties are two separate objects, this is not necessarily well understood by the general public.

We note that it is already a requirement for a manufacturer's warranty text to state that the product is subject to non-excludable guarantees under Australian Consumer Law and believe that this provides sufficient notice to consumers that they have additional, separate rights.

Draft Recommendation 7.1 - Improving the management of e-waste

The Australian Government should amend the National Television and Computer Recycling Scheme (NCRS) to allow e-waste products that have been repaired or reused by co-regulatory bodies to be counted towards annual scheme targets.

The exact design features that need to be incorporated into the NCRS to enable reuse options should be determined in consultation with the scheme's liable parties and co-regulatory bodies. The changes should be designed in a way that minimise any adverse incentives, including risks from:

- double-counting, where the same products cycle through the scheme without legitimately being reused*
- unlawful exports for reuse that result in more products in the informal recycling sector, generating worse health and environmental outcomes.*

Any future co-regulatory or mandatory product stewardship schemes should also include repair and reuse as options within their targets.

Response to Draft Recommendation

We note this draft recommendation.

Responses to Information Requests

Information Request 3.1 - Repair facilities, spare parts and software updates

To better understand whether consumers have reasonable access to repair facilities, spare parts and software updates, the Commission is seeking further information on:

- whether consumers have faced difficulties accessing spare parts or repair facilities under guarantees when their product breaks or develops a fault, including specific examples of the type and age of the product, and the costs incurred by the consumer*
- costs and benefits of businesses being required to hold physical spare parts or operate repair facilities for fixed periods of time*
- whether consumers are experiencing problems using their products due to a software fault or lack of software updates, including specific examples where manufacturers have not addressed the problem because of claims that it is not covered by consumer guarantees*
- the costs and benefits of requiring that software updates be provided by manufacturers for a reasonable period of time after the product has been purchased.*

Response to Information Request

Dot points #1 and #3 (consumer difficulties)

While we note that dot points one and three are primarily aimed at responses from consumers, we will make some general points.

As outlined in our initial submission to the Commission, our members who make video game consoles offer exemplar after-purchase repair services, which are generally provided at or below cost. In addition to the importance of customer service in our industry, the business model of video games means that it is in the financial interest of console makers for their customers to have well-functioning and reliable devices that last for years. As we noted, our members that make consoles have advised us that they are not aware of any evidence that the existing consumer guarantees regarding repairs are ineffective, nor of any non-compliance in our sector, nor that customers face difficulties in obtaining repairs.

As further outlined in our initial submission, console makers also provide essential software updates for their devices for far longer than likely the vast majority of other electronic products. For instance, it is common for consoles to still receive essential updates for well over a decade after their initial release.

More broadly, we also highlight some of the draft findings of the Commission that appear to paint a picture that consumers are facing few problems with obtaining repair remedies, including the fact that:

- The Australian Consumer Law already provides consumers with considerable legislative rights to obtain a remedy for defective products through the consumer guarantees (Draft Finding 3.1).
- Only a few hundred of the almost 100,000 contacts that the ACCC has received concerning the Australian Consumer Law relate to repairs or spare parts.

- Very few manufacturers choose to opt-out of the requirement to ensure repair facilities and spare parts are reasonably available.

Dot point #2 (physical spare parts and repair facilities)

We do not support this policy idea.

In relation to dot point two, our view is that the existing consumer guarantees (that a manufacturer will take reasonable action to ensure that facilities for repair, and parts for the product, are reasonably available for a reasonable period, after the product is supplied) is both effective for consumers as well as provides vital flexibility to manufacturers to meet these expectations in the most suitable and appropriate way. In light of the findings in the draft report that the Commission has already stated that there is limited evidence that manufacturers are not fulfilling their obligations regarding access to physical spare parts under the consumer guarantees, we do not see a need for any changes to the existing policy approach in this area.

We are particularly concerned that imposing a fixed period during which a business would be required to hold physical spare parts or operate repair facilities would impose an unreasonably inflexible burden, noting the vast variety of sectors and products it would apply to. For example, a single fixed period of time might be manageable for businesses that supply only a handful of high value goods that only change every couple of years (such as automotive dealers), but it would be unmanageable, prohibitively costly, and burdensome to businesses that supply hundreds of lower value products and rotate their stock routinely (such as discount retail stores and their suppliers). For example, a requirement on the latter to hold spare parts and operate repair facilities for a \$5 Christmas light that it only sold for a few weeks several Decembers ago would clearly be an impracticable regulatory burden. It also may result in inventories of spare parts that go unused, creating environmental impacts associated with manufacture and eventual disposal.

The draft report correctly identifies that there are compliance costs related to increasing a business's requirements for holding spare parts, especially as the parts inevitably degrade or need to be disposed of (likely significantly adding to the volume of e-waste in Australia, one of the issues that the 'right to repair' movement is intended to reduce). This requirement will be particularly frustrating to businesses where the fixed period of time, being an inflexible approach, is not in alignment with their consumer's actual demand for these parts. While the draft report suggests that 3D printing could help to reduce this problem in the future, the reality is that 3D printing does not presently provide a solution for the vast majority of businesses and may not do so for many years.

This also leads to the question as to how long the fixed period of time should be set for the availability of spare parts. There may be as many answers to this question as there are types of products. Any chosen fixed period of time will inevitably lead to some sectors where this period of time may be reasonable, and many others where it is not. We also question whether a fixed period of time will even always be a workable approach for the same product over its life cycle. As an example, while a requirement for a manufacturer to hold spare parts for, say five years, may be reasonable for a product that has just been introduced into the market, it is questionable whether that same timeframe would still be appropriate many years later when the product is at the end of its product cycle and has

been heavily reduced for clearance in reflection of that. In these cases, the current flexible 'reasonable time' approach under the Australian Consumer Law is more practical.

Dot point #4 (software updates)

We note this policy idea.

In contrast to the previous policy idea, dot point four takes a better approach as it canvasses a "reasonable period of time" rather than a fixed period of time. As discussed, our industry already provides software updates for an extended period of time and most likely our members would be able to meet such a requirement more easily than other sectors. However, we again reiterate our earlier point that as the Commission has identified the fact that Australia has strong consumer protection laws and has found no evidence of widespread issues concerning access to repairs or spare parts in Australia, including from a software perspective. Therefore, we see no pressing need for such broad reform. If the basis of this policy idea is primarily concerned with certain sectors, such as the automobile or agricultural equipment sectors, then we argue that it should be aimed specifically at those or other sectors according to evidence.

Information Request 4.1 - Consumer harm from limits on access to repair supplies

The Commission is seeking feedback and evidence on its preliminary assessment of consumer harm (chapter 4) in repair markets for agricultural machinery, mobile phones and tablets. In particular:

- is there any evidence of systematic differences in quality, safety or security between authorised and third-party repairers? If so, what is the cost to manufacturers (for example, damaged brand reputation, determining the cause of a fault, or other liability issues)?*
- what is the size of the repair market compared to the primary market? What proportion of repairs are conducted by authorised repairers?*
- how difficult is it for consumers to estimate the lifecycle costs of these products at the time of purchase?*
- to what extent are consumers locked in to using authorised repairers (for example, can consumers easily switch to other products or non-manufacturer repair supplies)?*
- is competition in the primary market sufficient to compensate consumers for any harm in the repair market (as indicated by low concentration and/or barriers to entry)?*
- to what extent are consumers harmed by less choice, high transportation or travel costs, delays, and inconvenience, particularly in regional and remote locations?*

The Commission is also interested in evidence of where there is substantial consumer harm in other repair markets, including but not limited to medical equipment and high-end watches (which were raised as areas of concern by participants to this inquiry) as well as construction machinery.

Response to Information Request

No substantive response - not relevant to our industry.

While IGEA does not represent the general mobile phone and tablet industry, some of our members do supply these products and their advice is that there is significant

competition in the primary market, with tablets and particularly mobile phones amongst the most fiercely competitive in the consumer electronics market. Consumers are, essentially, spoilt for choice at almost every price point in this space. Similarly, the phone and tablet sector supports an extensive third party repair market, as is evidenced by the fact that most large shopping centres across Australia will typically have at least one independent mobile phone repair shop. For example, the closest shopping centre to the author, Westfield Parramatta in Sydney, currently has five mobile phone repair shops [listed on its directory](#) (Mobile Experts, Phone City, Phone Mechanic and two separate branches of Dr Boom) and several more on the surrounding streets.

Information Request 4.2 - A positive obligation to provide access to repair supplies

The Commission is seeking feedback and evidence on the costs and benefits of different approaches to designing and implementing a positive obligation on original equipment manufacturers to provide access to repair supplies to third-party repairers. In particular:

- evidence on the effectiveness of positive obligation schemes overseas (such as motor vehicle repair information schemes in the United States and Europe, and spare parts requirements in Europe)*
- should a positive obligation be applied across all product markets or targeted towards particular product markets? If so, which product markets, and why?*
- should a positive obligation mandate access to all repair supplies or a subset of repair supplies (such as repair information, spare parts, or diagnostic tools)?*
- how should a positive obligation be implemented and enforced in practice?*

Response to Information Request

We do not support this policy idea, as least as it relates to the video games sector.

Our response to IR 4.2 is that any consideration of additional regulatory requirements for industry sectors, such as a positive obligation to provide access to repair supplies, should be based on evidence. We therefore note that the Commission’s draft report has found that there is no evidence of systemic competition problems in repair markets (Draft Finding 4.2).

If a recommendation for a positive obligation to provide access to repair supplies is retained in the final report, it should not be applied across all product markets, but targeted only towards product markets where competition issues have clearly been identified. We again note that we are not aware of any issues raised by stakeholders during the Commission’s consultation process concerning third party access to repair supplies for gaming consoles, and that we are not aware of any submissions that were made by third-party repairers that identified problems in our sector. As we advised in our previous submission, all three current generation game consoles have favourable iFixit reparability scores, and the tools needed to access them are already readily accessible to both professional and hobbyist repairers.

Finally, an unintended consequence of a broad positive obligation in our sector may be that console makers are forced to provide the means or tools for certain third-party, self-claimed ‘repairers’ to inappropriately bypass digital locks such as Technological

Protection Mechanisms (TPMs). For example, these tools could be used to facilitate intellectual property infringement, such as by removing copyright protections on a device, or to access confidential data, such as by bypassing lock screens to copy a user’s sensitive personal information. As there is currently no licensing or certification scheme for the electronic repairers profession, it will be almost impossible for console makers to differentiate between legitimate and illegitimate repairers.

Information Request 4.3 - A prohibition on warranty void terms

The Commission is considering recommending provisions similar to the Magnuson-Moss Warranty Act in the United States, which prohibit manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep their warranty coverage. We are seeking feedback and evidence on the costs and benefits of this approach. In particular:

- *would manufacturers respond by increasing product prices or making their warranties less generous? Would this latter change have any practical impact on consumers given they are also covered for defects under consumer guarantees?*
- *how could such a prohibition be designed and communicated to ensure that consumers are aware that voiding terms are now prohibited?*
- *how could the prohibition be designed to limit manufacturer liability for damage beyond their control? For example, the Magnuson-Moss Warranty Act permits warranty terms that limit manufacturer liability for damage caused by unauthorised repairs or parts, if they can demonstrate third-party fault.*

In a similar vein, should terms within end-user license agreements that purport to restrict repair related activities (discouraging third-party repair) also be prohibited? Is a disclosure as proposed under draft recommendation 4.2 sufficient or is a legislative prohibition required?

Response to Information Request

We do not support a prohibition on warranty void terms.

As we stated in our earlier submission, our view is that it is entirely appropriate for manufacturers that choose to voluntarily offer warranties over their products to be able to set the conditions under which those warranties are offered, including the circumstances where those warranties may be voided. As the Commission is aware, these warranties are always in addition to separate, non-excludable consumer guarantees.

For the companies that chose to include such void terms, they may do so for many reasons, including to prevent damage to their products from poorly conducted repairs, to prevent injury to inadequately trained repairers, and to ensure traceability of repairs. As we also noted in our earlier submission, a prohibition on warranty void terms may result in increased costs to manufacturers, which may need to undertake additional work triaging genuine faults from damage caused by poor quality repairs, costs which could be passed onto consumers.

In addition to these costs, it may be difficult and potentially even impossible to diagnose whether a fault was pre-existing or actually caused by non-authorised repairs (and

especially tampering). Responding directly to the third dot point (about limiting manufacturer liability), the ability to demonstrate third-party fault is a very heavy burden of proof on manufacturers. An example that we gave in our initial submission was that even though very minor damage to a game console’s cooling system caused by a third party could cause the console to overheat and fail, this process could take months or years, and proving the nexus between these two events may be very difficult (and challenging for the customer to accept). While this may not be a major concern for sectors where product tampering is not commonplace, it is a significant concern for the video games sector where the modification of consoles, call “modding”, has historically occurred, including to facilitate copyright infringement.

Also, as we had previously advised in our initial submission, the worst possible outcome of a prohibition on warranty void terms would be the harm to consumers if it leads to manufacturers scaling back their voluntary warranties, especially if those warranty terms are currently offered on generous terms. We also note that whether such clauses are included or not does not change the consumers’ rights under the consumer guarantees, which are unaffected by whether third party repairs have been carried out or otherwise.

However, should the final report include a recommendation that warranty void terms be prohibited, we recommend that it initially be sector-specific, targeting areas of highest risks. We particularly note the approach taken in the EU where such a prohibition has only been implemented with respect to motor vehicles and a policy decision has been taken not to adopt a general prohibition. Further, damage caused by third party repairs are typically not covered by warranties anywhere in the world, so it is also vital that manufacturers remain able to void their voluntary warranties where sub-standard unauthorised repairs or parts have been undertaken.

Finally, we do not support a prohibition on terms in EULAs covering repair-related activities. EULAs play a vital role in practically every sector and among other things help to protect products and services, their users, other users, third parties, and the significant investment required to develop products. Reform to impose new restrictions on EULAs, even on very targeted issues, may have significant consequences and should not be taken lightly. We note the evidence provided by CHOICE in its submission to the Commission that Australian consumer guarantees generally provide “*strong protections for repair and other fair remedies for defective goods*” and that they are already superior to protections in other territories such as the EU. It is, in our view, therefore unnecessary for the Commission to recommend such a significant change to Australian contract law when the report acknowledges a lack of evidence for widespread competition issues in the repairs market or inability for consumers to obtain appropriate remedies for faults.

Information Request 5.1 - Improving access to repair information

The Commission is considering recommending amendments to intellectual property laws to improve access to repair information through the options outlined in draft finding 5.2. It is seeking views on each option, in particular:

- whether the proposed reform options will assist repairers in accessing repair information, and therefore facilitate third-party repair*

- *what types of contractual arrangements that could override such reforms are most likely to be of concern*
- *the costs, benefits and risks of pursuing each option.*

Response to Information Request

We do not support changing copyright laws specifically for repair-related issues, although it could be added to the areas to be scoped further as a part of the Government's long-term copyright reform agenda.

On intellectual property policy, our overarching position is that we are generally open to considering balanced, fit-for-purpose, and evidence-based reform. Consistent with this position, however, if following this current consultation process the Commission remains of the view that there is only patchy and anecdotal evidence that intellectual property protections are restricting repairs (Draft Finding 5.1), then we believe there is insufficient evidence to recommend amendments to intellectual property laws at this time.

The policy ideas presented at Draft Finding 5.2 flag very significant reforms related to fair use and expanded fair dealing which should not be recommended in the absence of strong evidence that they are absolutely needed. Intellectual property laws are amongst the most complex of all legislation and involve some of the most diverse stakeholder groups, and even minor changes can have far-reaching impacts and Australian governments have historically adopted a very cautious approach to reform of such laws. The policy ideas must also be considered in a global context and will have significant and inevitable consequences abroad. A requirement to allow for the reproduction and sharing of repair information in Australia, for instance, would inevitably lead to that information being widely distributed online, even if such sharing were not allowed, impacting on territories that have not chosen to adopt such policies.

Further, notwithstanding their intended objectives, some of the reforms outlined in Draft Finding 5.2 may increase the intellectual property challenges that our sector faces. As we outlined in detail in our initial submission, parts of which we thank the Commission for referencing in the draft report, the video games industry faces significant threats from hackers, pirates, and other malicious actors - most likely more than any other sector. These are threats that, unfortunately, have historically been linked to a segment of the third-party electronics repair industry. We agree with the conclusion made in the draft report that while removing restrictions may not affect sophisticated malicious actors, it could increase the risks from less sophisticated or less well-resourced hackers who will have better access to necessary resources.

We would also like to respond specifically to the policy idea that has been flagged related to exceptions for circumvention of TPMs.

First, as we have previously discussed in this paper, a requirement for manufacturers to make available the means for repairers to bypass TPMs may be weaponised by malicious actors, particularly as there is no licensing or certification scheme for electronic repairers that would help manufacturers discern between legitimate and illegitimate repairers. For example, these tools could be used to facilitate intellectual property infringement, such as by removing copyright protections on a device, or to access confidential data, such as by bypassing lock screens to copy a user's personal information.

We disagree with the point made in the draft report that *“unauthorised use of copyright material carries with it substantial penalties which would still provide deterrent to non-repair TPM circumvention”* (p. 16). Unfortunately, the evidence does not support this view of penalties. In our initial submission we highlighted data from the Government’s 2019 copyright infringement survey that one-in-five (20%) Australian video game players admitted to consuming unlawful video game content. Since our submission was lodged, the Government has released its 2020 copyright infringement survey, which found that the proportion has risen dramatically to almost one-in-three (31%). Our initial submission also included an (easily found) example of an Australian ‘repairer’ offering to modify game consoles. We can provide the Commission with other examples of repairers offering these services in plain sight online. It is clear that the threat of penalties is not providing a strong deterrent to video game piracy.

Finally, we remind the Commission that while the draft report is correct in noting that the US Library of Congress in 2018 did issue a temporary three-year exemption permitting circumvention of TPMs for a range of purposes, some of which involve repair, video game devices were specifically not covered by this exemption in recognition of the specific and harmful intellectual property infringement challenges that our sector faces.

However, if the Commission does conclude that there are potential issues with the intellectual property framework, we suggest that it would be most prudent to make a recommendation for the Department of Infrastructure, Transport, Regional Development and Communications to investigate this matter further. The Department is best placed to consider the extent of the problem, what reform options would or would not be feasible, and to undertake the thorough stakeholder consultations that will be necessary.

Information Request 6.1 - Product labelling scheme

The Commission is seeking further evidence on the significance of information gaps that might contribute to premature obsolescence, including:

- the specific type of information gaps (such as on product repairability, durability, or the environmental impacts of products) that prevent consumers from making informed purchase decisions*
- the significance of these information gaps (for example, the cost to consumers from obtaining information independently)*
- evidence that these gaps are undermining the efficient operation of the market (for example, evidence that consumers are systematically overestimating product durability and repairability when making purchase decisions)*
- whether these information gaps affect specific types of products more than others.*

The Commission is also seeking input on how government and industry might work together to design a product labelling scheme to maximise the net benefits to consumers and the community.

Response to Information Request

We are encouraged by the Commission’s finding in the draft report that there is no evidence of any widespread practice of intentional product obsolescence. In our initial

submission we have already provided significant evidence that premature product obsolescence does not exist in the games industry, which we draw the Commission's attention to.

We also do not support the introduction of a product labelling scheme at this time.

The implementation of such a scheme will impose significant compliance costs on industry and the extent of any benefits are not clear. Unlike potentially in decades past, consumers and repairers now have access to extensive third-party information about the repairability of products and how to undertake repairs, from tutorials on video-sharing sites that are often available within days or even hours after a product is released, to comprehensive third party resources like iFixit, which provide independent repairability ratings and other guidance. Consumers and repairers can also easily purchase the tools they need to obtain repairs on most common household goods.

As per our original submission, we recommend that Australia wait until information is available on the effectiveness and challenges of the product labelling scheme that has only this year been introduced in France, especially considering it remains the only scheme of this kind in the world. The French repairability index scheme provides an opportunity to observe and learn, and if a decision to adopt a similar scheme is taken in the future, to implement improvements.

However, if the Commission decides to include a recommendation in support of a product labelling scheme in Australia, we ask that a cautious approach be taken and that the recommendation be framed around a suitable agency, such as the ACCC, being tasked with initially scoping out the feasibility of such a scheme and to undertake industry consultations and to monitor emerging repairability standards. The recommendation could also specify that a future product labelling scheme in Australia be limited to targeted sectors and products, similar to the French approach (we note that game devices are not within the scope of the French scheme).

Scoping and industry consultation will also help to ensure any potential future model identifies areas for practically improving upon the French scheme. For example, we understand that the French scheme applies a single inflexible points approach that covers multiple and often very diverse product types, which could be improved upon by adopting bespoke points approaches for different types of products. The French scheme also currently does not provide points for products whose manufacturers provide high quality or above standard after-purchase repair services, a gap that we believe may paint an incorrect picture of a product's repairability. These are issues that can only be drawn out in thorough and essential industry consultation processes.

Finally, it is vital that any hypothetical product labelling scheme in the future recognise that repairability does not exist in a vacuum and that product makers must unavoidably find a balance between repairability and other design priorities (including factors that consumers will consider to be more important). For example, in the consumer electronics space, consumers are increasingly demanding thinner devices and increased water resistance, which may involve an unavoidable trade-off in terms of repairability. The design of any future labelling scheme must reflect the need to strike this balance.

Any questions?

**For more information on any issues raised in this submission, please contact
IGEA's Director of Policy & Government Affairs, Ben Au,**

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