

**Written Brief on the Right to Repair – Standing Senate Committee on Banking, Commerce and the Economy (BANC) on Bill C-244, *An Act to amend the Copyright Act (diagnosis, maintenance and repair)*, and Bill C-294, *An Act to amend the Copyright Act (interoperability)***

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**Submission of the Public Interest Advocacy Centre**



**PUBLIC INTEREST ADVOCACY CENTRE  
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC**

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## Introduction and Summary

1. The Public Interest Advocacy Centre (“PIAC”) is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and in particular, vulnerable consumer interests concerning the provision of important public services. PIAC has been active in the field of consumer protection and policy for over 40 years.
2. PIAC strongly supports consumers’ right to repair. Consumers should have the freedom to choose their own repair options and providers, and not be limited to options provided by the manufacturer(s) or other providers authorized by the manufacturer(s). These repair options are often expensive, time-consuming and/or inconvenient, which may also prevent or limit users’ access to their own products and/or data depending on the product in need of repair. This may have dire consequences in case of medical devices that need to be repaired, or even threaten job security in case when vehicles breakdown with the repair options being too expensive and/or even non-existent in case of products that have a short shelf life and no reasonable options for repair. Thus, PIAC urges the federal government to recognize and implement a strong right to repair for Canadians as soon as possible.
3. PIAC supports the two bills under consideration at the Standing Senate Committee on Banking, Commerce and the Economy (BANC Committee) i.e. Bill C-244, *An Act to amend the Copyright Act (diagnosis, maintenance and repair)*, and Bill C-294, *An Act to amend the Copyright Act (interoperability)*. The changes introduced by these bills are important steps towards having a strong right to repair. However, a comprehensive right to repair concerns various other IP issues, as well as use of warranties, product design, consumer transparency and other legal and policy issues that need to be considered to ensure thorough protection and freedom for consumers.
4. At this stage, we limit our comments to the two bills under consideration to amend the *Copyright Act* and suggest some measures to support and enhance consumer protection. We look forward to sharing our comments on other issues affecting the right to repair as well as any other issues that may be raised regarding these two bills under consideration.
5. Our recommendations are as follows:
  - ❖ Consumers’ freedom and ability to repair products and devices should be explicitly stated as an objective in the wording of the bills, and must maintain a strong place within the overall regime.
  - ❖ Bill C-244 should have an explicit and broad exception to copyright infringement regarding access to repair resources, including, but not limited to repair manuals, diagnostic codes and other tools that are subject to copyright protection. This is to facilitate repair by consumers and/or other repairers. Access to these repair resources is integral for repair and to ensure that no harm or damage is caused to

the pertinent product when repaired by consumers themselves and/or independent or third party repairers.

- ❖ A similar exception to copyright infringement regarding access to all repair materials should be explicitly provided in Bill C-294 to avoid any confusion and ensure consumers and/or third party repairers have access to necessary materials to maintain interoperability.
- ❖ Bill C-294 should mention the application of existing privacy and security legislation and regimes to ensure that there is no collection, use or disclosure of personal information of individuals without their express consent, with such risks heightened in case of interconnected devices.
- ❖ We also recommend that the BANC Committee should add clarifications in both bills to ensure that "persons" availing themselves of the exceptions includes their agents, i.e., those persons acting on their behalf. This is to ensure that any technicians, third party repairers and/or independent repairers hired by consumers are covered by the amendments to the *Copyright Act*.

### **Brief Commentary on Bill C-244, *An Act to amend the Copyright Act (diagnosis, maintenance and repair)***

6. PIAC supports Bill C-244 that would create an important exception to technical protection measures (TPMs) 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 maintains its position as presented to the INDU Committee on Bill C-244 that consumers should have the option to repair their own products or select repair providers of their choosing.<sup>1</sup>
7. Importantly, the BANC Committee should ensure in its review of any proposed changes that the public interest considerations underlying Bill C-244 are duly acknowledged and consumer protection retains a strong place within the overall regime. We reiterate our earlier remarks regarding these considerations:

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.<sup>2</sup>

8. We submit that the above considerations should inform the BANC Committee's study and consumers' freedom to repair their own products and devices should be explicitly stated

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<sup>1</sup> House of Commons, Standing Committee on Industry and Technology, Evidence, NUMBER 049 Monday, December 5, 2022, at p6.

<sup>2</sup> *Ibid.* at p7.

as an objective in the wording of this bill. We also ask for similar considerations for Bill C-294 (discussed below). The BANC Committee should be wary of any attempts to sideline consumer interests, which could leave consumers, particularly vulnerable and low-income consumers in a position to not be able to use their own products or face significant challenges in getting them repaired, which as briefly noted earlier can have dire consequences.

9. We further note that Bill C-244 still lacks an exception to copyright infringement regarding access to find, reproduce and disseminate information, including diagnostic codes and repair manuals for the purpose of facilitating repair.<sup>3</sup> PIAC has commented on this issue earlier in its remarks to the INDU Committee<sup>4</sup> as well as in different consultations held by ISED.<sup>5</sup> Access to these repair manuals and resources is integral for not only being able to repair products but ensuring that no harm or damage is caused to the pertinent product when repaired by consumers themselves and/or independent or third party repairers.
10. Moreover, such an exception aligns with the Supreme Court's findings on the *Copyright Act's* public interest purposes as provided in *Théberge v. Galerie d'Art du Petit Champlain inc.* 2002 SCC 34. This exception is even more important when it comes to medical devices and equipments in need of repair, as well as a wide range of equipment or devices used by individuals with disabilities, such as wheelchairs, and hearing aids to name a few. This repair exception could either be a standalone provision or be added to the fair dealing exception.
11. The EU Directive 2024/1799 that sets out common rules to promote the repair of goods also provides a broad right requiring manufacturers to provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means. This is to ensure repair by not only the manufacturer, but also by other repairers.<sup>6</sup>

Under the requirements laid down in delegated acts adopted pursuant to Regulation (EU) 2024/1781 or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council, manufacturers are to provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means. Those requirements ensure the technical feasibility of repair, not only by the manufacturer, but also by other repairers. As a consequence, the repairers and,

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<sup>3</sup> See: House of Commons, Standing Committee on Industry and Technology, Evidence, NUMBER 049 Monday, December 5, 2022, at p7.

<sup>4</sup> House of Commons, Standing Committee on Industry and Technology, Evidence, NUMBER 049 Monday, December 5, 2022.

<sup>5</sup> See PIAC Submission, "A Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things - Submission of the Public Interest Advocacy Centre (2 September 2021), online: <<https://www.piac.ca/wp-content/uploads/2021/12/2021-09-02-PIAC-Submission-on-Modern-Copyright-Framework-AI-and-IoT.pdf>>; and PIAC Submission, Consultation on the Right to Repair – Innovation, Science and Economic Development Canada (26 September 2024).

<sup>6</sup> Directive (EU) 2024/1799 Of The European Parliament And Of The Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828 at para 18

where applicable, consumers will have access to spare parts and repair-related information and tools in accordance with Union legal acts and consumers will have a wider choice of repairers or, where applicable, the possibility to repair by themselves.<sup>7</sup> [Footnote within the quote omitted]

12. We emphasize that it is important that the legislation, rather than any regulation includes this explicit exception to copyright infringement on having access to repair materials. This would not only provide greater clarity and direction, but also ensure that a uniform standard is applied across Canada, with no backdoors left open in the different regimes, including provincial or territorial regimes that could be utilized to weaken access to such repair resources.
13. Additionally, the BANC Committee should add a clarification in Bill C-244 to ensure that "persons" availing themselves of the exceptions includes their agents, i.e., those persons acting on their behalf. This is to ensure that any technicians, and/or third party repairers and repair shops hired by consumers are covered by the proposed amendments. We recommend that the same should be added to Bill C-294.

### **Brief Commentary on Bill C-294, *An Act to amend the Copyright Act (interoperability)***

14. PIAC supports Bill C-294 and submits that consumers should be able to circumvent TPMs to obtain information to allow the subject program or device to be interoperable with other programs, devices or components or make the program or device interoperable with any other computer program, device or component, as provided in the text of this bill. In today's times when devices are becoming increasingly interconnected, it is critical to provide a strong right to interoperability in the context of the right to repair. This would allow consumers the much needed flexibility and freedom to get their interoperable products fixed by providers of their own choice and as per their means and budget, including themselves.
15. With rapid technological advancements, devices are becoming increasingly complexed and sophisticated, thus, it is more important than ever to ensure access to resources to maintain the functionality and interconnectedness of devices.
16. We reiterate our earlier comments to ISED that consumers are increasingly at risk of having essential services restricted as more and more products become software-enabled.<sup>8</sup> If, for example, smart home manufacturers are not required to provide access to software, as a result of strictly enforced TPM, then only home appliances made by that manufacturer and their partners will be interoperable.<sup>9</sup> Consumers will have fewer options when purchasing smart home utility products such as lightbulbs, water heaters, sound

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<sup>7</sup> *Ibid.*

<sup>8</sup> PIAC Submission, "A Consultation on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things - Submission of the Public Interest Advocacy Centre (2 September 2021) at p4.

<sup>9</sup> *Ibid.*

systems, personal assistants, and thermostats, and this limitation may disrupt their access to essential services.<sup>10</sup> This restricted access must stop, consumers should be granted the freedom to get these interconnected devices repaired as per their choice by allowing legal circumvention of TPMs for the purposes of maintaining interoperability of devices.

17. PIAC notes that Bill C-294 broadly provides under s.41.12(1)(a) that restrictions regarding circumventing TPMs do not apply for the purpose of obtaining information that would allow the person to make the program or a device interoperable with any other program. However, it does not explicitly state that it will not be a copyright infringement to access such repair materials and resources. The above provision may also lead to different interpretations and confusion. Thus, we suggest that a provision should be added in this bill as well for clarity. It should state that access to any and all repair resources and/or materials shall not amount to copyright infringement if it were to allow the person to make the program or a device in which it is embedded interoperable with any other computer program, device or component.
18. PIAC further notes that the proposed s.41.12(4) of Bill C-294 provides for sharing of information, and while we support such sharing of information, we note that it is important that stringent security and privacy safeguards are considered to ensure that there is no misuse of consumers personal data and information by any third party repairers, or any other stakeholders involved in the repair process. We expect such protections to be a part of the broader right to repair and other privacy and data security regimes, but explicit mention of the application of existing privacy and security legislation and regimes should be considered to ensure that there is no collection, use or disclosure of personal information of individuals without their express consent.

### **PIAC's Preliminary Recommendations**

19. Based on the above, our recommendations are as follows:
  - ❖ Consumers' freedom and ability to repair products and devices should be explicitly stated as an objective in the wording of the bills, and must maintain a strong place within the overall regime.
  - ❖ Bill C-244 should have an explicit and broad exception to copyright infringement regarding access to repair resources, including, but not limited to repair manuals, diagnostic codes and other tools that are subject to copyright protection. This is to facilitate repair by consumers and/or other repairers. Access to these repair resources is integral for repair and to ensure that no harm or damage is caused to the pertinent product when repaired by consumers themselves and/or independent or third party repairers.
  - ❖ A similar exception to copyright infringement regarding access to all repair materials should be explicitly provided in Bill C-294 to avoid any confusion and

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<sup>10</sup> *Ibid.*

ensure consumers and/or third party repairers have access to necessary materials to maintain interoperability.

- ❖ Bill C-294 should mention the application of existing privacy and security legislation and regimes to ensure that there is no collection, use or disclosure of personal information of individuals without their express consent, with such risks heightened in case of interconnected devices.
- ❖ We also recommend that the BANC Committee should add clarifications in both bills to ensure that "persons" availing themselves of the exceptions includes their agents, i.e., those persons acting on their behalf. This is to ensure that any technicians, third party repairers and/or independent repairers hired by consumers are covered by the amendments to the *Copyright Act*.

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