



The Right of the Consumer to Use Out-of-Commerce Hardware and Software: From Right to Repair to Abandonware

Candidate: Oscar Maria
Formaro

Supervisor: Prof. Eugenio
Prosperetti

Management and Computer Science

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Part I – Consumer Rights to Repair & Hardware Obsolescence

1 - Defining obsolescence

Obsolescence is the process by which a product or service becomes outdated or unusable before the end of its natural life-span. It can arise in two principal ways. First, **planned obsolescence** describes the deliberate design of goods with a limited operational life so that consumers must replace them after a relatively short period. Examples include sealed batteries that cannot be replaced and components engineered to fail after a certain number of uses. Second, **functional (or technological) obsolescence** occurs when improvements in technology or software make an existing product less desirable even though it still functions. This form of obsolescence is common in the digital economy, where new models and software updates quickly render earlier devices obsolete. Both forms of obsolescence increase consumption and waste, and they play a central role in the debate about consumer rights and sustainability.

Historically, one of the earliest and most notorious examples of «planned obsolescence» was the **Phoebus cartel** formed in 1924 by major lightbulb manufacturers. Within a year the cartel agreed to standardise household bulbs at a lifespan of **1 000 hours**, down from the **1 500-to-2 000 hours** that had previously been common. In practice, the cartel's engineers shortened bulb life even further: average lifespans declined from **around 1 800 hours in 1926 to roughly 1 205 hours by fiscal year 1933-34**. This global arrangement — motivated by profits and higher sales rather than consumer benefit—codified shorter product lifetimes and is widely regarded as the birth of modern planned obsolescence.¹

Planned obsolescence has significant environmental and social costs. The world currently discards close to **50 million tonnes** of electronic and electrical waste every year², yet less than 20 per cent of this e-waste is formally recycled². This means that millions of devices—phones, laptops, appliances and other equipment — are either stockpiled in homes or dumped in landfills and informal recycling sites. The **World Economic Forum** notes that the global generation of e-waste

¹ Markus Krajewski, “**The Great Lightbulb Conspiracy**,” *IEEE Spectrum* (24 Sep 2014)

² International Labour Organization, “**50 million tonnes of potentially job creating e-waste discarded annually**,” newsroom release (25 Jan 2019) <https://www.ilo.org/resource/news/50-million-tonnes-potentially-job-creating-e-waste-discarded-annually>

reached **about 53.6 million metric tons** in 2019, with **only around 17 per cent** being properly collected and recycled³. These figures underscore the scale of the problem and highlight how quickly waste streams are growing. Because the materials contained in e-waste include valuable metals (copper, palladium, platinum) and rare earth elements, the failure to recover them represents both an economic loss and an ecological burden.

The health implications of poorly managed e-waste are alarming. The **World Health Organization** classifies e-waste as hazardous because it contains toxic materials such as dioxins, lead and mercury; when electronics are dismantled or burned improperly, these toxicants are released into the environment and pose serious risks to workers and nearby communities⁴. Children and pregnant women are especially vulnerable to exposure, which can lead to neurological damage, impaired respiratory function and other long-term health problems. Many of the world's poorest workers engage in informal e-waste recycling — over **600 000** people in China alone work under often precarious conditions to collect and process discarded electronics⁵. This labour is frequently unregulated, and workers are exposed directly to hazardous substances without adequate protection.

Functional obsolescence, by contrast, is driven less by physical deterioration than by the pace of technological innovation. Rapid product cycles and mandatory software updates can make older devices incompatible with new applications or operating systems. Manufacturers may cease providing security patches or spare parts for legacy devices, leaving consumers with functioning hardware that cannot be safely used. While technological obsolescence often reflects genuine progress, it also raises questions about the fairness of depriving consumers of the ability to use products they have purchased. The result is a proliferation of devices that are fully operational but unusable due to software incompatibility or discontinued support.

Government agencies and courts have begun to tackle both forms of obsolescence. In 2018 Italy's competition authority fined Apple and Samsung **€10 million** (treated in two different infringements) and **€5 million**, respectively, for «unfair commercial practices» (Legislative Decree 206/2005, Articles 20–26) after finding that software updates for older smartphones caused serious malfunctions and significantly reduced performance, thereby encouraging users to buy new devices⁶. The Italian Consumer Code states that a commercial practice is unfair if it “distorts or is likely to distort the economic behaviour of the consumer”. The watchdog criticised the companies for failing to inform consumers of the

³ World Economic Forum, “**The enormous opportunity of e-waste recycling**” (24 Mar 2023) <https://www.weforum.org/stories/2023/03/the-enormous-opportunity-of-e-waste-recycling/>

⁴ World Health Organization, “**Electronic waste (e-waste)**” fact sheet (2024) [https://www.who.int/news-room/fact-sheets/detail/electronic-waste-\(e-waste\)](https://www.who.int/news-room/fact-sheets/detail/electronic-waste-(e-waste))

⁵ See footnote 2

⁶ Samuel Gibbs, “**Apple and Samsung fined for deliberately slowing down phones,**” *The Guardian* (24 Oct 2018)

effects of the updates or provide any means of restoring original functionality. France in 2015 **criminalised planned obsolescence**; the law⁷ (Article L441-2 of the French Consumer Code) grew from activism by the group **Halte à l'obsolescence programmée** and treats the deliberate shortening of product life as a social and environmental offence. Under this law prosecutors may seek fines of up to **5 per cent of annual sales** and a **two-year prison sentence** for executives. Beyond national measures, the **Basel Convention** on the Control of Transboundary Movements of Hazardous Wastes⁸ regulates cross-border e-waste shipments. The **Ban Amendment** to the convention, which entered into force in the EU in 2019, prohibits exports of hazardous waste — including e-waste — from OECD and European Union countries to other states. The Convention also provides guidelines to distinguish waste from non-waste and to promote environmentally sound management and recycling. These legal responses, together with emerging right-to-repair rules, illustrate a growing recognition that obsolescence is not merely a consumer inconvenience but a practice with significant environmental, health and social implications.

The growing awareness of these issues has led to legislative and social initiatives that seek to curb obsolescence and empower consumers. In May 2024 the Council of the European Union adopted the **right-to-repair directive**, which requires manufacturers to repair goods that are technically repairable under EU law and creates incentives for consumers to choose repair rather than replacement. Among the measures introduced are a **standardised repair form** detailing deadlines and prices, a **European online platform** to help consumers locate repair services, and an **extension of the legal guarantee by twelve months** when repair is chosen instead of replacement. Member States will have twenty-four months from the directive's entry into force to transpose these obligations into national law⁹. By making repair easier, cheaper and more attractive, the Directive aims to prolong product life-spans, reduce waste and foster a circular economy. The new rules complement the forthcoming ecodesign regulation, which will require durable and repairable design for a broader range of products. Together, they represent a significant step towards addressing both planned and functional obsolescence and aligning consumer rights with sustainability goals.

⁷ Article L441-2, *French Consumer Code* 2015

⁸ *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, adopted 22 March 1989, entered into force 5 May 1992, 1673 U.N.T.S. 57.

⁹ *Council of the European Union*, "Circular economy: Council gives final approval to right-to-repair directive" (press release, 30 May 2024) <https://www.consilium.europa.eu/en/press/press-releases/2024/05/30/circular-economy-council-gives-final-approval-to-right-to-repair-directive/>

2 - Right-to-repair movement

The rapid turnover of consumer electronics and household appliances has given rise to a grass-roots right-to-repair movement.¹⁰ At its heart is a simple question: if a product fails or a component wears out, should the owner be forced to buy a new one or should they have a legal right to fix it? Manufacturers often make repairs difficult through glued components, proprietary screws, software locks or by withholding spare parts and manuals. Repairs can also be expensive and inconvenient, so many consumers simply replace broken items, feeding a throw-away culture that produces millions of tonnes of electronic waste. According to the Council of the European Union, the cost and complexity of repairs leads many consumers to discard devices, resulting in unnecessary waste and the consumption of scarce resources¹¹. The right-to-repair movement responds to these problems by demanding that products be designed to last and that owners have affordable access to parts, tools and information.

On 30 July 2024 the European Union adopted the Right-to-Repair directive, which aims to make repairs easier and more attractive for consumers. The Directive obliges manufacturers to repair goods that are technically repairable under EU law—such as washing machines, dishwashers, refrigerators, vacuum cleaners, televisions, smartphones and tablets (specified in Annex II, everything else not on it is not covered) and bans anti-repair practices that impede independent repairs. It stipulates that repairs must be carried out within a reasonable time and at a reasonable price, and manufacturers must provide spare parts and diagnostic tools to repairers and consumers at fair costs. For repairs undertaken during the legal guarantee period, the seller's liability period is extended by at least twelve months¹²; consumers can therefore preserve their guarantee rights by choosing to repair rather than replace defective goods. Beyond the guarantee period, the manufacturer remains obliged to repair the product, and consumers may even borrow a replacement device or opt for a refurbished unit if the original cannot be fixed(10)¹³.

To support transparency and informed choice, the directive introduces a standardised repair information form. Repairers may offer this form free of charge, setting out the estimated price, duration and conditions of the repair, and the information remains valid for 30 days. An online repair platform, to be operational by mid-2027, will connect consumers with professional repairers, sellers of

¹⁰ *Right to Repair Europe*, “Who We Are,”., <https://repair.eu/about/>

¹¹ Consilium, «**Right to repair products**» (press release), <https://www.consilium.europa.eu/en/policies/right-to-repair-products/>

¹² See footnote 7

¹³ European Parliament, «**Right to repair: Making repair easier and more appealing to consumers**» (press release), <https://www.europarl.europa.eu/news/en/press-room/20240419IPR20590/right-to-repair-making-repair-easier-and-more-appealing-to-consumers>

refurbished goods and community initiatives¹⁴. This EU-level portal aims to simplify the search for local services and promote cross-border repairs. The directive also requires manufacturers to display information on spare parts on their websites and forbids practices that prevent the use of second-hand or 3D-printed parts¹⁵. Importantly, the new rules ensure that consumers retain the right to choose between repair and replacement during the guarantee period, but they reward repair by extending the warranty when that option is chosen¹⁶.

By focusing on after-sales repair, the directive complements other EU measures such as the Ecodesign for Sustainable Products Regulation and the Empowering Consumers for the Green Transition Directive. These instruments establish design requirements that make products more durable and repairable and provide consumers with information about durability and repairability at the point of sale. Together, they aim to encourage a circular economy in which goods are reused, repaired and refurbished rather than thrown away. The European Parliament estimates that premature disposal of consumer goods produces 261 million tonnes of CO₂-equivalent emissions, consumes 30 million tonnes of resources and generates 35 million tonnes of waste annually; the new right-to-repair rules are expected to yield €4.8 billion in growth while reducing waste(10)¹⁷.

Despite these ambitions, the directive's scope remains relatively narrow. The Repair Association notes that, while the rules mandate reasonable prices for spare parts and extend repair obligations, they currently apply only to selected household goods such as major appliances, televisions and handheld devices¹⁸. Smaller electronics (e.g. hairdryers or microwaves) and many industrial or professional products remain outside the regime, and the directive allows manufacturers to justify anti-repair restrictions on intellectual-property grounds. Advocates argue that vague terms like "reasonable price" could permit excessive mark-ups for spare parts and that the lack of strong enforcement mechanisms may allow manufacturers to continue anti-repair practices¹⁹. Nevertheless, the Commission can add new product categories through delegated acts, and the directive is seen as an important step towards mainstreaming repair in European consumer law.

While the EU sets minimum standards, several Member States have implemented national measures that go beyond the directive. France, a leader in the right-to-repair movement, introduced a repairability index in 2021²⁰ that requires

¹⁴ See footnote 7

¹⁵ Legislative Train Schedule, «**Proposal for a directive on common rules promoting the repair of goods**», <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-right-to-repair?sid=9501>

¹⁶ See footnote 9

¹⁷ See footnote 8

¹⁸ *Repair Association*, «**Right to Repair Around the World**», <https://www.repair.org/world>

¹⁹ See footnote 10

²⁰ *Enviropass*, "France's Repairability and Durability Index: Empowering Sustainable Consumer Choices," 2021, <https://getenviropass.com/durability-index/>

manufacturers (both inside and outside the EU) to score smartphones, laptops, televisions and washing machines on a 0-to-10 scale based on criteria such as ease of disassembly, availability and price of spare parts and the clarity of repair documentation²¹. From 2025 this index will evolve into a broader sustainability index covering reliability as well as repairability²². France also obliges sellers to inform consumers about the availability of spare parts (seller is defined in Article 2(3) of the Sale of Goods Directive as «any natural or legal person, irrespective of whether privately or publicly owned, acting... for purposes relating to that person’s trade, business, craft or profession»); if the information is not provided, parts are presumed unavailable, which can trigger liability²³. Mandatory availability periods require manufacturers to supply spare parts for five years for laptops and smartphones and up to ten years for washing machines and dishwashers²⁴. The country has even criminalised deliberate obsolescence, and courts can impose fines and prison sentences on executives.²⁵

France has paired these regulatory measures with financial incentives. Since December 2022 a repair fund has subsidised out-of-warranty repairs for electronic devices: consumers receive a lump-sum reduction (around 20 per cent) directly on their invoice, financed through extended-producer-responsibility fees²⁶. The fund covers appliances, small electronics and, since 2023, shoes, clothing, sporting goods and bicycles²⁷. To qualify, repairers must obtain a “Qualirepar” label; more than 1 000 workshops have been certified, with another 1 800 in the process²⁸. This scheme reduces paperwork for consumers and ensures that manufacturers—not taxpayers — pay for the bonus²⁹.

Austria pioneered the repair bonus (*Reparaturbonus*), first piloted by the city of Graz in 2017, and later in other Austrian regions³⁰. Citizens could claim up to 50 % of the repair cost (maximum €100) for electrical devices³¹. The programme’s success led to adoption in the city of Vienna (where 90 % of repaired items were successfully fixed, saving 540 tonnes of CO₂) and then nationwide in April 2022. Each voucher now covers 50 % of repair costs up to €200 per item and

²¹ See footnote 10

²² *Europe-consommateurs*, «Spare parts and repairs: A right in Europe?», <https://www.europe-consommateurs.eu/en/shopping-internet/spare-parts-and-repairs.html>

²³ See footnote 11

²⁴ See footnote 10

²⁵ Mike Woods, “France starts criminal probe into Apple over « obsolescence »,” *RFI* (9 Jan 2018)

²⁶ *Right to Repair Europe*, «There is life on Mars! Success stories of financial incentives to make repair affordable», <https://repair.eu/news/there-is-life-on-mars-financial-incentives-to-make-repair-affordable/>

²⁷ *Reset.org*, «Berlin rewards the repair of smartphones and other devices: How the new repair bonus works», <https://en.reset.org/berlin-rewards-the-repair-of-smartphones-and-other-devices-how-the-new-repair-bonus-works/>

²⁸ See footnote 13

²⁹ See footnote 14

³⁰ *Katrin Meyer*, “Germany and Austria Implement Repair Bonuses,” *Right to Repair Europe*, 18 August 2021

³¹ See footnote 13

even subsidises 50 % of the cost estimate; the scheme is financed by €130 million from the EU's COVID-19 recovery fund and had subsidised over 353 000 repairs by late 2022. This success story led to the adoption of this initiative in other Austrian regions and, eventually, other countries.

Germany has adopted similar initiatives at the regional level. The *Land* of Thuringia introduced a repair bonus in 2021, covering 50 % of the repair bill up to €100. High demand exhausted the initial €500 000 budget; nearly 12 000 repairs were funded in 2022, demonstrating that cost is a major barrier to repair. Other *Länder*, including Saxony and Bavaria, are piloting their own schemes, and Berlin and Saxony reimburse half of repair costs up to €200, covering all electronics from smartphones to white goods. In Saxony alone, 10 000 appliances were repaired in the first half of 2024, and the Thuringian scheme has processed approximately 30 000 applications since its launch³². Advocates hope these regional bonuses will be rolled out nationally.

Sweden takes a different approach by reducing value-added tax on repair services. In 2016 the VAT rate for small repairs of bicycles, clothing and shoes was reduced from 25 % to 12 %; in 2022 it was further reduced to 6 %, although the rate will revert to 12 % in 2023. Sweden also allows tax deductions for the labour costs of repairing household appliances³³. These fiscal measures make repairs cheaper without requiring consumers to apply for subsidies.

Other Member States are exploring similar incentives. The Right to Repair Europe coalition, representing more than 180 organisations in thirty countries, has called for a universal right to repair and has documented the successes of repair bonuses and tax incentives³⁴. The coalition demands that products be designed for easy disassembly and that spare parts, repair manuals and diagnostic tools be universally available at fair prices. It also advocates for a repairability scoring system at the point of sale financial incentives to lower repair costs and a ban on contractual, hardware or software techniques that block independent repairs or “part pairing”³⁵. These demands influenced the EU directive and national policies and continue to guide advocacy efforts.

Although the right-to-repair directive and national schemes represent significant progress, they leave important questions unanswered. First, the directive is tied to repairability requirements set by other EU regulations. This means that if a product has not been assigned a repairability requirement by the EU Commission, there is no obligation for the manufacturer to repair it. Advocates argue for a broader scope that includes laptops, small kitchen appliances, entertainment devices and industrial equipment. Second, the directive allows manufacturers to refuse the use of certain

³² See footnote 14

³³ See footnote 13

³⁴ *Right to Repair Europe*, «What we want» and «Who we are», <https://repair.eu/what-we-want/>, <https://repair.eu/about/>

³⁵ See Footnote 15

parts when intellectual property rights might be infringed, which could be exploited to restrict compatible or 3D-printed parts³⁶. Third, there is no explicit cap on spare-part prices; terms like “reasonable price” are not defined, and the absence of a public reference price could discourage independent repairers. Moreover, enforcement will depend on the ability of national authorities to monitor compliance and impose penalties.

Furthermore, the limitations of the Directive do not preclude the application of general EU competition law, which has long served as a 'safety net' against aftermarket restrictions. Under Article 102 TFEU, a manufacturer's attempt to monopolize the repair or spare parts market can be sanctioned as an abuse of a dominant position. A seminal example is *Hilti AG v Commission* (Case T-30/89), where the Court upheld that Hilti abused its market power by 'tying' the sale of its patented cartridge strips to its own nails, thereby excluding independent manufacturers from the secondary market.

Applying the Hilti doctrine to the modern right-to-repair context suggests that when a dominant firm uses technical barriers — such as software locks or 'part pairing' — to prevent the use of third-party components or independent repair services, it may be found in breach of antitrust rules. Consequently, even where sectoral repair regulations are absent or narrow, competition law provides a robust mechanism to ensure that secondary markets remain open and competitive.

From a consumer perspective, financial incentives remain uneven across Europe. While Austria and certain German states refund half of repair costs and France subsidises repairs via producer responsibility fees, some countries offer little or no support. Without subsidies, repairs of low-value items may still be more expensive than buying replacements. Advocates propose EU-wide repair vouchers funded by eco-fees on new products, as well as reduced VAT for all repair services. They also call for open-source repair manuals and stronger protections for independent repairers, such as legal immunity for bypassing digital locks when necessary to repair a device.

Looking forward, the right-to-repair movement seeks to embed repairability into the design stage. The EU's forthcoming codesign regulation for smartphones and tablets already requires manufacturers to ensure a steady supply of spare parts and repair information³⁷, and this model could be extended to other devices. Expanding the repairability index into a sustainability index across the EU would allow consumers to compare products based on durability, repairability and environmental impact, pressuring manufacturers to improve design. The movement also champions community-led repair, such as repair cafés, which not only reduce waste but also build social networks and technical skills. Finally, the movement intersects with intellectual-property law: just as the *UsedSoft* judgment confirmed that digital software licences can be resold, activists argue that consumers should

³⁶ See footnote 10

³⁷ See footnote 10

not lose access to the software necessary to operate physical goods when manufacturers discontinue support. Integrating hardware and software rights will be crucial to ensuring that the right-to-repair fully addresses obsolescence in the digital age.

3 – EU Legislation Coverage

The European Union has built a sophisticated legal framework to promote longer-lasting, repairable products and to protect consumers when goods fail to meet expectations. This chapter reviews the key directives and regulations that underpin the **right-to-repair** agenda and the broader fight against **planned obsolescence**. The legislative landscape spans sectors, from general sales rules to digital content, product design and waste management. Understanding how these measures interact will help clarify the extent to which EU law supports consumer rights and sustainable consumption.

3.1 Directive 2019/771/EU – Sale of Goods Directive

Directive 2019/771/EU modernises the rules on contracts for the sale of goods between traders and consumers. It replaces Directive 1999/44/EC and applies to all physical goods, including those with digital elements. Sellers must ensure that goods conform to the contract by meeting both **subjective** and **objective** criteria. The subjective criteria cover features explicitly agreed by the parties, while the objective criteria include that the goods be fit for normal use, correspond to any sample or model shown, and possess qualities and features that the consumer may reasonably expect³⁸. Notably, the directive now ties these objective qualities to **durability, repairability, functionality, compatibility and security** expectations. Where a seller offers a choice between repair and replacement to remedy a lack of conformity and the consumer opts for repair, the seller's liability period must be extended once by **12 months**. Sellers are also obliged to provide updates for digital elements of goods to keep them in conformity. If the goods are defective, consumers may choose between repair and replacement free of charge and within a reasonable time, and if these remedies fail, they may request a proportional price reduction or contract termination. Member States had to transpose the directive by **1 July 2021**, and it has applied since **1 January 2022**³⁹. The sale of goods directive is significant for the right-to-repair movement because it enshrines **repair** as the primary remedy and explicitly links conformity to durability and repairability. By extending the

³⁸ EUR-Lex summary of Directive 2019/771/EU (Sale of Goods Directive) <https://eur-lex.europa.eu/eli/dir/2019/771/oj/eng>

³⁹ See footnote 16

liability period when consumers choose repair, it incentivises repairs over replacements. However, the directive does not oblige manufacturers to provide spare parts or repair services; those obligations come from sector-specific regulations and the new repair directive. The directive also preserves Member States' ability to maintain longer liability periods and specific rules on hidden defects. This flexibility has led to differing national implementations, with some countries offering longer guarantees or stricter seller obligations.

3.2 Directive 2019/770/EU – Digital Content and Digital Services Directive

The Digital Content and Digital Services Directive complements the sale of goods directive by regulating contracts where a trader supplies digital content or digital services to consumers. It covers downloads, streaming services, cloud storage and other digital services, including those offered in exchange for personal data⁴⁰. Digital content or services must conform to the contract description and quality and possess the functionality, compatibility and interoperability consumers reasonably expect⁴¹. Digital goods must be supplied with all accessories and instructions needed for proper use and must be updated as stipulated in the contract. Traders are obliged to inform consumers of and supply updates — including security updates — necessary to maintain conformity. A trader is liable for any lack of conformity that exists at the time of supply and for defects that become apparent within at least two years; if the content is supplied continuously, the trader remains liable throughout the supply period.

If a trader fails to supply the digital content or service, the consumer may terminate the contract. In case of non-conformity, the consumer may require the trader to bring the content into conformity; if the trader fails to do so, the consumer is entitled to a proportionate price reduction or contract termination. Upon termination, traders must reimburse the consumer and allow them to retrieve any content they provided. Traders must not continue to use non-personal data provided by the consumer once the contract has ended. Like the sale of goods directive, Member States were required to transpose the digital content directive by **1 July 2021**, and its rules apply from **1 January 2022**. The directive ensures that consumers receive ongoing updates and security patches, reducing the risk of premature digital obsolescence. However, it does not oblige suppliers to keep services running indefinitely; if a service ceases entirely, the consumer's remedy is termination and reimbursement rather than continued access.

⁴⁰ EUR-Lex summary of Directive 2019/770/EU (Digital Content Directive) <https://eur-lex.europa.eu/eli/dir/2019/770/oj/eng>

⁴¹ See footnote 17

3.2 Directive 2024/1799/EU – Repair of Goods Directive

Adopted in **March 2024**, Directive 2024/1799/EU — often called the “repair of goods” or “right-to-repair” directive — promotes repair as a remedy beyond the legal guarantee. It applies to goods that already fall under EU reparability requirements, such as washing machines, vacuum cleaners, refrigerators, mobile phones and tablets, and guarantees that consumers can request repair from manufacturers even after the legal guarantee has expired⁴². Manufacturers must offer repair within a reasonable time and at a reasonable price and must not use contractual clauses or technical, hardware or software means to obstruct independent repair. They must ensure access to spare parts at reasonable prices and provide clear information about repair services. The directive prohibits manufacturers from refusing repair or imposing prices that make repair uneconomical; these obligations apply to all manufacturers in the EU, even when they do not sell directly to consumers⁴³.

The directive also amends the sale of goods directive to grant consumers an extra year of legal guarantee when they choose repair over replacement. It encourages Member States to adopt national measures that promote repair, such as vouchers or information campaigns. A **European repair platform** is to be established by **2027** to connect consumers with repairers, and a standardised **repair information form** must be provided free of charge; this form sets out expected completion times, prices and conditions and remains valid for 30 days. By shifting the burden toward repair, the directive seeks to reduce waste and extend product lifetimes. However, it currently covers only a limited list of products, so expanding its scope will require further measures under the ecodesign regulation. Member States must transpose the directive by **31 July 2026**.

3.3 Directive 2009/125/EC – Ecodesign Framework

The **Ecodesign Directive 2009/125/EC** established a framework that allows the European Commission to set harmonised ecodesign requirements for energy-related products sold in the EU. Its overarching goal is to improve energy efficiency and environmental protection and to avoid fragmented national rules⁴⁴. The directive empowers the Commission to adopt measures that address all stages of a product’s life cycle — from raw material extraction to disposal — and to

⁴² European Commission press release on Directive 2024/1799/EU (Repair of Goods) https://commission.europa.eu/law/law-topic/consumer-protection-law/directive-repair-goods_en

⁴³ See footnote 18

⁴⁴ EUR-Lex summary of Directive 2009/125/EC (Ecodesign Directive) <https://eur-lex.europa.eu/EN/legal-content/summary/ecodesign-for-energy-related-products.html>

include provisions on repair and recycling at end of life⁴⁵. While early ecodesign regulations focused primarily on energy consumption during use, more recent measures take a holistic view, recognising that manufacturing and materials account for a significant portion of a product's environmental footprint. To maximise the embodied energy and extend product lifetimes, requirements increasingly target **reliability**, **reparability** and **recyclability**. Products that meet ecodesign requirements bear the CE marking and may be marketed throughout the EU. The directive has enabled product-specific regulations — for example for vacuum cleaners, computers and light sources — setting minimum efficiency standards and, in some cases, obligations for availability of spare parts.

Regulation 2024/1781/EU – Ecodesign for Sustainable Products Regulation (ESPR)

In **June 2024** the EU adopted Regulation 2024/1781, which replaces the old ecodesign directive and greatly expands its scope. This regulation seeks to enhance the **circularity, energy performance and other sustainability aspects** of almost all physical goods placed on the EU market⁴⁶. It serves as the new legal basis for ecodesign rules and authorises the Commission to set requirements for specific product groups or to adopt horizontal rules across several categories through delegated acts⁴⁷. The regulation forms part of the European Green Deal's circular economy package. Ecodesign requirements may cover any physical good except food, feed, medicines and certain defence products. Measures under the ESPR are intended to improve **durability, reusability, upgradability and reparability**, make products more energy and resource efficient, eliminate substances that hinder circularity, increase recycled content, facilitate remanufacturing and recycling, reduce environmental footprints and address the **destruction of unsold goods**. The regulation introduces a **Digital Product Passport** — a digital record that contains information on materials, technical performance, repair activities and recycling capabilities — accessible to consumers, manufacturers and public authorities. It also empowers the Commission to set **green public procurement** criteria, ensuring that public authorities give preference to sustainable products. Regulation 2024/1781 entered into force on **18 July 2024** and allows product-specific measures to be adopted from **19 July 2025**. By mandating design for longevity and transparency, the ESPR complements the right-to-repair directive and promotes a systemic shift toward sustainable products.

⁴⁵ See footnote 19

⁴⁶ EUR-Lex summary of Regulation 2024/1781/EU (Ecodesign for Sustainable Products Regulation – ESPR) <https://eur-lex.europa.eu/eli/reg/2024/1781/oj/eng>

⁴⁷ See footnote 20

3.4 Directive 2012/19/EU – WEEE Directive

The **Waste Electrical and Electronic Equipment (WEEE) Directive** addresses the rapid growth of e-waste in the EU, one of the fastest-growing waste streams. Electronics contain hazardous materials as well as valuable critical raw materials, so proper treatment is essential for environmental protection and resource security⁴⁸. The directive mandates the **separate collection** and proper treatment of waste electrical and electronic equipment and sets binding **targets** for collection, recovery and recycling⁴⁹. It helps Member States combat illegal exports by making it harder for exporters to disguise shipments as reused goods and by harmonising national registers and reporting formats, thereby reducing administrative burdens. By emphasising re-use and recovery, the WEEE Directive complements the right-to-repair agenda: repaired devices are less likely to become waste and can contribute to meeting collection and recycling targets. Nevertheless, because the directive is centred on waste management rather than product design, its influence on repairability is indirect and relies on parallel measures such as ecodesign requirements and extended producer responsibility schemes.

3.5 Directive 2020/1828/EU – Representative Actions Directive

The **Representative Actions Directive** creates a framework for collective redress mechanisms in consumer law. It allows **qualified entities**—such as consumer organisations or public bodies—to bring representative actions on behalf of groups of consumers seeking injunctions or redress⁵⁰. Injunctive measures can stop unlawful practices, while redress may include compensation, repair, replacement, price reduction or contract termination⁵¹. The directive aims to protect the collective interests of consumers across numerous sectors, including data protection, financial services, travel, tourism, energy and telecommunications. It applies to representative actions against infringements of EU law listed in Annex I and permits Member States to extend the mechanism to additional areas. Representative actions may be domestic or cross-border and may receive public or private funding. The directive encourages **opt-in** and **opt-out** models so that consumers can decide whether to participate and benefit from the outcome. By facilitating collective enforcement, it empowers consumers to seek remedies when

⁴⁸ European Commission WEEE information page https://environment.ec.europa.eu/topics/waste-and-recycling/waste-electrical-and-electronic-equipment-weee_en

⁴⁹ See footnote 21

⁵⁰ European Commission page on Representative Actions Directive https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive_en

⁵¹ See footnote 22

traders breach EU consumer law — including obligations arising from the sale of goods, digital content and right-to-repair directives. Qualified entities can demand repairs, replacements or refunds for large groups of consumers, making enforcement more efficient and deterring unfair practices. The directive entered into application on **25 June 2023**, although not all Member States have completed transposition.

3.6 Other Relevant Measures

RoHS Directive and hazardous substances – The Restriction of Hazardous Substances (RoHS) Directive limits the use of certain hazardous materials in electrical and electronic equipment. It complements the WEEE Directive by ensuring that products placed on the market are less harmful when recycled and by encouraging design modifications that remove toxic substances. The RoHS rules support reparability because products with safer materials are easier to handle and refurbish.

Consumer Rights Directive 2011/83/EU – This directive harmonises consumer rights in distance and off-premises contracts, including the right to withdraw within fourteen days. Although not directly related to repair, it interacts with the sale of goods directive to ensure that consumers can return non-conforming goods and thus indirectly influences manufacturers’ incentives to produce durable products.

General Product Safety Regulation 2023/988 – Adopted in May 2023 and applicable from **13 December 2024**, this regulation replaces the general product safety directive. It requires producers to ensure that non-harmonised products are safe throughout their life cycle and mandates mandatory **product registration** for certain high-risk categories. The regulation empowers market surveillance authorities to order safety warnings, withdrawals or recalls. By addressing safety defects, it indirectly supports repair initiatives: producers will have to maintain a pool of spare parts to rectify safety issues and may redesign products for easier repairs.

3.7 Commentary and Interaction

Taken together, these measures illustrate a move from **linear** consumption toward a **circular** economy. The sale of goods and digital content directives set baseline consumer rights and remedies, emphasising repair as an initial remedy and mandating updates to prolong functionality. The repair directive builds on these rights, directly obliging manufacturers to provide repair services, spare parts and information. Ecodesign rules and the new ESPR ensure that products are designed for durability, reparability and recyclability from the outset. Meanwhile, waste legislation like the WEEE Directive targets end-of-life management and resource recovery. Collective redress under the representative actions directive ensures that

these rights can be enforced efficiently, deterring companies from evading their obligations. Remaining challenges include expanding the scope of the repair directive to cover more product categories, aligning national implementations and ensuring that design requirements under the ESPR translate into concrete improvements in product longevity. Future reforms may also address **software obsolescence**, bridging the gap between hardware and digital products and ensuring that consumers retain access to purchased goods even when servers shut down.

4 - A comparative look at national approaches

A significant part of the consumer right-to-repair debate occurs not in Brussels but at national level. EU directives set the broad framework for repairability, yet it is the Member States that have begun to innovate with laws, tax incentives and awareness campaigns. This chapter offers a comparative panorama of national practices – mainly France, Italy, Sweden, Austria, Germany (including regional schemes), Spain, Belgium and Finland – and briefly looks at a digital case study to highlight how software shutdowns are also beginning to trigger public regulation.

4.1 France: from criminalising obsolescence to repairable products

France is often portrayed as the vanguard of anti-obsolescence policy. In 2015, its Parliament adopted the *Loi no 2015-992 sur la transition énergétique*⁵², which explicitly criminalises planned obsolescence (pratiques visant à réduire délibérément la durée de vie d'un produit). The law defines the offence and provides for up to two years' imprisonment and a fine of €300 000, which can be increased to 5 % of the company's annual turnover⁵³. This criminal sanction, rarely used so far, symbolises the recognition that engineering goods to break early is an unacceptable business practice.

Complementing the prohibition is a suite of measures aimed at giving consumers the information and means to make sustainable choices. From 1 January 2021 France introduced a mandatory *repairability index* for five categories of electronic goods – washing machines, smartphones, laptops, televisions and electric lawnmowers – and extended the index to four more categories in November 2022.

⁵²LOI n° 2015-992 du 17 août 2015 relative à la transition énergétique pour la croissance verte, *Legifrance* <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000031044385/>

⁵³ Daan Tech, *Repairability index and planned obsolescence: how it works* https://daan.tech/eur/what-is-the-repairability-index-fighting-against-programmed-obsolescence/?srsltid=AfmBOop4jdFiM72orj_T14BVlaRFjEahIJxk7XhTdeBZIYGTu3_v_I-m

The index scores products from 1 (difficult to repair) to 10 (easy to repair) and is displayed as a coloured pictogram on product labels and online listings. It is calculated using five criteria: availability of technical documentation, ease of disassembly, availability and delivery time of spare parts, price of spare parts and product-specific criteria. The government plans to turn this into a broader *sustainability index* by 2024, adding criteria such as robustness and reliability⁵⁴.

French law also requires sellers to inform customers about the availability of spare parts. If no information is given, the law presumes that the parts are unavailable⁵⁵. Manufacturers or importers must deliver spare parts within 15 days, and for many electronic and electrical devices the parts must be available for at least five years⁵⁶. Second-hand spare parts may be used, and any action (including software locks) that prevents independent repairers from fixing or reconditioning devices is prohibited. These obligations apply to in-store sales; on-line retailers must also display the repairability score.

To reduce consumer costs, France established a *repair fund* based on the “polluter pays” principle. Manufacturers pay contributions into a collective scheme managed by an “ecological organisation”; the fund finances 10 % of the repair price for out-of-warranty electronic products. Separately, since December 2022 the government has offered a *repair bonus*, a voucher deducted immediately from the repair bill, which was doubled or increased for many appliances in January 2024⁵⁷. For example, the bonus for TVs rose from €30 to €60 and that for washing machines and dishwashers from €25 to €50. To benefit, the product must be outside the legal guarantee and the owner must not have misused it⁵⁸. These policies show a coordinated approach: criminal sanctions for planned obsolescence, mandatory information, a rating system encouraging design for repair and financial support for consumers.

4.2 Italy: consumer enforcement through competition law

Unlike France, Italy has not enacted a general right-to-repair act, but its competition authority has taken a lead role in sanctioning conduct that undermines product longevity. In 2018 the Autorità garante della concorrenza e del mercato (AGCM) fined Apple €10 million and Samsung €5 million for misleading practices

⁵⁴ See footnote 23

⁵⁵ European Consumer Centre Germany, *Repair, don't throw away: all you need to know about the right to repair* (8 May 2024) <https://www.evz.de/en/shopping-internet/right-to-repair.html>

⁵⁶ See footnote 24

⁵⁷ Service Public (France), *Bonus réparation: barème 2024* <https://www.economie.gouv.fr/particuliers/mes-droits-conso/bien-consommer/bonus-reparation-comment-ca-marche>

⁵⁸ See footnote 25

related to software updates⁵⁹ — a relatively low fine considering the turnover of the two — which made the sanction barely effective. The authority found that both companies induced consumers to install operating-system updates that were not supported by their devices, causing serious malfunctions and reduced performance; consumers were neither adequately informed nor offered the option to restore full functionality. The AGCM concluded that the updates accelerated the replacement of handsets and thus constituted unfair commercial practices⁶⁰. The decision required the companies to publish corrective statements on their Italian websites. While this case does not create a statutory repair right, it signals that competition law can tackle digital obsolescence when manufacturers use updates to hasten replacement.

Italy does not yet require manufacturers to provide spare parts or repair information, though EU rules will soon impose such obligations⁶¹. Nonetheless, Italian consumers can rely on the 2022 expansion of EU guarantee rules, which extend warranty periods for certain goods and create rights to repair or replacement. Italy's experience shows how enforcement agencies can address software-driven obsolescence even in the absence of dedicated legislation.

4.3 Sweden: tax incentives for a repair economy

Sweden has chosen a fiscal route to encourage repair. In September 2016 the Social Democrat-Green coalition proposed cutting the value added tax on repairs to bicycles, clothes and shoes from 25 % to 12 % and allowing households to deduct half of the labour cost of repairing appliances like fridges and washing machines from their income tax⁶². Per Bolund, then minister for financial markets, argued that reducing repair bills by about 50 SEK on a 400 SEK repair would make it rational to fix rather than replace. The measure is framed as both an environmental policy — reducing emissions linked to the manufacture of new goods — and a job-creation scheme for the service sector⁶³. By lowering the cost barrier, Sweden hopes to normalise a culture of repair rather than consumption, illustrating how tax policy can complement regulatory schemes.

⁵⁹ Autorità garante della concorrenza e del mercato, *Fines against Apple and Samsung for unfair commercial practices* (press release, 24 October 2018) <https://www.agcm.it/media/comunicati-stampa/2018/10/PS11009-PS11039>

⁶⁰ See footnote 26

⁶¹ See footnote 24

⁶² R. Orange, *Waste not want not: Sweden to give tax breaks for repairs*, The Guardian, 19 September 2016.

⁶³ See footnote 27

4.3 Austria: the Reparaturbonus

Austria's Reparaturbonus exemplifies direct financial support for repairs. Launched in 2022, the federal scheme covers 50 % of the repair or servicing cost for electronic appliances and bicycles, up to a maximum of €200 per repair and €30 for cost estimates⁶⁴. The programme targets private individuals and applies to common household devices – from toasters, smartphones and laptops to power tools – provided they are owned by the applicant and are out of warranty⁶⁵. The aim is to give devices “a second chance,” save consumers money and protect the climate. The bonus is financed by the Ministry of Agriculture, Regions and Tourism (now climate protection), as part of Austria's NextGenerationEU stimulus. Demand has been so high that the funds were temporarily exhausted in 2024, with the programme suspended pending a relaunch later in the year. This success underscores both the popularity of financial incentives and the challenge of sustaining them.

4.5 Germany: ecodesign implementation and regional repair bonuses

Germany implements the EU Ecodesign Directive by requiring spare parts to be available for a certain period; retailers must inform consumers at purchase about possible defects, whether and how the product can be repaired and the cost. Retailers must also recycle more and take back old electronic equipment and cannot destroy returned products that are almost new⁶⁶. Although Germany lacks a national repair subsidy, several federal states and cities have introduced their own repair bonuses.

Berlin and Saxony: In 2024 Berlin joined Saxony in offering a repair bonus that reimburses 50 % of the cost of repairs up to €200⁶⁷. The programme covers all electrical and electronic devices including smartphones, laptops and white goods; repairs must be carried out by professional workshops or in repair cafés. By the first half of 2024 approximately 10 000 devices had been repaired under the Saxony scheme and about 30 000 applications had been approved in Thuringia since 2021⁶⁸.

Thuringia: This state introduced a repair bonus in 2021, funded with €600 000 and prolonged in 2025. Residents can claim 50 % of repair costs up to €100 per year; in repair cafés, the programme covers 100 % of spare-part costs. The bonus

⁶⁴ Federal Ministry for Climate Protection (Austria), *Reparaturbonus* programme information page <https://helferline.at/reparaturbonus-en/>

⁶⁵ See footnote 28

⁶⁶ See footnote 24

⁶⁷ Reset.org, *Berlin gets a repair bonus: these states subsidise repairs*, <https://en.reset.org/berlin-rewards-the-repair-of-smartphones-and-other-devices-how-the-new-repair-bonus-works/>

⁶⁸ See footnote 29

applies for invoices above €50 or €25 in repair cafés⁶⁹. Around 40 000 repairs have been funded since inception⁷⁰. These regional schemes demonstrate how sub-national governments can supplement EU rules and national obligations with tangible incentives.

4.6 Spain: extended legal guarantee

Spain implemented Directive (EU) 2019/771 by extending the legal warranty for consumer goods from two to three years on 1 January 2022⁷¹. Second-hand goods can have a shorter warranty but not less than one year, and digital content or services now carry a minimum two-year guarantee⁷². The extended guarantee, coupled with EU-wide rights to repair or replacement, gives Spanish consumers longer to demand corrective measures if products fail prematurely. Spain has not announced specific repair bonuses, but the longer guarantee indirectly promotes repair by increasing the period during which the seller is liable.

4.7 Belgium, Finland and other European examples

Belgium uses fiscal policy to encourage repair by reducing VAT on small repairs – to bicycles, shoes, leather goods, clothing and household linen – to 6 %⁷³. Though modest in scope, the measure treats repair labour like a basic good and makes local crafts more competitive.

Finland employs a consumer-protection approach: under its Consumer Protection Act, a product is considered defective if its lifetime is shorter than could reasonably be expected. This may oblige traders to repair goods even several years after sale and incentivises companies to keep spare parts available for long periods. Finland illustrates how national contract law can protect consumers beyond the minimum warranty period.

Several other countries have adopted smaller measures. In Greece retailers must ensure spare parts are available for the estimated lifetime of the product, while Ireland has reduced VAT on small repairs and introduced rights when a seller

⁶⁹ KommunalService Jena (Thuringia), *Repair bonus continues* (2025 update) <https://ksj.jena.de/en/news/repair-bonus-2025>

⁷⁰ See footnote 30

⁷¹ Ministerio de Consumo (Spain), *Consumer guarantees: three-year legal warranty* (2022) <https://portal-cec.consumo.gob.es/en/informacion-general/compras-online/garantias>

⁷² See footnote 31

⁷³ See footnote 24

promises the availability of spare parts. These policies demonstrate a graduated palette of incentives and obligations.

4.8 Digital obsolescence: The “Stop Killing Games” initiative

Hardware policies alone cannot solve the problem of obsolescence when software and digital services can be remotely disabled. A striking example arose in 2024, when Ubisoft announced it would shut down the servers for *The Crew*, a racing game released in 2014. Without servers, the game became unplayable even for those who had purchased it, prompting Youtuber Ross Scott to launch the *Stop Killing Games* European Citizens’ Initiative. By July 2025 the petition had collected 1.4 million signatures, exceeding the one-million threshold to require a response from the European Commission⁷⁴. Scott’s campaign argues that remote “bricking” of legally purchased software is tantamount to destroying property and advocates obligations for publishers to provide offline modes or allow community-run servers when official support ends. While not yet a national policy, the initiative has spurred debates in European and national legislatures and suggests that future case studies will need to address both hardware and software obsolescence.

4.9 Synthesis and lessons

These national examples reveal several patterns. First, approaches combine information, fiscal incentives and legal obligations. France illustrates how criminal sanctions, mandatory repair indexes and financial subsidies can work together to change market behaviour, while Italy shows that competition law may be used to penalise software-driven obsolescence. Second, tax incentives (Sweden, Belgium) and direct subsidies (Austria, German states) effectively encourage consumers to choose repair, but they require significant public funding and may not be sustainable without broader market changes. Third, guarantee rules (Spain, Finland) can indirectly promote repair by lengthening the period in which traders must remedy defects, while laws requiring spare parts and prohibiting anti-repair practices (France, Germany) tackle structural barriers. Finally, the emergence of *Stop Killing Games* highlights that consumers increasingly view digital obsolescence as a parallel issue requiring policy solutions. National practices thus provide laboratories for testing what works and foreshadow how the EU might expand its regulatory toolkit to encompass both physical and software products.

⁷⁴ Ross Scott, *Stop Killing Games* – European Citizens’ Initiative (2025 update) <https://www.stopkillinggames.com>.

Part II – Intellectual Property & Obsolescence

5.1 Directive 2009/24/EC (Software Directive)

Directive 2009/24/EC codifies the European Union’s copyright framework for computer programs, harmonising protection across member states and defining exclusive rights, exceptions and remedies that shape the legal landscape for software.

5.2 Purpose and scope

The Software Directive requires member states to protect computer programs by copyright and treats them as literary works under the Berne Convention. Protection covers the expression of a program — including preparatory design material — but excludes the ideas and principles on which a program is based. Only programs that are the author’s own intellectual creation qualify for protection⁷⁵. This reflects the idea/expression dichotomy: copyright protects source and object code, not algorithms, formats or interfaces. Accordingly, competitors may study a program’s functionality and develop interoperable software so long as they do not copy the code⁷⁶. Recent ECJ rulings⁷⁷ have confirmed that the directive protects the form of expression but not data structures or variables.

5.3 Authorship and exclusive rights

The Software Directive identifies the author of a program as the person or legal entity that created it, and co-authors share joint ownership. Article 4 grants authors several exclusive rights: reproduction of the program, translation or adaptation, and

⁷⁵ European Union, Directive 2009/24/EC — Computer programs – legal protection (summary), EUR-Lex <https://eur-lex.europa.eu/eli/dir/2009/24/oj/eng>

⁷⁶ Stoica & Asociatii, Protection of computer programmes in CJEU case law (2024).

⁷⁷ ECJ, Judgment of 6 October 2021, Top System SA v Belgian State (C-13/20); ECJ, Judgment of 3 July 2012, UsedSoft GmbH v Oracle International Corp. (C-128/11); and ECJ, Judgment of 15 November 2024, Sony Computer Entertainment Europe Ltd v Datel (C-159/23)

distribution of copies. The distribution right is subject to exhaustion: once a copy is sold within the EU, the rightholder may not control its resale⁷⁸.

ECJ's *UsedSoft v Oracle*⁷⁹ decision confirmed that this exhaustion rule applies to downloadable software: when a customer purchases a perpetual licence and downloads the program, the transaction constitutes a sale and the author's distribution right is exhausted⁸⁰. This means that the purchaser may resell their copy provided they delete their own installation. The ruling treats digital downloads and physical copies equivalently and underpins the development of second-hand markets for software.

5.4 Limitations and exceptions: ensuring use and interoperability

To prevent copyright from blocking legitimate use, Article 5 entitles a lawful user to reproduce or adapt a program without permission when these acts are necessary for its intended use. A user may make a back-up copy and may observe, study or test the program to understand the ideas and principles underlying any element of the program⁸¹. Article 8 invalidates contractual provisions that restrict these rights⁸². Article 6 permits decompilation — translating object code back into human-readable code — to achieve interoperability with other programs, provided that the information needed is not readily available and that decompilation is limited to what is necessary⁸³. Finally, Article 7 requires Member States to provide remedies against infringing copies and bans devices that circumvent technical protection measures⁸⁴.

However, these specific provisions are more than mere technical exceptions, they represent a broader systemic shift in digital law. Corrective measures aimed at a unitary reconstruction of the regime governing digital circulation place significant

⁷⁸ European Parliament and Council, Directive 2009/24/EC. Article 4

⁷⁹ ECJ, Judgment of 3 July 2012, *UsedSoft GmbH v Oracle International Corp.*, Case C-128/11 [https://infocuria.curia.europa.eu/tabs/affair?lang=IT&sort=AFF_NUM-DESC&searchTerm="C-128%2F11"&publishedId=C-128%2F11](https://infocuria.curia.europa.eu/tabs/affair?lang=IT&sort=AFF_NUM-DESC&searchTerm=)

⁸⁰ Andrew Nicholson, "Old Habits Die Hard?: *UsedSoft v Oracle*", *SCRIPTed* (2013)

⁸¹ European Parliament and Council, Directive 2009/24/EC. Article 5

⁸² Judgment of the Court (Grand Chamber) of 3 July 2012 — *UsedSoft GmbH v Oracle International Corp.*, https://www.ippt.eu/sites/ippt/files/2012/IPPT20120703_ECJ_UsedSoft_v_Oracle.pdf

⁸³ European Parliament and Council, Directive 2009/24/EC. Article 6

⁸⁴ European Parliament and Council, Directive 2009/24/EC. Article 7

emphasis on a set of solutions revolving around the principle of interoperability. This principle, originally introduced in software legislation, proves instrumental in enabling the uniform circulation of digital content by overcoming a range of technical restrictions that unduly compress the ability to allocate and exercise rights in digital works.⁸⁵

5.5 Error correction and the *Top System* ruling

In *Top System v Belgian State* (2021)⁸⁶ the European Court of Justice tried a case where a Belgian administrative body decompiled licensed software to fix a malfunction. The ECJ held that decompilation falls within the author's exclusive rights, but Article 5(1) of the Software Directive (Directive 2009/24/EC) allows the lawful acquirer to reproduce or adapt the program when such acts are necessary for its intended use. Where the licence does not specify procedures, purchasers may decompile code to correct errors without complying with Article 6's interoperability conditions⁸⁷. Article 6 allows decompilation to achieve interoperability only if (a) the acts are carried out by the licensee or an authorised person, (b) the information needed to achieve interoperability has not been made readily available, and (c) the acts are limited to those parts of the program that are necessary for interoperability⁸⁸. Any information obtained may not be used for purposes other than interoperability, may not be given to third parties, and may not be used to develop a substantially similar program. Commentators stress that this right exists only to the extent necessary to restore functionality and that licence terms may specify repair procedures but cannot exclude error correction⁸⁹.

⁸⁵ Eugenio Prosperetti, *L'Opera Digitale tra Regole e Mercato* (2013)

⁸⁶ ECJ, Judgment of 6 October 2021, *Top System SA v Belgian State*, Case C-13/20 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62020CJ0013>

⁸⁷ Society for Computers & Law, Court of Justice rules that software buyers can decompile programs to correct errors (14 Oct 2021) <https://www.scl.org/12394-court-of-justice-rules-that-software-buyers-can-decompile-programs-to-correct-errors/>

⁸⁸ Lydian, Court of Justice of the European Union allows reverse engineering to correct errors (Oct 2021). <https://www.lydian.be/en/news/court-justice-european-union-allows-reverse-engineering-correct-errors>

⁸⁹ Stibbe, Digital Law Update: CJEU allows decompilation of computer programs to correct errors (18 Oct 2021) <https://www.stibbe.com/publications-and-insights/digital-law-upupdate-cjeu-allows-decompilation-of-computer-programs-to>

5.6 Modding and the *Sony v Datel* judgment

In *Sony v Datel* the device at issue was a plug-in program that modifies transient variables (also known as temporary data) in the console's RAM while the game is running; for example, it can change a player's score or reduce difficulty. Because it alters only these variables and does not copy or alter the source or object code, the CJEU held that such modifications do not reproduce the protected work. The Software Directive protects only the expression of a computer program (source and object code), not the transient data generated during execution; thus, the variables changed by the cheat device are not protected by copyright⁹⁰.

The Italian Supreme Court instead eventually found the producer of mod chip liable (Case C-159/23, Judgement of the Court 17 October 2024) under art. 171-ter, lett. fbis, Italian Copyright Law, implementing the provision codified at art. 6(2), of the Information Society Directive. The Court ruled that since videogames aren't merely software, defendants faced a stricter standard of proof when justifying the mod chip's circumvention capabilities. Yet the Court overlooked a key distinction: the mod chip circumvented protections on the console hardware, not the games themselves. This matters because circumventing software protections involves different legal provisions with a more lenient defense — defendants need only show their technology has legitimate non-infringing uses.

This oversight has concerning implications. Many companies now use technical protection measures (TPMs) to bundle multiple products together, leveraging copyright protection on at least one item to lock down the entire package. The Italian Supreme Court's decision could enable such firms to extend copyright protections beyond their intended scope, potentially allowing them to strengthen their market position while restricting competition in adjacent markets where they operate⁹¹.

⁹⁰ IP Helpdesk, CJEU clarifies modifying variables in RAM does not infringe copyright (Oct 2024), *Sony v Datel*, Case C-159/23 on Legal Protection of Computer Programs https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/cjeu-clarifies-modifying-variables-ram-does-not-infringe-copyright-eu-trade-mark-dispute-support-fit-2024-10-25_en

⁹¹ *Emmanuela Arezzo*, Videogames and Consoles between Copyright and Technical Protection Measures, SSRN

5.7 Interaction with digital obsolescence

Although the directive lets lawful users run, study and fix software, it leaves vendors free to withdraw support and deactivate activation servers when a product reaches its commercial end-of-life. Under Directive (EU) 2019/770 on digital content, traders must supply updates necessary to keep digital goods in conformity for the period the consumer can reasonably expect; they cannot arbitrarily declare end-of-life if it would leave the product non-conforming during that period. These obligations limit vendors' discretion to discontinue support for purely commercial reasons. Article 7 prohibits the circumvention of technical protection measures⁹², so users cannot legally bypass DRM (Digital Rights Management measures) to keep software operational, and the exhaustion rule does not oblige vendors to supply updates or offline patches. Consumer campaigns such as *Stop Killing Games* therefore argue that digital obsolescence undermines the value of lawfully acquired software and call for laws requiring publishers to offer offline modes or release server code when shutting down services⁹³.

5.8 Has the Software Directive ensured sufficient rights to users?

Directive 2009/24/EC balances incentives for creation with users' ability to run, study and repair software. It protects only the expression of code⁹⁴, grants authors exclusive rights⁹⁵ and carves out exceptions allowing lawful users to reproduce, adapt and decompile programs when necessary^{96 97}. Judgments like *UsedSoft*, *Top System* and *Sony v Datel* confirm digital exhaustion (which will be better examined in paragraph 6 to prior reference to the case), permit error correction and exclude transient variables from protection^{98 99}. Yet the directive does not stop

⁹² See footnote 84

⁹³ *Euronews*, "Gamers launch 'Stop Killing Games' petition after Ubisoft shuts down The Crew" (15 April 2024)

⁹⁴ See footnote 75

⁹⁵ See footnote 78

⁹⁶ See footnote 81

⁹⁷ See footnote 87

⁹⁸ See footnote 80

⁹⁹ See footnote 89

software becoming unusable when vendors retire activation servers or impose DRM, so broader legislation is needed to guarantee access and repair after support ends.

UsedSoft (C-128/11) Judgment by the CJEU

6 · The UsedSoft judgment and digital exhaustion

6.1 Introduction

In 2012 the Court of Justice of the European Union (CJEU) — which is examined in detail in paragraph 6 to prior reference to the case. — confronted a question fundamental to the digital economy: do copyright holders retain control over software downloaded under a perpetual licence, or does the first-sale doctrine apply as it does to physical media? The answer would determine whether consumers could lawfully resell downloaded software and, by extension, whether the market could support a secondary trade in “used” licences.

In *UsedSoft GmbH v Oracle International Corp.*, the court held that a publisher exhausts its distribution right when it grants a customer a perpetual licence and allows the program to be downloaded for a lump sum¹⁰⁰. This ruling extended the first-sale doctrine to intangible copies.

6.2 Background and legal questions

The dispute arose because Oracle sold its enterprise database software online and furnished customers with licences permitting unlimited use but prohibiting transfer. UsedSoft acquired licences from Oracle customers and resold them, providing new buyers with instructions on how to download the software from Oracle’s server. When Oracle sued in Germany, the Bundesgerichtshof (Federal Court of Justice) referred two questions to the CJEU: (i) whether the act of enabling a download and issuing a perpetual licence is a “sale” that exhausts the author’s distribution right under Article 4(2) of Directive 2009/24/EC, and (ii) if so, whether

¹⁰⁰ See footnote 82

a subsequent purchaser may download the program and rely on exhaustion¹⁰¹. The case thus pitted the rights-holder's attempt to maintain control over intangible copies against the European Union's policy favouring the free movement of goods and secondary markets.

Under the Software Directive a rightholder's exclusive right to distribute a program is exhausted after the first sale of a copy in the European Economic Area, but the exclusive right of reproduction remains intact. Oracle contended that this rule applies only to tangible copies; it argued that digital downloads merely confer a licence and that each new download creates a new copy, infringing the reproduction right. UsedSoft responded that sale should be defined by substance rather than form: when a customer pays a one-off fee for a perpetual licence, the transaction functions like a sale even if delivery occurs electronically. The referring court therefore asked the CJEU to interpret the Directive's terms and reconcile the distribution and reproduction rights.

6.3 Advocate General Bot's opinion

Advocate General Yves Bot, delivering his opinion in April 2012, framed the dispute in terms of both copyright law and the internal market. He reasoned that limiting exhaustion to physical carriers would enable rightholders to bypass the first-sale doctrine simply by delivering works online, thereby undermining the free movement of goods. According to the AG, a transaction in which a copy of a program is provided and the user is granted a right to use it for an unlimited period in return for a lump-sum payment constitutes a sale. He noted that the purchaser's right to use is perpetual and the payment reflects the full economic value of the copy; thus, the supplier should not be able to demand further remuneration on resale. The AG also recognised that the reproduction right is distinct from the distribution right and cautioned that subsequent downloads may require

¹⁰¹ Press release No 94/12 — Judgment in Case C-128/11 UsedSoft/Oracle, Court of Justice of the European Union (Curia).

authorisation if they produce a new copy beyond what is necessary for the program's intended use¹⁰².

6.4 The CJEU's reasoning and holding

The Grand Chamber of the ECJ largely followed the Advocate General. It held that a publisher who allows the downloading of a program and grants a perpetual licence for a lump sum has sold a copy and thereby exhausted the distribution right under Article 4(2)¹⁰³. The court emphasised that the essence of a sale is the transfer of the right to use a copy for an unlimited period in exchange for a price reflecting its economic value¹⁰⁴. It rejected Oracle's argument that exhaustion attaches only to physical carriers: to accept that view would permit rightholders to control the resale of downloads and demand payment for each successive transfer, contravening the Directive's goal of ensuring the free movement of goods. By equating digital downloads with sales, the court treated tangible and intangible copies equally and prevented contract wording from undermining statutory rights.

The Court also addressed several ancillary issues. First, it ruled that a licence covering multiple users may not be split into smaller licences: the licence forms an indivisible whole and must be resold in its entirety. Second, it held that exhaustion extends to updated copies provided under maintenance contracts — such updates are part of the original copy — so a subsequent purchaser is entitled to download the latest version. Third, the court stressed that the exhaustion of the distribution right does not exhaust the reproduction right. The initial purchaser must render their own copy unusable at the time of resale; they may not retain a back-up or continue using the program. The second purchaser is a lawful acquirer and may reproduce the program only insofar as necessary to use it properly under Article 5(1) (46). In other words, exhaustion establishes a chain of legitimacy: each downstream acquirer must ensure that prior copies have been deleted and that the copy originates from a source whose distribution right has been exhausted.

¹⁰² Press release No 49/12 — Advocate General Bot: Digital distribution triggers exhaustion of the distribution right, Court of Justice of the European Union (Curia).

¹⁰³ See footnote 82

¹⁰⁴ See footnote 101

6.5 Practical guidelines and evidentiary challenges

After the ruling the case returned to the German courts, which dismissed UsedSoft's action because it failed to prove that the conditions for exhaustion were met. Practitioners summarised the conditions for lawful resale: the program must have been placed on the EEA market with the rightholder's consent, the licence must be perpetual, the initial fee must reflect the software's economic value, and the seller must delete all copies. Courts underscore that the reseller bears the burden of proof and that technical evidence may be needed¹⁰⁵. Because of these hurdles and the need to respect original licence terms, the secondary market remains small and specialised.

6.6 Critiques and limitations

The UsedSoft decision was hailed by consumer advocates and environmentalists because it confirms that software can be resold like any other product. Yet critics argue that extending exhaustion to intangible copies erodes the reproduction right, as each resale entails making a new copy of the software. They contend that the court blurred the line between distribution and reproduction and that copyright holders may struggle to verify whether earlier users have deleted their copies. Others note that the ruling applies only to software covered by Directive 2009/24/EC. Other digital works, such as e-books and music, fall under the Information Society Directive (2001/29/EC), which the CJEU later held does not recognise digital exhaustion. As a result, rights to resell digital content remain inconsistent across categories of works. Publishers have responded by offering subscription models or requiring online authentication to avoid granting perpetual licences. From a practical perspective, verifying deletion is extremely difficult: licensees may retain back-ups or fail to uninstall the software. Some national courts therefore interpret UsedSoft narrowly, limiting its application to enterprise software

¹⁰⁵ The end of the UsedSoft case and its implications for “used” software licences, Osborne Clarke <https://www.osborneclarke.com/insights/the-end-of-the-usedsoft-case-and-its-implications-for-used-software-licences>

and refusing to apply exhaustion to volume licences or to consumer licences for inexpensive programs¹⁰⁶.

6.7 Implications for digital obsolescence and subsequent developments

For the right-to-repair movement and software preservation advocates, UsedSoft provides a foothold for arguing that consumers own downloaded software and may transfer it. Once a second purchaser qualifies as a “lawful acquirer”, Article 5(1) grants them the right to reproduce and adapt the program as necessary to use it¹⁰⁷. This might encompass installing the software on newer hardware or correcting errors. However, the judgment does not compel publishers to keep activation servers running, provide offline installers or release server code. Vendors can still render software unusable by shutting down authentication systems or embedding digital rights management. Consequently, UsedSoft does little to curb planned obsolescence: it recognises a right to resell but not a right to have functioning software after support ends.

The case also exposes broader gaps in EU digital policy. In the Tom Kabinet case the CJEU held that reselling e-books constituted a “communication to the public” and therefore fell outside the exhaustion regime. This divergence underscores that only software enjoys a digital exhaustion rule. National repair schemes and consumer initiatives like Stop Killing Games argue that exhaustion alone is insufficient; they call for legislation requiring publishers to offer offline modes, allow community-run servers or disclose end-of-life policies. Without such measures, the rights recognised in UsedSoft may remain largely theoretical. As digital distribution becomes ubiquitous, the policy debate has shifted from whether digital exhaustion exists to how to ensure that digital goods continue to function and remain accessible when vendors retire them. Addressing digital obsolescence will likely require a combination of copyright reforms, consumer protection rules and technical standards.

¹⁰⁶ The future of used software? UsedSoft and the exhaustion of digital copyright, Goodwin Procter LLP.

¹⁰⁷ See footnote 82

7. Directive 2012/28/EU – Orphan Works

7.1 Introduction and rationale

Copyright law is intended to reward creativity and encourage the dissemination of cultural works, yet sometimes it has the opposite effect. Millions of books, films, photographs and recordings in archives and libraries sit unused because the rightholder is unknown or cannot be located. These so-called orphan works are difficult to clear for digitisation or public access, even though they often hold significant historical or cultural value. According to a guide produced by the Electronic Information for Libraries network (EIFL), about 40 % of the British Library’s collection is orphaned; the BBC has more than one million hours of archives that cannot be used because of the costs and risks involved in tracing rightholders. Reasons for “orphaning” include long copyright terms that extend well beyond the life of the author, mergers and bankruptcies of publishers, works created anonymously or under pseudonyms, and embedded rights in multi-layered works such as films and broadcasts¹⁰⁸. In an era of digital obsolescence, where older formats become unreadable and cultural memory risks being lost, legislatures have sought ways to unlock these works while respecting the rights of absent creators.

7.2 Scope and subject matter of the directive

The Orphan Works Directive (Directive 2012/28/EU) was adopted in 2012 to provide a harmonised solution at EU level. Its aim, as the European Commission notes, is to promote digitisation and legal online access to orphan works stored in libraries, museums, archives and public-service broadcasters across the Union¹⁰⁹. Article 1 defines the directive’s subject matter and scope: only certain institutions are eligible to rely on it — publicly accessible libraries, educational establishments, museums, archives, film and audio heritage institutions, and public-service broadcasting organisations. The directive applies to works that have been published or broadcast — books, journals, newspapers, magazines, films, audiovisual works

¹⁰⁸ The European Orphan Works Directive – An EIFL Guide – Electronic Information for Libraries (EIFL) <https://eifl.net/resources/european-orphan-works-directive-eifl-guide>

¹⁰⁹ Report on the application of the “Orphan Works Directive” – European Commission <https://digital-strategy.ec.europa.eu/en/library/report-application-orphan-works-directive>

and phonograms — as well as unpublished works that have been made public by those institutions with the consent of the rightholder. Works embedded or incorporated in other works, such as images in a book or songs in a film, may also benefit, but each layer requires its own diligent search¹¹⁰.

7.3 Definition of orphan works

Article 2 sets out the legal definition. A work becomes orphan when none of the rightholders in that work or in a recording of a performance can be identified or located despite a diligent search in good faith.. Where a work has multiple rightholders and only some cannot be found, the directive allows a partial orphan status: the institution may use the work provided that the located rightholders consent to the uses envisaged. If a diligent search reveals no owner at all, the work is treated as fully orphaned.

7.4 Diligent search requirements

The heart of the directive lies in its diligent search requirement. Article 3 requires eligible institutions to conduct a good-faith search for each work they wish to digitise or make available¹¹¹.. This search must consult appropriate sources determined by the Member State in which the work was first published or, for audiovisual works, where the producer has his headquarters. The sources may include copyright registries, authority files, publishers' catalogues, collecting society databases and relevant online resources. Institutions must record their searches and submit the outcome — whether the work remains orphan or not — to the EU Intellectual Property Office (EUIPO) database. The diligence requirement is further emphasised by Article 3(3): organisations have to maintain records and evidence of their searches so that courts or rightholders can verify compliance.

This process is designed to balance legal certainty with rightholder protection, but it is also one of the directive's most criticised features. A 2023 assessment by copyright scholars noted that the directive mandates a separate search for each embedded work; for instance, a library digitising a 1970s television programme

¹¹⁰ Directive 2012/28/EU (Orphan Works Directive) <https://eur-lex.europa.eu/eli/dir/2012/28/oj/eng>

¹¹¹ See footnote 110

must search for rights holders of scripts, music, still photographs and any other component separately, significantly increasing costs and deterring digitisation. The directive also imposes a long list of mandatory sources to consult, and Member States have interpreted these requirements unevenly¹¹².

7.5 Mutual recognition and the EUIPO database

Article 4 introduces the principle of mutual recognition: once a work is identified as orphan in one Member State following a diligent search, the orphan status is valid throughout the EU. This prevents duplication of efforts across borders and ensures that an orphan work can be used consistently in all Member States. The EUIPO database records details of each orphan work, including the search conducted and the uses envisaged. Institutions must update the database if a work's status changes; for example, when a rightholder emerges and terminates the orphan status. Although the database is a central feature intended to increase transparency, its use has been modest. According to recent figures cited by commentators, only about 6,000 works were registered as orphan more than a decade after the directive's adoption¹¹³. Given that there may be millions of orphan works in European collections, this number underscores the directive's limited impact.

7.6 Permitted uses and compensation

Article 6 enumerates the permitted uses of orphan works. Eligible institutions may reproduce orphan works for the purposes of digitisation, indexing, cataloguing, preservation and restoration, and they may make them available to the public — typically through online access on their websites¹¹⁴. Crucially, these uses must form part of the institution's public-interest mission, and any revenues derived must be limited to recovering costs of digitisation or preservation. Institutions may not exploit the works commercially nor distort or alter them beyond what is necessary. Article 6(5) adds a protective measure: if a rightholder comes forward and ends the orphan status, the institution must stop further uses and pay fair compensation, the

¹¹² “The Orphan Works Directive is broken but the Commission won't fix it!” – Kluwer Copyright Blog <https://legalblogs.wolterskluwer.com/copyright-blog/the-orphan-works-directive-is-broken-but-the-commission-wont-fix-it/>

¹¹³ See footnote 112

¹¹⁴ See footnote 110

level of which is determined by national law¹¹⁵. The compensation seeks to balance the risk that the institution's uses might have been free-riding on a potential market; however, the uncertainty about potential liability deters many institutions from using the directive¹¹⁶.

7.7 Evaluation: successes and shortcomings

The Commission's 2022 report on the application of the Orphan Works Directive acknowledged that the directive aimed to promote digitisation and cross-border online access. However, the same report concluded that there is no need to revise the directive, even though the uptake has been minimal¹¹⁷. Many commentators view the directive as ineffective. A Kluwer Copyright Blog analysis points out that as of early 2023 only 6,031 orphan works were registered in the EUIPO database, and only a handful of institutions reported using the scheme. In surveys, just 24 % of institutions felt that the directive had improved digitisation practices. The main reasons cited include the limited scope (only certain institutions and categories of works), the cumbersome diligent search requirement, the narrow permitted uses (limited mainly to digitisation and making available on websites), and the uncertainty about compensation when rightholders reappear. The obligation to search for all rights in embedded works is seen as particularly burdensome, effectively disqualifying complex works such as newspapers or films¹¹⁸.

The directive's limitations have led some Member States and institutions to explore alternative mechanisms. The Copyright in the Digital Single Market (CDSM) Directive of 2019 introduced an "out-of-commerce works" regime that allows cultural heritage institutions to make available collections of works no longer commercially available through extended collective licences or a copyright exception without the need for individual searches. This framework, which applies broadly to all types of works and institutions, is seen by many scholars as more efficient than the orphan works approach¹¹⁹. Nonetheless, the orphan works

¹¹⁵ See footnote 110

¹¹⁶ See footnote 112

¹¹⁷ See footnote 109

¹¹⁸ See footnote 112

¹¹⁹ Ibidem

directive still plays a role for specific categories of works and institutions, especially for orphan phonograms and audiovisual works produced by public broadcasters before 2002¹²⁰.

7.8 Implications for digital obsolescence and cultural heritage

From the perspective of the broader thesis on repair and obsolescence, the orphan works directive illustrates how copyright law can both enable and constrain preservation. On one hand, it provides a legal pathway for cultural institutions to digitise and disseminate works that might otherwise deteriorate or be forgotten due to ageing media formats. On the other hand, the heavy administrative burdens and limited scope mean that many orphan works remain locked away, effectively making them digitally obsolete despite the availability of technology to preserve them. This situation mirrors the tension between user rights and intellectual property protection seen in the software sector: legal exclusivity can inadvertently contribute to cultural obsolescence if frameworks are not flexible enough to accommodate preservation and access. Reforming the directive to broaden eligible institutions, simplify searches, and expand uses could help align copyright policy with the imperative of safeguarding Europe's cultural memory.

7.9 Orphan Works: Where it Stands

Directive 2012/28/EU was a significant step in recognising the problem of orphan works and creating an EU-wide mechanism to address it. Its provisions allow libraries, archives, museums and broadcasters to make certain orphan works available after conducting a diligent search, and they ensure mutual recognition of orphan status across Member States. However, the directive's restrictive scope, burdensome search requirements and uncertain compensation regime have limited its practical utility. In the decade since its adoption only a small fraction of orphan works have been registered, and many institutions prefer alternative schemes or simply refrain from using the directive. As the digital environment evolves and the need for large-scale digitisation grows, there is a compelling case for revisiting the

¹²⁰ See footnote 110

orphan works framework to better balance rightholder protection with the preservation of Europe’s cultural heritage.

8. Directive 2019/790 (CDSM Directive – Articles 8–11 on Out-of-Commerce Works)

8.1 Background and aims

The Copyright in the Digital Single Market (CDSM) Directive of 2019 is the European Union’s attempt to modernise copyright for the online era. While much attention has been given to controversial provisions such as the press publishers’ right and platform liability, the directive also contains a suite of measures designed to unlock Europe’s cultural heritage. Articles 8–11 of the directive introduce a new framework for dealing with so-called *out-of-commerce* works; cultural goods that are still protected by copyright but are no longer available through normal commercial channels. The previous orphan-works regime gave public institutions limited permission to use works when no right-holder could be found, but it required a burdensome diligent search and applied only to specific types of works. Europe’s libraries, archives and museums therefore continued to sit on vast collections that could not legally be digitised or shared. The European Commission estimated that many millions of books, films, sound recordings and photographs were effectively inaccessible because their rights status was unclear or because collective licensing mechanisms were not available¹²¹. At the same time, cultural heritage institutions (CHIs) faced legal and financial risk if they made these works available without permission, even when there was no realistic prospect of a commercial market.

Articles 8-11 respond to this impasse by creating two pathways for CHIs to reproduce, digitise and make available out-of-commerce works for non-commercial purposes. The first pathway is a licensing scheme: where a *representative* collective management organisation (CMO) exists for a type of work, that CMO can issue

¹²¹ “What will the new EU copyright rules change for Europe’s Cultural Heritage Institutions?” – Pro Europeana <https://pro.europeana.eu/post/explainer-what-will-the-new-eu-copyright-rules-change-for-europe-s-cultural-heritage-institutions>

non-exclusive licences to CHIs covering all rightholders, including those who have not mandated the CMO. The second pathway is an exception or limitation to copyright: if no representative CMO exists, or if a CMO is unwilling to grant a licence, CHIs may make the work available without permission, provided the use remains non-commercial and other conditions are met¹²². These two mechanisms are intended to facilitate mass digitisation projects while ensuring that rightholders remain fairly compensated and can opt out at any time. To ensure transparency, the directive establishes a public portal run by the EU Intellectual Property Office (EUIPO) and requires CHIs to notify rightholders at least six months before making works available. Finally, the directive calls for regular stakeholder dialogue to refine the scheme and for cross-border application of licences so that cultural heritage can circulate freely within the single market.

8.2 Defining “out-of-commerce” and the scope of Articles 8–11

The scheme applies to works and other subject matter that are no longer available via “customary channels of commerce”. According to Article 8(5), a work is deemed out-of-commerce if it can be presumed in good faith that the whole work is not available to the public through ordinary commercial distribution after a reasonable effort has been made to check. This open-ended definition reflects the heterogeneity of works in CHI collections. Books, films, and recorded music that have fallen out of print or are not streamed digitally may qualify, but so can unpublished ephemera like posters or amateur films. Member States may adopt more specific criteria or cut-off dates as long as they are reasonable; for example, a national archive might deem all private films made before 1990 to be out-of-commerce¹²³. Rightholders retain moral rights and can object at any time. Importantly, a work that is still available in second-hand shops or for which a licence might hypothetically be obtained is not considered to be commercially

¹²² Articles 8–11 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market <https://enterprise.gov.ie/en/consultations/consultations-files/summary-articles-of-directive-eu-2019-790.pdf>

¹²³ “Directive 2019/790/EU Article 8(5)” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

available. This reflects an understanding that theoretical availability should not block public access.

The Directive's broad definition has been welcomed by cultural sector advocates, but it also introduces uncertainties. Scholars have noted that key terms such as “customary channels of commerce”, “reasonable effort” and “non-commercial purposes” are left deliberately vague. This may give CHIs flexibility, but it also creates legal risks. For example, if a small independent bookshop in another Member State sells a few copies of a long-out-of-print novel, is that novel still “in commerce”? The directive's recitals suggest that such limited availability should not count¹²⁴, but institutions must interpret these provisions in good faith. The definition of “non-commercial” is similarly ambiguous; CHIs may recoup digitisation costs, but any commercial exploitation is prohibited. As Melanie Brown observes, these uncertainties could deter risk-averse institutions from using the scheme and may create inconsistent application across the EU. Nevertheless, the directive acknowledges that absolute certainty is impossible and invites Member States to develop guidance through stakeholder dialogue¹²⁵.

8.3 Article 8: Licensing mechanism and exception

Article 8 lies at the heart of the out-of-commerce regime. Paragraph 1 authorises representative CMOs to grant non-exclusive licences to CHIs covering the reproduction, distribution, communication to the public and making available of out-of-commerce works for non-commercial purposes. To ensure legitimacy, the CMO must be sufficiently representative of rightholders for the type of works in question, and licences must treat all rightholders equally¹²⁶. The licensing mechanism is intended to provide a single-point solution for institutions; rather than negotiating individually with multiple authors or estates, a museum can obtain a blanket licence from the relevant CMO. Because the licence is non-exclusive, rights holders remain free to license their works commercially. Importantly, article 8(1) applies to all rightholders in the repertoire, including those who have not mandated

¹²⁴ “Exploring Article 8 of the Copyright Directive: Hope for Cultural Heritage” – Melanie Brown, CIPPM Working Paper.

¹²⁵ “Directive 2019/790/EU Article 11” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

¹²⁶ “Directive 2019/790/EU Article 8(1)” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

the CMO, thereby extending the effect of the licence. The directive further ensures that licences concluded in one Member State may be used by CHIs throughout the EU. This cross-border effect reduces fragmentation and allows digital collections to be shared across the single market¹²⁷.

Article 8(2) introduces an alternative when no representative CMO exists or when the CMO declines to grant a licence on reasonable terms. In such cases, CHIs may digitise and make out-of-commerce works available without seeking authorisation, provided the use is strictly non-commercial and the work is in the institution's collection. The institution must provide information about the work and, where the author or performer is known, indicate the name unless doing so is impossible or would violate moral rights¹²⁸. This exception ensures that the absence of a licensing infrastructure does not block access. However, it is narrower than the licensing route: it applies only in the Member State where the CHI is established¹²⁹; other Member States cannot rely on the exception to distribute the digitised work. The limitation also reinforces that CHIs cannot monetise out-of-commerce works; any revenue must be strictly for cost recovery, and commercial partners cannot exploit the works. By combining licensing and an exception, Article 8 tries to provide flexibility while respecting the legitimate interests of rightholders.

Article 8(4) and (5) balance access and authorial control. Paragraph 4 grants rightholders the right to exclude their works from the scheme at any time, whether a licence has been granted or an exception relied upon¹³⁰. This opt-out may be exercised by withdrawing the work from the EUIPO portal or by notifying the CMO. CHIs must then cease making the work available, though previously lawful uses are not necessarily undone. Paragraph 5 defines out-of-commerce works and allows Member States to set more precise rules¹³¹. This ensures that the notion of “out-of-commerce” remains dynamic and responsive to market changes. Yet the opt-out mechanism also introduces uncertainty: rightholders can reclaim control at

¹²⁷“Directive 2019/790/EU Article 9” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

¹²⁸“Directive 2019/790/EU Article 8(2)” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

¹²⁹ “Directive 2019/790 – Summary of Articles” – Department of Enterprise, Trade and Employment (Article 9) <https://enterprise.gov.ie/en/consultations/consultations-files/summary-articles-of-directive-eu-2019-790.pdf>

¹³⁰ “Directive 2019/790/EU Article 8(4)” EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

¹³¹ See footnote 123

any time, potentially disrupting digitised collections. Institutions must therefore build monitoring systems and prepare for takedown requests. Still, the possibility of opt-out was necessary to comply with international treaties that prohibit compulsory licensing without a reservation.

8.4 Article 9: Cross-border effects

The digital nature of cultural heritage collections means that reproduction and making available of works will often cross national borders. Article 9 addresses this by providing that licences obtained under Article 8(1) may cover uses in all Member States¹³². Once a CHI obtains a licence in one Member State, it may make the licensed works available online to users anywhere in the EU. This ensures legal certainty for cross-border dissemination and prevents fragmentation of rights. However, for uses under the exception in Article 8(2), the directive deems the use to occur only in the Member State where the CHI is established¹³³. A museum in Italy relying on the exception cannot automatically make the work available in France; it must either secure a licence from a French CMO or rely on Italy's exception and geoblock access. This limitation reflects the directive's respect for Member State sovereignty and the principle that exceptions should not conflict with national law. It may, however, complicate digital projects that aim to provide pan-European access to marginalised works.

8.5 Article 10: Publicity measures

Transparency is a cornerstone of the out-of-commerce regime. Article 10 requires Member States to ensure that information about works intended to be used under Article 8 is made publicly available six months before any use. The EUIPO has established a central portal where CHIs must record details of the works they wish to licence or use, including titles, authors (if known), and the type of use¹³⁴. This announcement period gives rightholders an opportunity to check whether their works are included and to exercise their opt-out rights. The directive also allows Member States to impose additional publicity measures, such as notifying relevant

¹³² See footnote 129

¹³³ See footnote 127

¹³⁴ "Directive 2019/790/EU Article 10" EUR-Lex <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

industry bodies or publishing notices in official journals. For institutions, the six-month delay may feel onerous, especially if they wish to digitise materials quickly for anniversaries or exhibitions. On the other hand, the lead time aims to safeguard authors' rights and to avoid erroneous inclusion of works that are still actively marketed. A clear and accessible public portal will be crucial to the success of this mechanism.

8.6 Article 11: Stakeholder dialogue and guidance

Recognising that many practical questions remain unresolved, Article 11 mandates that Member States facilitate dialogue between CMOs, cultural heritage institutions and rightholder organisations¹³⁵. The objective is to determine what constitutes a sufficiently representative CMO, the due diligence required to establish that a work is out-of-commerce, and the type of information that should be provided on the public portal. Member States must also encourage regular dialogue to monitor the effectiveness of the licensing scheme and the exception¹³⁶. This cooperative approach is designed to build trust among participants and to adjust the scheme in light of technological and market developments. Given the diversity of cultural heritage institutions and creative sectors across Europe, such dialogue will be essential to harmonise practice without imposing a one-size-fits-all solution. Some Member States have already set up expert committees to draft guidelines, while others have integrated discussions into existing copyright forums.

8.7 Extended collective licences and Article 12

Although Articles 8–11 specifically address out-of-commerce works, they sit alongside Article 12, which introduces extended collective licences (ECL). Under an ECL regime, a CMO may grant licences on behalf of all rightholders in a category of works, including non-members, provided certain safeguards are met. Article 12 aims to facilitate large-scale licensing beyond CHIs by allowing Member States to recognise the extended effect of licences for other uses and by enabling

¹³⁵ “Directive 2019/790 – Summary of Articles” – Department of Enterprise, Trade and Employment (Article 11) <https://enterprise.gov.ie/en/consultations/consultations-files/summary-articles-of-directive-eu-2019-790.pdf>

¹³⁶ See footnote 125

cross-border application¹³⁷. Many Nordic countries have long used ECLs to license mass digitisation; the directive now provides an EU-wide legal basis. However, Article 12 is optional: Member States may decide not to introduce extended licensing, and any system must include opt-out rights and sufficient representativeness. Some commentators question whether the additional complexity of ECLs is necessary given the limited scope of out-of-commerce works; nonetheless, Article 12 signals an evolving European approach to collective licensing beyond the cultural heritage sector.

8.8 Implementation and criticism

Since the directive entered into force in June 2019 and had to be transposed by June 2021, Member States have begun implementing Articles 8–11. Early experience shows both promise and challenges. Europeana’s review of the directive notes that Articles 8–11 offer a coherent framework and provide legal certainty for digitisation projects¹³⁸. Cultural heritage institutions welcome the ability to obtain a single licence or to rely on an exception when no CMO exists, and the cross-border application simplifies EU-wide dissemination¹³⁹. The Europeana article also emphasises the importance of the public portal and the six-month notification period, which allows rightholders to identify works and opt out¹⁴⁰. However, Europeana warns that determining whether a work is really out-of-commerce can be difficult. Many creative sectors lack representative CMOs; for example, there is no Europe-wide CMO for amateur documentary films. In such cases, CHIs must rely on the exception, but that only authorises use in their home country, undermining cross-border access. Moreover, some rightholders and publishers fear that the scheme could erode their control over back catalogues, especially when no licensing infrastructure exists. They may opt out pre-emptively, limiting the scheme’s scope.

¹³⁷ “Directive 2019/790 – Summary of Articles” – Department of Enterprise, Trade and Employment (Article 12) <https://enterprise.gov.ie/en/consultations/consultations-files/summary-articles-of-directive-eu-2019-790.pdf>

¹³⁸ See footnote 121

¹³⁹ See footnote 129

¹⁴⁰ “Directive 2019/790 – Summary of Articles” – Department of Enterprise, Trade and Employment (Article 10) <https://enterprise.gov.ie/en/consultations/consultations-files/summary-articles-of-directive-eu-2019-790.pdf>

Commentators also point to the administrative burdens imposed by Articles 8–11. Institutions must research whether a representative CMO exists, determine whether works are commercially available, upload metadata to the EUIPO portal, and monitor opt-out requests. Melanie Brown argues that the lack of clear definitions for “out-of-commerce”, “reasonable effort” and “customary channels of commerce” creates legal uncertainty and may lead to cautious over-compliance¹⁴¹. She notes that different Member States may adopt divergent criteria for determining OOC status, leading to forum shopping or inconsistent access to works. The directive hints that sampling or proportionality may help CHIs determine whether large collections are out-of-commerce, but guidance is lacking. Additionally, while the opt-out mechanism is necessary to protect authors’ rights, it could discourage institutions from investing in digitisation projects if there is a risk that works will be withdrawn after digitisation. Finally, because the scheme only covers non-commercial uses, it does not address the growing interest in reusing heritage materials in education, creative industries or commercial publishing. For those uses, rights clearance remains necessary, and no fallback exception exists.

8.9 Evaluation and relevance to obsolescence

The out-of-commerce provisions represent a significant step forward in Europe’s efforts to combat cultural obsolescence. By establishing licensing and exception mechanisms, the directive reduces the legal uncertainties that prevented libraries and museums from digitising their collections and making them available online. The cross-border effect of licences allows citizens across the Union to access works that were previously trapped within national borders¹⁴². The scheme also complements the broader goals of the digital single market by promoting the free movement of knowledge and by encouraging the development of collective licensing infrastructures. In this sense, Articles 8–11 offer a pragmatic balance between safeguarding rightholders’ interests and enabling public access to culturally significant works. They also contribute to the fight against digital obsolescence by ensuring that works which lack a viable market are not lost to time.

¹⁴¹ See footnote 124

¹⁴² See footnote 127

At the same time, the regime's limitations reveal the ongoing tension between property rights and the public interest. The narrow focus on non-commercial uses and cultural heritage institutions means that many actors, such as researchers, teachers, and creative industries, remain outside its scope. Determining whether a work is truly out-of-commerce requires judgement, and the lack of clear criteria may lead institutions to avoid relying on the exception¹⁴³. The opt-out right preserves authorial control but could undermine the stability of digital collections. Furthermore, the success of the scheme depends on the existence of representative CMOs, which are uneven across sectors and countries. Without sufficient CMOs, the fallback exception remains geoblocked and limited. For these reasons, some commentators argue that further reform is necessary to ensure that cultural heritage can thrive in the digital age and that the directive's promise is realised. Nevertheless, Articles 8–11 provide a solid foundation on which future policy can build.

9. IP & Obsolescence: Intersections

As consumer products become increasingly complex, manufacturers have been able to use a mixture of technological design choices and legal mechanisms to control how, when and whether their goods are repaired. This section examines the overlapping legal and technological strategies that connect intellectual property (IP) rights with planned obsolescence, drawing on the current literature and the emerging right-to-repair movement. It then assesses whether recent EU legislation – especially the Right to Repair Directive and proposals around digital content – adequately balance the need to protect creative and innovative investment with the

¹⁴³ See footnote 124

fundamental principle that products, once sold, should remain functional and maintainable.

9.1 Legal frameworks enabling or constraining repair

IP rights protect a creator's or manufacturer's intangible assets: patents protect functional inventions, trademarks denote the origin of goods, designs cover the appearance of products, copyright protects original works of authorship (including software), and trade secrets protect confidential business information. In the context of product maintenance, these rights are often invoked in ways that extend control beyond the first sale.

The most direct interface between IP and obsolescence arises from the use of patents and designs to shield spare parts or consumables from third-party production. Manufacturers may patent key mechanical components or register design rights over the appearance of parts. Such rights remain exclusive for up to twenty years (for patents) or twenty-five years (for registered designs), creating a lawful monopoly that prevents independent producers from supplying functionally compatible parts. The Bird & Bird commentary on the Right to Repair Directive notes that companies have historically used “withholding access to product manuals and repair information, incompatibility strategies, [and] protecting products or parts thereof with IPRs” to keep control of repair markets¹⁴⁴. In other words, IP tools are employed not simply to protect a core product but to entrench after-sales revenue streams by limiting the availability of necessary spare parts.

Trademarks also play a role. While EU law provides that trademark rights are exhausted once goods are put on the market (Article 15 of the Trademark Directive (EU) 2015/2436), manufacturers sometimes argue that visible use of a mark on refurbished parts constitutes infringement. The Bird & Bird analysis explains that resellers of refurbished goods may rely on exhaustion as long as products have not been “substantially modified” or their quality degraded; otherwise, the trademark owner may legitimately object. This creates uncertainty for independent repairers:

¹⁴⁴ Bird & Bird, The new Right to Repair Directive – How does it interact with IPRs? <https://www.twobirds.com/en/insights/2025/finland/the-new-right-to-repair-directive--how-does-it-interact-with-iprs>

relabelling or removing branding may be necessary to avoid infringement, but doing so could mislead consumers about the origin of parts.

Copyright and software protection are increasingly relevant because modern appliances embed code that governs operation. The Software Directive affords program authors exclusive rights of reproduction, adaptation and distribution, but Article 5(1) allows a lawful acquirer to reproduce and adapt a program as necessary for its intended use. In practice, however, original equipment manufacturers (OEMs) frequently rely on end-user licence agreements (EULAs) and technological protection measures (TPMs) to contractually and technologically restrict what consumers and independent technicians can do. The Potenzano article observes that OEMs can rely on “patents, trademarks, copyrights [and] trade secrets” to justify denying access to repair information and tools. The mere assertion of holding a patent or copyright can deter consumers from attempting repairs. Many EULAs expressly prohibit reverse engineering or modification, and TPMs such as encrypted firmware or serialised spare parts render it illegal to circumvent locks, even to perform a lawful repair, because the EU InfoSoc Directive (Directive 2001/29/EC)¹⁴⁵ prohibits circumvention and the provision of circumvention devices¹⁴⁶. This means that bypassing a digital lock on a tractor or smartphone, even to replace a battery or fix a bug, could expose the repairer to liability.

Trade secrets law (Directive 2016/943/EU) strengthens another avenue for limiting repair. Companies may designate repair manuals, diagnostic software and technical schematics as confidential know-how and pursue legal remedies against those who disclose or use the information without authorisation. As Bird & Bird notes, some manufacturers “protect specific repair information as trade secrets and refuse the disclosure of such information”¹⁴⁷. While trade-secret protection helps businesses recoup investment and maintain competitive advantage, the broad and

¹⁴⁵ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society <https://eur-lex.europa.eu/eli/dir/2001/29/oj/eng>

¹⁴⁶ Rosalba Potenzano, The right to repair in the EU and the USA comparative perspective *DirittiComparati*

¹⁴⁷ See footnote 144

indefinite nature of these rights may impede legitimate aftermarket activities, especially when combined with technical measures and contractual restrictions.

9.2 Exhaustion and the inherent right to repair

To counterbalance these exclusive rights, IP law incorporates the principle of exhaustion (or the “first sale” doctrine), whereby the distribution right over a specific copy of a product is exhausted after its lawful sale. The Court of Justice of the European Union (CJEU) held in *UsedSoft v. Oracle* that even software distributed online and accompanied by a perpetual licence is “sold”, meaning that the rightholder’s distribution right is exhausted and subsequent purchasers are lawful acquirers who may download and run the software¹⁴⁸. While *UsedSoft* concerned software, it illustrates a broader point: once ownership is transferred, exclusive control should diminish and consumers should be free to dispose of or repair their property. The Potenzano article frames repair as “an inherent incident of ownership” and emphasises that exclusive control should end after the first sale¹⁴⁹. Where the exhaustion doctrine applies, IP rights cannot be used to prevent reselling or using an item in ways that are reasonably expected by consumers.

However, exhaustion does not authorise modifications that result in a new product. Altering a patented device beyond repair (e.g., converting a single-use medical device into a multi-use one) may constitute making a new product and infringe patent rights. Similarly, reproduction of software beyond what is necessary for use, or removal of trademark labels in a way that misleads consumers, may fall outside the exhaustion doctrine. These boundaries create a “grey area” where repairers must carefully assess whether their actions are lawful. Bird & Bird warns that the Right to Repair Directive leaves the determination of lawfulness to case law, and that repairers must “continue respecting the IPRs of the original manufacturer”¹⁵⁰.

¹⁴⁸ CJEU press release 94/12, The Court declares that the author of software cannot oppose the resale of his ‘used’ licences https://ec.europa.eu/commission/presscorner/detail/en/cje_12_94

¹⁴⁹ See footnote 146

¹⁵⁰ See footnote 144

9.3 Contractual restrictions and technological protection measures

Contract law offers another avenue for manufacturers to limit repair, often in combination with IP rights. Many consumer devices are sold under licences rather than outright ownership, especially when software or digital services are involved. EULAs typically prohibit disassembly, reverse engineering or tampering with firmware; they may also restrict the use of independent spare parts or require repairs to be performed only by authorised service centres. Potenzano notes that manufacturers use EULAs and warranties to “contractually forbid independent services and to restrict spare parts to original ones”¹⁵¹. These restrictions may not be enforceable where they contravene the exhaustion principle or consumer protection law, but consumers rarely litigate, and the threat of termination of service or warranty is often sufficient to dissuade repair attempts.

Technological protection measures reinforce contractual restrictions. In automotive contexts, software and firmware updates can disable aftermarket parts or detect non-authorised repairs, raising both safety and IP concerns. The Bird & Bird article notes that the Right to Repair Directive prohibits manufacturers from making repair more difficult through software or hardware measures, unless justified by legitimate factors including the protection of IPRs. This carve-out leaves room for continued deployment of TPMs where manufacturers claim that releasing keys or disabling security features would compromise safety, reliability or IP.

9.4 Patents, trade secrets and spare parts

Patent protection is frequently invoked against third-party parts suppliers and 3D-printing of replacement components. Even if the part is sold after the patent has expired, patents on manufacturing methods or peripheral features may still be asserted. For example, engine control units, battery management systems and microchips in consumer electronics often incorporate patented features, making it challenging for aftermarket suppliers to design compatible replacements without risking infringement. The Bird & Bird analysis points out that the new

¹⁵¹ See footnote 146

Right to Repair Directive does not override patent rights: “the recompilation of a patent protected good could likewise amount to patent infringement, as could the unauthorised reproduction of ... patent protected spare parts”¹⁵². Consequently, while the Directive compels manufacturers to supply spare parts at reasonable prices, it does not create a general freedom to replicate those parts.

Trade secrets, as noted above, are also strategically deployed to withhold repair manuals, service bulletins and diagnostic software. Even though the Right to Repair Directive obliges manufacturers to provide certain information and repair tools for covered products, it is still unclear how trade-secret claims will be handled. Manufacturers may argue that releasing diagnostic codes or firmware keys would divulge sensitive know-how, while consumer advocates contend that safe and effective repair cannot occur without such information. Finding a balanced approach – perhaps by allowing limited disclosure subject to confidentiality obligations – is a key challenge for policymakers.

9.5 Copyright and software obsolescence

Software obsolescence presents a distinct but related problem. As noted earlier, modern devices depend on software for essential functions. Manufacturers can render products unusable by withdrawing updates or shutting down servers, as highlighted in the case of Ubisoft’s *The Crew* where the shutdown of servers effectively destroyed purchased games. Copyright law, through the Software Directive and the InfoSoc Directive, affords rightholders broad control over copying and modification. Yet consumers rely on such modifications for repair or continued use. When the CJEU recognised a right to decompile software to correct errors (*Top System v. Belgian State*), it did so under Article 5(1) of the Software Directive, emphasising that a lawful acquirer can reproduce and adapt a program to fix bugs. This limited recognition shows that copyright is not an absolute barrier to repair but remains a hurdle when combined with contractual restrictions and TPMs.

Moreover, digital obsolescence can be engineered through updates that deliberately reduce performance or disable features. Italy’s competition authority

¹⁵² See footnote 144

fined Apple and Samsung for software updates that reduced the performance of older phones, encouraging replacement¹⁵³. While this sanction was based on consumer protection law rather than IP, it shows how the software layer can be manipulated to create obsolescence. The challenge for IP law is to distinguish between legitimate updates that fix vulnerabilities (which are often protected under copyright and trade secret law) and those that degrade a product's value, effectively turning software into a tool of planned obsolescence.

9.6 Emerging legislative responses and proposals

The Right to Repair Directive (EU 2024/1799) and the EU's Circular Products initiatives mark an attempt to rebalance control. Under the Directive, manufacturers of certain products must provide repairs within reasonable time and price, make spare parts and tools available at reasonable prices, and inform consumers about repair services. At the same time, the Directive prohibits contractual, hardware or software techniques that impede repairs, unless justified by "legitimate and objective factors, including the protection of IPRs"¹⁵⁴. This language ensures that IP rights cannot be used as blanket justification for undermining repair but allows for case-by-case assessment where safety or trade secrets are genuinely at stake.

Several commentators¹⁵⁵ argue that further reform is necessary. Potenzano advocates for clarifying the legal status of repair, extending exhaustion to prevent contractual end-runs, and creating explicit exceptions to anti-circumvention provisions for repair purposes¹⁵⁶. Bird & Bird suggests that manufacturers should consider licensing strategies to monetise spare parts and collaborate with repairers instead of relying solely on defensive IP strategies. Others propose that trade-secret law should include public policy exceptions for disclosure where necessary for safety and functionality.

¹⁵³ Italian Competition Authority, AGCM fines Apple and Samsung for misleading commercial practices <https://en.agcm.it/en/media/press-releases/2018/10/PS11009-PS11039>

¹⁵⁴ See footnote 144

¹⁵⁵ *R. Potenzano*, "The Right to Repair in the EU and the US: A Comparative Perspective," *DirittiComparati*(2019) - *C. Sganga*, "A Plea for Digital Exhaustion in EU Copyright Law," *Journal of Intellectual Property, Information Technology and E-Commerce Law* (2018) - *T. Dreier*, "Unscrewing the Future: The Right to Repair and the Circumvention of Software TPMs in the EU," *JIPITEC* (2020)

¹⁵⁶ See footnote 146

9.7 Conclusion

Intellectual property rights underpin innovation and provide incentives for research and development. Yet when deployed aggressively in aftermarket contexts they can entrench planned obsolescence, limit repair opportunities and generate unnecessary environmental waste. The right-to-repair movement, and the EU's legislative agenda around circular economy and digital preservation, seek to realign this balance by recognising an inherent right to maintain one's property and by constraining the misuse of IP rights. Key challenges remain: distinguishing legitimate IP interests from rent-seeking strategies, clarifying how exhaustion applies to complex products and digital goods, and crafting exceptions to anti-circumvention laws that respect both copyright and consumer rights. Addressing these questions will determine whether future technologies support sustainable consumption or perpetuate cycles of premature obsolescence.

Part III – Software Obsolescence & the *Stop Killing Videogames Initiative*

10. Origins of the Stop Killing Videogames Movement

The “Stop Killing Videogames” campaign (often abbreviated SKG) emerged in early 2024 from a growing discontent within the gaming community about games purchased by consumers becoming unplayable when publishers shut down servers.¹⁵⁷ The spark came from the open-world racing game *The Crew* (2014)¹⁵⁸. Ubisoft announced in late 2023 that it would delist the game from digital stores and

¹⁵⁷ Stop Killing Games is a consumer movement founded by Ross Scott in April 2024 after Ubisoft shut down its online-only racing game: *The Crew*. Its goal is to preserve video games after they are taken offline and to challenge the practice of selling online-only games as purchases rather than leases. Scott compares the destruction of games to the silent-film era practice of studios melting film reels to recover silver, noting that most silent films are now lost.

¹⁵⁸ *The Crew* is a discontinued 2014 online only racing game published by Ubisoft. The game was released for Playstation 4, Windows, and Xbox One, with an Xbox 360 port developed by Asobo Studio in December 2014.

turn off its servers on 31 March 2024. This decision meant that even the single-player mode — which technically could have run without network infrastructure — could no longer launch, and players who had bought the game lost access entirely¹⁵⁹. Many interpreted this as a form of planned obsolescence: a product sold as a permanent purchase but designed to cease functioning once corporate support ends¹⁶⁰. The controversy drew attention to a wider industry problem: publishers selling digital games as though they were goods while reserving the right to revoke access at any time — highlighting the illusory nature of ownership rights in the digital age¹⁶¹¹⁶².

10.1 Ross Scott's call to action

The movement's founder, Ross Scott — better known for the machinima series *Freeman's Mind* — had been advocating for game preservation for over a decade. On 2 April 2024, he released a video titled “The largest campaign ever to stop publishers destroying games,”¹⁶³ announcing the formation of Stop Killing Videogames¹⁶⁴. In the video he argued that publishers were engaging in a “war on ownership” by designing games that would disappear when servers were turned off and by using end-user licence agreements and digital rights management to strip away the consumer's right to repair or continue using their purchase. Scott framed the practice as both immoral and legally dubious: digital products were marketed as permanent goods yet rendered worthless at the whim of publishers. His long-standing frustration found a focal point in *The Crew's* shutdown, which, in his view, “made a \$60 purchase vanish overnight”.

Scott's argument resonated with players who had experienced similar frustrations across other titles. He noted that many older games — *Friday the 13th*

¹⁵⁹ Stop Killing Games. Wikipedia. https://en.wikipedia.org/wiki/Stop_Killing_Games

¹⁶⁰ Stop Killing Games. Official Website. StopKillingGames.com.

¹⁶¹ Ghidini, G., *Innovation, Competition and Consumer Welfare in Intellectual Property Law*, Edward Elgar Publishing, 2010.

¹⁶² The Stop Killing Games Initiative: A Milestone in Video Game Preservation, But the Battle Persists. Global Brands Magazine. <https://www.globalbrandsmagazine.com/the-stop-killing-games-campaign/>

¹⁶³ Ross Scott, The largest campaign ever to stop publishers destroying games <https://www.youtube.com/watch?v=w70Xc9CStoE>

¹⁶⁴ Stop Killing Games. Consumer Rights Wiki. https://consumerrights.wiki/w/Stop_Killing_Games

or Call of Duty: Warzone, for example — had also been disabled by publishers, and preservation groups had estimated that 87 % of games released before 2010 are no longer commercially available. For Scott, The Crew was merely the most visible symptom of a systemic failure: digital distribution allowed companies to “destroy a product that has already been paid for — without any obligation to preserve it or refund the money”¹⁶⁵. By equating server shutdowns with the destruction of cultural artefacts, he drew parallels to silent-film studios melting down reels for silver and called for treating games as part of cultural heritage¹⁶⁶.

Ross Scott and many observers argue that destroying games erases part of our cultural and artistic heritage. During a UK Parliament debate, MPs noted that removing a game is akin to destroying books or films and urged that video games’ cultural identity be recognised.

10.2 Early petitions and organising

From its inception, Stop Killing Videogames was more than a YouTube rant; it was an organised campaign aimed at enacting legislative change. Two weeks after Scott’s announcement, UK citizens launched a Parliament petition titled “Require videogame publishers to keep games they have sold in a working state.” The petition aimed to mandate that publishers maintain access or provide offline alternatives after servers shut down. The UK government’s initial response refused to amend consumer law, but the petition reached tens of thousands of signatures and set a precedent for national debate. In January 2025 activists filed a new petition, “Prohibit publishers irrevocably disabling video games they have already sold,” which later surpassed the threshold for parliamentary debate¹⁶⁷.

On 19 June 2024 the campaign registered a European Citizens’ Initiative (ECI) titled “Stop Destroying Videogames”. This legal mechanism allows EU citizens to request legislation if they gather at least one million verified signatures across member states. Signature collection began on 31 July 2024, and Scott released a

¹⁶⁵ Explaining the Stop Killing Games Movement: Who They Are and What They Stand For. <https://bo3.gg/games/articles/the-stop-killing-games-movement-explained>

¹⁶⁶ Stop Killing Games petition: here’s everything you need to know. PlayRatedGames <https://playratedgames.com/stop-killing-games-petition-heres-everything-you-need-to-know/>

¹⁶⁷ See footnote 164

video urging Europeans to sign. The ECI called for laws requiring publishers to provide offline modes or release server code to the public after ending official support. It also sought to classify digital games as durable goods — entitling consumers to the same protections afforded to physical products — and to require clear end-of-life plans at the point of sale¹⁶⁸. The initiative quickly amassed hundreds of thousands of signatures and by July 2025 surpassed the one-million threshold, ensuring that the European Commission would have to consider the proposal¹⁶⁹.

10.3 The flashpoint of *The Crew*

A key part of the movement’s narrative is how *The Crew* exposed the fragility of digital ownership. Bo3.gg’s analysis notes that the campaign “kicked off in April 2024 when Ubisoft shut down *The Crew* — a racing game with online dependency that sold over 12 million copies”. Despite having a single-player mode, the game became completely inoperable once servers were switched off. Bo3.gg emphasises that this was not the first time a game had disappeared, but it was among the most public and painful cases, bringing to light a “systemic flaw—the illusion of ownership in the digital age”¹⁷⁰. Players saw that a publisher could erase a paid product without refund or recourse, which made the controversy go viral and galvanised support for Scott’s campaign.

The same article highlights why *The Crew* became the flashpoint: it was sold on major platforms like Steam and Ubisoft Connect, required a constant internet connection, lacked an offline mode and still had an active player base when it was shut down. This combination underscored the precariousness of server-dependent games and served as a cautionary tale for future releases. The outrage crystallised when Ubisoft revoked licences entirely, demonstrating that digital games are often licences rather than owned products¹⁷¹. Scott’s movement therefore positioned itself as a defence of consumer rights and cultural preservation, demanding that

¹⁶⁸ See footnote 166

¹⁶⁹ See footnote 162

¹⁷⁰ See footnote 165

¹⁷¹ See footnote 159

publishers plan for the “end of life” of their games instead of simply flipping the switch¹⁷².

10.4 Media coverage and public resonance

Mainstream and gaming media quickly amplified the story. Northeastern University wrote that the petition was set in motion by Ross Scott “in response to the practice of making purchased games unplayable”. The article framed the movement as a consumer revolt against the trend of server-based games being sold at full price without guaranteed longevity, noting that Scott urged continued signing even after surpassing one million signatures because of potential invalidation¹⁷³. The 80.lv gaming news site likewise reported that the initiative launched in April 2024 when Ubisoft shut down The Crew and that it regained momentum in 2025 as influencers and media outlets lent support¹⁷⁴. These reports emphasised the campaign’s dual focus: compelling legislators to act and educating gamers about the limitations of digital licences.

The global-brands magazine noted that the campaign, headed by Ross Scott, seeks laws ensuring games remain playable through offline modes or private servers¹⁷⁵. It described how the petition surpassed one million signatures in July 2025, putting pressure on the European Commission to address digital game preservation. PlayRatedGames, a US-based site, similarly traced the petition’s roots to Ubisoft’s shutdown and observed that Scott compared the event to “silent-film studios destroying their own film reels,” illustrating the cultural loss that unpreserved games represent. The site emphasised that SKG is not about forcing indefinite support but about establishing minimum guarantees: mandatory offline modes, private-server options and classification of digital games as durable goods¹⁷⁶.

¹⁷² See footnote 160

¹⁷³ Will the ‘Stop Killing Games’ initiative make an impact in Europe?. Northeastern University News. <https://news.northeastern.edu/2025/07/03/stop-killing-games-petition/>

¹⁷⁴ Stop Killing Games: A milestone in video game preservation. 80.lv

¹⁷⁵ See footnote 162

¹⁷⁶ See footnote 166

10.5 Beyond YouTube: a coordinated movement

Unlike many internet campaigns, Stop Killing Videogames was deliberately structured as a legal and political initiative. Ross Scott worked with lawyers and activists to design the ECI petition to meet EU requirements. The campaign's official website describes SKG as a consumer movement challenging the legality of publishers destroying video games they have sold. It notes that an increasing number of video games are marketed as goods without a stated expiration date but are designed to become unplayable as soon as support ends. The site frames this as planned obsolescence detrimental to customers and emphasises that the legality of such practices remains largely untested¹⁷⁷. SKG therefore positions itself not only as an awareness campaign but as a test case for consumer-protection law in the digital age.

By late 2025 the campaign had drawn support from high-profile YouTubers like PewDiePie, MoistCr1TiKaL and Louis Rossmann, as well as developers frustrated by industry practices. Critics argued that mandating offline modes could increase development costs and security risks¹⁷⁸, but the movement's organisers maintained that only minimum guarantees were sought, not indefinite support. The debate over digital obsolescence—and the ownership of software more broadly—was no longer confined to niche forums; it had become a topic of parliamentary debates in the UK and a formal subject for the European Commission.

10.6 Significance and legacy

The origins of Stop Killing Videogames underscore how quickly a focused consumer campaign can grow in the age of digital distribution. What began as a video call-to-action from a niche creator tapped into widespread frustration about the erosion of ownership rights when games are tied to servers. The shutdown of The Crew revealed the precariousness of digital purchases and inspired players to seek legal remedies. By April 2024, Scott had transformed his personal outrage into an organised movement with petitions, legal analysis and public-relations

¹⁷⁷ See footnote 160

¹⁷⁸ See footnote 162

strategies¹⁷⁹. Within a year, the campaign achieved enough support to compel the European Commission to evaluate new laws — an outcome unthinkable for most fan movements.

As the campaign moves forward, the challenge will be translating the momentum of its origins into concrete legislation without stifling innovation. But regardless of the final legislative outcome, Stop Killing Videogames has already left an imprint on public discourse. It has forced consumers, publishers and policymakers to confront the reality that digital products can be revoked at any time and that preserving access may require rethinking intellectual-property norms and consumer-protection laws. In doing so, the movement has turned a seemingly niche grievance into a broader conversation about the future of ownership in the digital era.

11. Petition Progress & Outcomes

The Stop Killing Videogames campaign quickly grew from a niche protest into one of the most successful grassroots initiatives in EU history. Launched in April 2024 after Ubisoft delisted and later shut down *The Crew*, the movement argued that vendors should not be able to sell “buy once” games and then remotely disable them. By early July 2025 it had already exceeded the one-million signature threshold required for a European Citizens’ Initiative, and by the second week of July it had amassed roughly 1.25 million names. Organisers framed the practice of terminating online games as a form of “planned obsolescence” that robs customers of purchases and destroys cultural heritage. They urged supporters to keep signing because some signatures might be invalidated during verification¹⁸⁰. On 13 August 2025 Euronews reported that the petition had reached 1.4 million signatures. In interviews campaign organiser Daniel Ondruska emphasised that the initiative does not seek to appropriate intellectual property or prevent publishers from ending support; instead, it asks for a reasonable “end-of-life plan” so people

¹⁷⁹ See footnote 164

¹⁸⁰ Citizens’ petition to “Stop Killing Games” reaches 1 million signatures, likely triggering EU review. Euronews. <https://www.euronews.com/next/2025/07/08/citizens-petition-to-stop-killing-games-reaches-1-million-signatures-likely-triggering-eu->

can keep playing purchased games, whether through an offline patch or a means to run private servers¹⁸¹.

After the collection period closed on 31 July 2025, national authorities began the painstaking process of verifying signatories. An update posted on the campaign's Reddit page in late October revealed that 689 035 of the 1 448 270 signatures had already been confirmed, with 15 countries meeting their quotas and only about 3 % of signatures deemed invalid. Although Germany and France had yet to complete validation, the organisers said they were confident the petition had “surpassed the required thresholds”. PC Gamer noted that even with a 3 % failure rate the petition would still have around 1.404 million valid signatures, more than 400 000 above the one-million requirement¹⁸². A report from This Week in Video Games echoed those figures and added that the campaign had engaged in intense discussions with European Commission officials, Members of the European Parliament (MEPs) and national governments. The organisers said they were seeking expert backing to answer “tough questions” as they prepared to personally deliver the petition to Brussels¹⁸³. Independent news site Massively Overpowered interpreted the preliminary verification data to mean that about 97 % of signatures were valid, making it “all but certain” that the petition would get a formal hearing before the Commission¹⁸⁴.

The success of the campaign spurred broader political activity. An October update on gaming portal Gaming Amigos celebrated that nearly half the signatures had been verified and listed the top signatory countries — Germany (306 399 names), France (173 146) and Poland (156 463) — while reminding readers that the

¹⁸¹ Citizens' petition “Stop Destroying Games” reaches 1.4 million signatures, likely triggering EU review. Euronews <https://www.euronews.com/my-europe/2025/08/13/citizens-petition-stop-killing-games-reaches-14mln-signatures-likely-triggering-eu-review>

¹⁸² Only 3 % of Stop Killing Games' EU initiative signees have failed verification so far. PC Gamer. <https://www.pcgamer.com/gaming-industry/only-3-percent-of-stop-killing-games-eu-initiative-signees-have-failed-verification-so-far-which-is-a-great-sign-itll-progress-to-the-european-commission/>

¹⁸³ Stop Killing Games has verified almost half of its EU signatures. This Week in Video Games. <https://thisweekinvideogames.com/news/stop-killing-games-has-verified-almost-half-of-its-eu-signatures/>

¹⁸⁴ Stop Killing Games is all but assured of a hearing in the EU for its petition. Massively Overpowered. <https://massivelyop.com/2025/09/16/stop-killing-games-is-all-but-assured-of-a-hearing-in-the-eu-for-its-petition/>

petition closed with more than 1.4 million signatures. Because the United Kingdom had left the EU, a separate UK petition was launched; by mid-July it had reached 189 890 signatures, easily surpassing the 100 000 needed to trigger a parliamentary debate. Gaming Amigos also noted that the European Parliament's Internal Market and Consumer Protection Committee had approved a request to hold a special expert workshop on the issue, signalling growing political interest. The article highlighted how the organisers saw the campaign fitting into the EU's proposed Digital Fairness Act, which targets exploitative digital practices. The petition's leaders encouraged supporters to participate in the Act's public consultation—an effort that eventually drew over 4 300 submissions, a record for an EU consultation. By tying their cause to a broader piece of legislation, the campaigners hoped to fold game-preservation obligations into a wider consumer-protection framework¹⁸⁵.

Behind the scenes, the movement expanded its network. According to Gaming Amigos, organisers met with MEPs, national governments and political parties, and even some European Commission representatives proactively reached out. They also sought academic and industry expertise to bolster their arguments. Campaign statements stressed that the fight was not against game developers—many of whom sympathise with preservation efforts—but rather against a handful of publishers who treat games as disposable products. This messaging aimed to maintain goodwill within the developer community while keeping pressure on large publishers. The organisers vowed to continue staging public events and urged citizens to contact governments, consumer groups and even their favourite studios to maintain momentum.

11.1 The UK Petition

The UK petition moved into the political spotlight on 3 November 2025, when Westminster Hall hosted a debate on consumer law and video games. Almost 190 000 people had signed the petition, reflecting strong public concern¹⁸⁶. Labour MP Pam Cox argued that the campaign highlighted players' frustration at seeing

¹⁸⁵ Stop Killing Games petition nears 50 % verification, DFA sets record submissions. Gaming Amigos. <https://www.gamingamigos.com/post/stop-killing-games-petition-50-verification-dfa>

¹⁸⁶ Video Games: Consumer law. Hansard debate. <https://hansard.parliament.uk/commons/2025-11-03/debates/C603C07C-1BB5-41EF-A3C1-1AE1FEBBB95D/VideoGamesConsumerLaw>

their purchases vanish and declared that “digital ownership must be respected,” calling for publishers to provide ways for players to retain or repair games when official support ends. Henry Tufnell, another Labour MP, emphasised the cultural value of games and compared their destruction to burning a book or deleting a film. Mark Sowards (Labour) distilled the campaign’s demands into a “fairly simple” guarantee: gamers are not asking companies to keep servers running forever, but they do expect publishers not to deliberately disable every copy of a purchased game. Sowards likened current practices to a printer manufacturer remotely disabling a printer, insisting that the end of support should not be confused with outright obsolescence. MPs cited specific casualties — Ubisoft’s *The Crew*, EA’s *Anthem*, PlatinumGames’ *Babylon’s Fall* and *LawBreakers* — to illustrate how live service shutdowns can erase cultural heritage. Several speakers called for clearer disclosure in sales contracts, such as explicit warnings that a game may be deactivated, and for legal obligations to provide offline alternatives¹⁸⁷.

The government responded with a mixture of sympathy and caution. Parliamentary Under-Secretary Stephanie Peacock acknowledged the strength of feeling behind the petition, noting that the UK campaign had almost 190 000 signatures and the EU initiative over a million. However, she reiterated that the government had “no plans to amend existing consumer law on disabling video games”. Peacock argued that modern games are dynamic services that require substantial, ongoing investment and that transferring servers to players could create legal and safety issues. She stressed that video games have always been licensed rather than sold outright; even in the 1980s, unwrapping a cartridge box constituted acceptance of a licence. The minister warned that imposing end-of-life obligations might create “harmful unintended consequences” and emphasised that consumers must understand what they are paying for. Nonetheless, she said the issue would be monitored and pointed to the Digital Markets, Competition and Consumers Act 2024, which gives ministers powers to designate unfair commercial practices and

¹⁸⁷ “Digital ownership must be respected”: UK parliament debates Stop Killing Games campaign, but government doesn’t budge. Video Games Chronicle. <https://www.videogameschronicle.com/news/digital-ownership-must-be-respected-uk-parliament-debates-stop-killing-games-campaign-but-government-doesnt-budge/>

could potentially be used if evidence arises¹⁸⁸. The government's position left campaigners disappointed but provided clarity on current policy.

Although legislative change remains uncertain, the Stop Killing Videogames initiative has already achieved tangible consumer outcomes. First, it has propelled the issue of digital obsolescence into mainstream political discourse. MEPs and national legislators are now grappling with questions about ownership, licensing and preservation, which were previously confined to niche forums. The campaign has mobilised hundreds of thousands of consumers across Europe and the UK, demonstrating a broad constituency for digital rights. It has also built bridges between gamers, preservationists and policymakers, with organisers working closely with MEPs and the European Commission to explore practical solutions. Second, the drive has influenced industry narratives. Some publishers have already responded by promising offline modes or private-server options for sequels, and the mere prospect of regulation has encouraged companies to think more about end-of-life policies. Finally, the campaign has generated unprecedented engagement in the EU's Digital Fairness Act consultation, ensuring that any future consumer-protection legislation will consider game preservation¹⁸⁹. Whether or not the European Commission proposes new laws, the petition has succeeded in making digital obsolescence a public issue and in forcing governments and industry to reckon with the idea that a game sold as "yours" should not simply disappear overnight.

12. Proposals, Aims & Legal Framing

The campaign's mid-2025 surge of signatures – culminating in more than 1.4 million names by July and ongoing verification through the autumn. shifted the Stop Killing Videogames movement from a fringe protest to a serious policy proposition. With that visibility came pressure to flesh out its demands and legal rationale. Organisers have insisted that they are not asking publishers to support

¹⁸⁸ See footnote 186

¹⁸⁹ See footnote 185

games forever; rather, they want lawmakers to outlaw the practice of switching off servers and revoking software licences, and to require a minimum level of post-support playability. This section reviews the proposals on the table, the broader aims of the petition and how they intersect with existing intellectual-property and consumer-protection law.

12.1 Core proposals: functional games, offline modes and private servers

At the heart of the petition are three simple demands. First, games that are sold to consumers must remain in a functional state after the end of official support. Techdirt summarised the movement’s end goal as legislation ensuring that games sold “must be left in a functional state,” must not require further connections to publishers or affiliated parties to run, and that these obligations extend to games featuring micro-transactions¹⁹⁰. Second, if a game relies on proprietary online servers, the publisher should either implement an offline mode or release server code that allows private or peer-to-peer hosting¹⁹¹. The PlayRatedGames explainer lists these elements explicitly, noting that mandatory offline modes would ensure core content stays playable and that publishers should be required to release tools or code so communities can keep games alive when official support ends. Third, the petitioners want to see digital games reclassified as durable goods rather than disposable services. This would subject them to the same consumer-rights regime that applies to physical products, including long-term fitness for purpose.

Ross Scott and his fellow organisers have stressed that the law would only oblige publishers to provide a way to continue playing once servers are retired; it would not require indefinite support, nor would it mandate the preservation of every multiplayer feature. The Stop Killing Games FAQ emphasises this point: “We are in favour of publishers ending support for a game whenever they choose. What we are asking for is that they implement an end-of-life plan to modify or patch the game so that it can run on customer systems without further support from the company.” In practice this could mean patching out always-online checks or providing

¹⁹⁰ ‘Stop Killing Games’ Finds More Allies from MPs in the UK. Techdirt <https://www.techdirt.com/2025/11/07/stop-killing-games-finds-more-allies-from-mps-in-the-uk/>

¹⁹¹ See footnote 166

peer-to-peer networking. The FAQ notes that if companies face penalties for destroying copies of games they have sold, they will likely patch these titles globally rather than support multiple regional versions¹⁹². The movement thus ties its consumer-rights claim to a pragmatic approach: enforcing a single country's rules could trigger worldwide compliance through code-sharing, just as Australia's competition authority forced Valve to offer refunds globally following litigation.

12.2 Broader aims: preserving culture and enforcing ownership

Beyond the technical fixes, the petition seeks to redefine digital ownership. PlayRatedGames argues that the movement aims to “redefine the concept of digital game ownership” by challenging publishers’ unilateral power to render titles inaccessible. It frames the issue as one of agency: players who purchase a game are making a cultural investment that should outlive marketing cycles and quarterly revenues¹⁹³. The organisers warn that if publishers can revoke access to games at will, the practice could spread to other sectors, including agricultural equipment and medical devices – a “radical assault on consumer rights”¹⁹⁴. Such fears resonate beyond entertainment: the petition is part of a broader backlash against planned obsolescence, aligning itself with European right-to-repair legislation and digital content directives discussed in previous chapters.

The movement also positions game preservation as a cultural issue. Many titles that require online authentication or proprietary servers vanish when support ends, erasing unique art styles, musical scores, and interactive narratives. GameWhims notes that licensing agreements often prevent end-users from maintaining or modifying games, turning digital releases into “pieces of digital history” that can be lost forever. SKG organisers compare server shutdowns to book burnings: without legal safeguards, each closure destroys a library’s worth of stories. This cultural framing has attracted support from preservationists, academics and some industry veterans. Notably, former BioWare producer Mark Darrah said that while

¹⁹² Stop Killing Games FAQ. StopKillingGames.com

¹⁹³ See footnote 166

¹⁹⁴ What is Stop Killing Games? Millions back EU petition to shape future of video game industry. ABC News <https://www.abc.net.au/news/2025-07-27/millions-back-eu-petition-to-shape-future-of-video-game-industry/105534758>

mandating preservation could raise costs, it may be a price worth paying to prevent “cultural and artistic heritage” from being lost¹⁹⁵.

12.3 Opposition and legal complexities

Major publishers and trade associations have dismissed the proposals as impractical. Video Games Europe, representing major developers like Activision Blizzard and EA, argues that many titles are designed from the ground up as online-only experiences; forcing publishers to offer offline modes or private-server tooling would be prohibitively expensive and could “curtail developer choice”¹⁹⁶. In a July 2025 statement the association claimed that private servers would expose rights holders to cybersecurity and content-moderation liabilities and would erode intellectual-property rights by forcing disclosure of proprietary middleware¹⁹⁷. The group also warns that mandatory offline modes might deter investment in innovative networked games. These concerns are echoed by the Australian Competition and Consumer Commission (ACCC), which notes that under Australian law there is no requirement to keep games accessible after sale and that issues of access are best handled through clear disclosure at point of purchase.

Responding to these criticisms, Ross Scott argues that costs are often overstated: while retrofitting offline modes into existing games can be difficult, building in such functionality during development can be “utterly minimal,” especially given the European Union’s 450-million-person market. Supporters also point out that many games already include offline modes or can be configured for peer-to-peer networking. According to the Hungarian Conservative’s coverage, Scott suggests companies could absolve themselves of liability by releasing server code under user agreements, enabling games to live on in community hands. The same article highlights how the planned shutdown of EA’s Anthem and other live-service titles underscores the precarity of digital ownership¹⁹⁸.

¹⁹⁵ See footnote 159

¹⁹⁶ See footnote 166

¹⁹⁷ See footnote 194

¹⁹⁸ Stop Killing Games Initiative Gains Momentum as Industry Pushes Back. Hungarian Conservative <https://www.hungarianconservative.com/articles/tech/stop-killing-games-initiative-signatures-industry/>

Legal scholars such as Azizi Othman warn that the petition must grapple with intellectual-property and contract law. The SKG organisers propose that EULAs should not supersede the right to play a purchased game¹⁹⁹. The games-industry lobbying association (Interactive Software Federation of Europe) responded to the SKG petition by warning that imposing a legal duty to keep games playable would be legally risky and prohibitively expensive for developers, beyond creating issues with copyright due to the publication of a game's source code. Sergio Ferrera of GamesIndustry.biz has argued that proposals must “reflect the realities of IP law, contract obligations and server infrastructure,” noting the difficulty of converting a server-dependent game to work offline and potential legal issues with licensed content and middleware²⁰⁰. This tension between property law and preservation was discussed in Chapter II: the exhaustion doctrine recognised in the *UsedSoft* judgment applies only to distribution rights and does not compel publishers to maintain a work in a usable state. Similarly, the software and digital content directives analysed earlier provide consumers with remedies when goods are defective but do not require perpetual service. Many End-User Licence Agreements allow the publisher to terminate the licence “at any time, for any reason”. For example, Ubisoft's EULA for **The Crew** permits Ubisoft to discontinue support and terminate users' licences at its sole discretion. As a result, contract terms may undermine consumers' ability to rely on statutory rights.

12.4 Political context and November 2025 developments

By November 2025 the movement's proposals were at the centre of political debates. In the UK, a parliamentary debate on 3 November saw MPs echo SKG's demands. Labour MP Mark Sowards argued that a publisher should not be able to “deliberately disable every copy of a game that consumers have already purchased,” and that companies should have a duty to ensure a purchased game remains playable. Another MP, Warinder Juss, likened remote deactivation to switching off a mobile phone when a new model launches, questioning why games should be treated differently. While the UK government declined to amend law, officials

¹⁹⁹ See footnote 190

²⁰⁰ See footnote 159

acknowledged that consumer-protection and competition regulators may intervene if companies mislead players about longevity. They also recognised the cultural value of games and the need for clear information at purchase²⁰¹. These debates highlight a growing political appetite to address digital obsolescence, even if concrete legislation remains elusive.

On the continent, the European Citizens' Initiative continued to make headway through the autumn. As discussed in the previous section, signature verification indicated that over 97 percent of signatories were valid, making a hearing before the European Commission all but certain. Organisers leveraged this momentum to lobby for inclusion of SKG provisions in the upcoming Digital Fairness Act and in national implementation of the Consumer Sales Directive. They also cited California's AB 2426, which requires digital storefronts to disclose when a purchase is merely a revocable licence, as evidence that legislative change is possible²⁰². Meanwhile, the Australian debate has been more cautious: the ACCC advises consumers to report cases where they feel misled but stops short of advocating for a law forcing companies to keep games running²⁰³.

12.5 Evaluation and prospects

The Stop Killing Videogames proposals occupy a delicate space between consumer rights, cultural preservation and developer freedom. By demanding mandatory offline modes or server releases, the petition seeks to inscribe a baseline of digital dignity into law. Critics worry about costs, legal risks and design constraints; yet proponents counter that the principle is simple: if you sell a product, you should not have the unilateral right to destroy it. As of late 2025, the movement's proposals remain intentionally broad to allow regulators and technologists to hammer out details²⁰⁴. Whether Europe's lawmakers will craft a workable framework hinges on balancing these competing interests. Even without immediate legislation, the campaign has already reshaped the discourse: publishers

²⁰¹ Stop Killing Games debate (3 November 2025). UK Parliament Hansard <https://hansard.parliament.uk/commons/2025-11-03/debates/C603C07C-1BB5-41EF-A3C1-1AE1FE BBB95D/VideoGamesConsumerLaw>

²⁰² See footnote 159

²⁰³ See footnote 194

²⁰⁴ See footnote 166

like Ubisoft have pledged offline modes for future titles, while UK and EU officials have pledged to monitor game shutdowns and explore regulatory options ²⁰⁵.

13. Industry & Institutional Reactions

The Stop Killing Games campaign gained enough signatures in mid-2025 to trigger an EU citizens' initiative and quickly moved from a grassroots petition to a subject of public debate. In this new context it received intense scrutiny from both the video-games industry and political institutions. While players and preservationists argued that purchasing a game should guarantee access for as long as the software can run, industry bodies warned that the proposals would impose unworkable obligations and chill innovation. This section summarises those reactions, drawing on public statements and parliamentary debates up to November 2025.

13.1 Industry lobby groups push back

Video Games Europe (VGE) – an association representing publishers including Ubisoft, Nintendo, Sega, Microsoft, Take-Two and Electronic Arts – was the first major trade body to respond when the petition crossed the one-million threshold in July 2025. In a press statement it acknowledged the passion behind the movement but said that discontinuing online services is a complex decision based on economic viability, technical constraints and player safety. VGE argued that publishers already provide notice to players when servers will be shut down²⁰⁶ and stressed that private servers are “not always a viable option” because publishers would remain legally responsible for user-generated content and data protection. The group insisted that many online games are designed from the ground up to be online-only and that mandating offline modes or perpetual server support would raise costs and restrict creative choices²⁰⁷. In a more detailed position paper published later, VGE reinforced its position: “the right to decide how, when and for

²⁰⁵ See footnote 201

²⁰⁶ Statement on Stop Killing Games. Video Games Europe, <https://www.videogameseurope.eu/news/statement-on-stop-killing-games/>

²⁰⁷ European game publisher group responds to Stop Killing Games. PC Gamer, <https://www.pcgamer.com/gaming-industry/european-game-publisher-group-responds-to-stop-killing-games-claims-these-proposals-would-curtailed-developer-choice/>

how long to make an online video game available ... is vital” and any obligation to maintain servers indefinitely or to engineer games for permanent offline use would have a “chilling effect on game design”. The paper argued that such requirements would be far from a trivial modification and would ignore material reputational, safety and security concerns²⁰⁸.

VGE’s message was amplified by media outlets and tech commentators. PC Gamer summarised the statement, noting that the lobby group views the petition’s demands as “multi-faceted” and warns that imposing a legal obligation to keep servers running could make games prohibitively expensive to create. Nintendo Life echoed VGE’s warning that forcing publishers to maintain online support indefinitely would disincentivise releasing online games in Europe. KitGuru observed that the statement came as the petition approached the EU threshold and pointed out that VGE comprises major publishers such as Ubisoft, Take-Two, WB, Riot, Activision Blizzard, Microsoft and Nintendo; it reproduced VGE’s contention that continuing server support for unprofitable games is unsustainable and that private servers raise liability concerns²⁰⁹.

Critics of VGE countered that the movement is not seeking perpetual support, only the ability to play the games they own after official servers are switched off. Ross Scott, the petition organiser, uploaded a video disputing VGE’s claim that rights-holders would be liable for user-generated content on private servers and emphasised that his proposals call for offline patches or the release of server code to allow community preservation, not continuing official support indefinitely. Cybernews, covering the story in August 2025, highlighted that the “buy” button often means renting access until a corporate decision pulls the plug and quoted VGE’s argument that indefinite server operation is “commercially impossible” and diverts resources from new projects. The article noted that players are often willing

²⁰⁸“It Will Have a Chilling Effect on Game Design”. Nintendo Life, <https://www.nintendolife.com/news/2025/07/it-will-have-a-chilling-effect-on-game-design-eu-group-responds-to-stop-killing-games>

²⁰⁹ Video game industry pushes back as petition gains traction. KitGuru, <https://www.kitguru.net/gaming/matthew-wilson/video-game-industry-pushes-back-as-stop-killing-games-petition-gains-traction/>

to run fan-hosted servers, undercutting the argument that shutting down servers is the only option²¹⁰.

13.2 Individual publishers

The most detailed industry response came from Ubisoft. At a shareholders' meeting in July 2025, CEO Yves Guillemot faced questions about *The Crew*'s decommissioning and the Stop Killing Games petition. He acknowledged that "nothing is eternal," insisting that Ubisoft's games and services cannot last forever. Guillemot explained that players are warned in advance when servers will close and that Ubisoft had offered the successor, *The Crew 2*, for a symbolic fee to mitigate the impact. He also announced that *The Crew 2* would be updated with an offline mode, but stressed that maintaining games indefinitely was not sustainable²¹¹. Ubisoft, he said, is working to improve its end-of-life strategy but the issue affects the entire industry. Some commentators praised Ubisoft for promising an offline patch, while others noted that the company only made this concession after intense public pressure.

Beyond Ubisoft, few publishers issued official statements. Electronic Arts' shutdown of *Anthem* in 2025 – widely reported as a catalyst for players' frustrations – underscored the business case for terminating underperforming online games. The Cybernews report listed other titles such as *Battleborn* (2K) and *City of Heroes* (NCSOFT) as examples of server closures²¹². While these companies did not comment on the petition, their actions illustrated the long-standing industry practice of pulling the plug on games when they are no longer profitable.

Some developers publicly supported the campaign. Owlcat Games, developer of *Warhammer 40,000: Rogue Trader*, issued a statement in July 2025 declaring that "every player deserves lasting access to the games they've paid for," aligning itself with the petition's goals. This endorsement was one of the few from a commercial

²¹⁰ Stop Killing Games and digital ownership. Cybernews, <https://cybernews.com/gaming/stop-killing-games-ross-scott/>

²¹¹ Ubisoft shareholders meeting. TweakTown transcript <https://www.tweaktown.com/news/106508/ubisoft-ceo-responds-to-stop-killing-games-nothing-is-eternal/index.html>

²¹² Stop Killing Games and digital ownership. background on game shutdowns. Cybernews, <https://cybernews.com/gaming/stop-killing-games-ross-scott/>

studio and demonstrated that not all industry players share the trade body's scepticism. Meanwhile, independent developers and modders continued to restore online functionality to abandoned games through private server projects, challenging the narrative that offline preservation is technically unfeasible.

13.3 Reactions from political institutions

UK Government and Parliament – The petition's UK counterpart gathered nearly 190,000 signatures by July 2025, prompting a Westminster Hall debate on 3 November 2025. MPs across parties criticised current practices. Mark Sewards (Labour) argued that the movement seeks a simple guarantee that games purchased will not be deliberately disabled; he emphasised that players are not asking companies to maintain multiplayer servers forever, but to allow offline or private server alternatives. Conservative MP Henry Smith highlighted the cultural significance of games, comparing them to film and literature and stressing that their preservation is a matter of heritage. Other MPs pointed out that always-online games blur the line between sale and subscription and that the current situation undermines consumer trust²¹³.

The UK government's response was cautious. Parliamentary Under-Secretary Stephanie Peacock acknowledged the petition's popularity but reiterated that online video games are dynamic, interactive services that require investment and that there is no requirement in existing consumer law for companies to continue supporting software indefinitely. She noted that publishers must comply with the Consumer Rights Act, which requires digital content to be of satisfactory quality and as described, and that the government would monitor the issue but had no plans to amend legislation. A House of Commons research briefing released ahead of the debate emphasised that decisions to discontinue games are commercial matters and that existing UK law does not oblige companies to keep games accessible. It added that traders must clearly inform consumers about the support period and that

²¹³ UK Parliament debates Stop Killing Games. Video Games Chronicle, <https://www.videogameschronicle.com/news/digital-ownership-must-be-respected-uk-parliament-debates-stop-killing-games-campaign-but-government-doesnt-budge/>

consumers may seek redress if digital goods fail to meet contractual descriptions²¹⁴. This official stance suggests that any legislative change is unlikely in the near future.

European Parliament and Commission – At the EU level, the petition’s success drew attention from lawmakers. Romanian MEP Nicolae Ștefănuță, one of the Vice-Presidents of the European Parliament, publicly endorsed the campaign, stating that “a game once sold belongs to the customer, not the company” and pledging to raise the issue within the Parliament’s Internal Market Committee (IMCO). His support signalled that at least some legislators view the issue as a matter of digital ownership and consumer rights. Other MEPs, including members of the Greens/EFA group, expressed support for the petition during the verification phase, arguing that cultural works should not be arbitrarily destroyed. However, as of November 2025 the European Commission had not issued a formal position. Commission officials indicated that they would respond after verifying the petition’s signatures and analysing its compatibility with existing EU law. Observers expected the file to be considered alongside the forthcoming Digital Fairness Act, which aims to update EU consumer rights for digital products²¹⁵.

13.4 Public discourse and advocacy

Beyond formal statements, the movement sparked broader debates about digital ownership and the longevity of cultural goods. Cybernews reported that hundreds of online games vanish each year, leaving players powerless when purchases disappear²¹⁶. The article quoted VGE’s claim that indefinite server operation diverts resources from new projects while also noting that players often volunteer to maintain fan-hosted servers²¹⁷. Commentary on Nintendo Life’s article pointed out that most players were not asking for perpetual online services but for offline modes or private-server support after shutdowns²¹⁸. Fans argued that developers managed

²¹⁴ E-petition relating to consumer law and videogames. House of Commons Library, <https://commonslibrary.parliament.uk/research-briefings/cdp-2025-0195/>

²¹⁵ Games industry’s self-induced traumatic brain injury. Cory Doctorow, <https://doctorow.medium.com/https-pluralistic-net-2025-11-17-stop-killing-games-again-object-transience-f63af9cde93f>

²¹⁶ See footnote 212

²¹⁷ See footnote 210

²¹⁸ See footnote 208

to implement offline functionality for decades, so claims that it is impossible ring hollow. On social media, MEP supporters and campaigners urged consumers to continue signing the petition and to engage in public consultations on the Digital Fairness Act.

Industry insiders voiced concerns that the petition could lead to more radical proposals. Some warned that an obligation to provide offline functionality might effectively require publishers to release source code, which they argue is proprietary and confidential. Others suggested that the movement understates the costs of maintaining legacy servers or porting games to offline mode. At the same time, consumer rights organisations drew parallels to the “right-to-repair” movement in hardware, arguing that software should be treated as property rather than a temporary licence.

13.5 Assessment and future outlook

As of November 2025, the industry and institutional reactions reveal a clear divide between commercial interests and consumer expectations. The core of the industry’s argument rests on cost, liability and innovation: publishers insist that they must be free to withdraw services when they are no longer commercially viable, and they warn that mandating offline modes or perpetual server support would raise costs and stifle new game development^{219 220}. By contrast, supporters of the petition argue that consumers purchase products, not licences, and that games should remain playable via offline or community-run servers once official support ends²²¹. Institutional responses reflect a cautious approach: the UK government recognises players’ frustration but prefers to rely on existing consumer law²²², while the European Parliament shows signs of support but awaits the Commission’s assessment. Whether the movement leads to concrete legislative change remains uncertain, but the debate has already pressured publishers like Ubisoft to provide offline patches and prompted public scrutiny of digital ownership practices. As the

²¹⁹ See footnote 208

²²⁰ See footnote 207

²²¹ See footnote 213

²²² See footnote 214

petition progresses through verification and into the legislative arena, industry and institutional positions will likely evolve, making this an ongoing story to watch.

14. Legal & Policy Implications

The Stop Killing Videogames movement has crystallised a fundamental question of digital consumer rights: do people who pay for video games own them, or merely license access to the software? While players' intuition treats a game purchase like a book — once bought, it cannot be repossessed — the law generally views downloaded games as licensed services. This section examines the legal and policy environment surrounding the petition through November 2025. It explores how existing intellectual-property and consumer-protection frameworks shape the debate, describes emerging policy initiatives such as the UK's Digital Markets, Competition and Consumers Act and the EU's planned Digital Fairness Act, and reflects on academic analyses questioning whether legislative mandates are the right tool to address digital obsolescence.

14.1 Licensing versus Ownership: where expectations clash

The movement's anger stems from a disconnect between consumer expectation and legal reality. As legal scholar Feiyang Peng explains, courts treat software users as licensees rather than owners: End-User Licence Agreements (EULAs) reserve title in the publisher, restrict transfer and reproduction, and do not guarantee indefinite access. Remote termination clauses are enforced through Digital Rights Management (DRM) that can lock users out of games or revoke licences remotely. While buyers expect that clicking "Buy Now" will confer ownership, the law views the transaction as granting a limited licence. Players do not demand perpetual maintenance; they merely seek to preserve worlds they have invested countless hours in²²³. Yet the industry's heavy reliance on licensed components—music, brand logos and middleware—means that source code and assets cannot simply be handed over without breaching third-party licences.

²²³ Feiyang Peng, License to Kill (Games), Columbia Journal of Law & the Arts.

Because these agreements are time-limited, the practice of killing games is an inevitable outcome of an ecosystem built on temporary permissions.

This gap explains the movement's focus on continued access rather than ownership: petitioners seek offline modes or authorised private servers rather than full transfer of intellectual property. Academic commentary suggests that instead of a blunt legislative mandate, the industry might adopt a self-regulatory framework similar to the Entertainment Software Rating Board that discloses expected lifespan and post-support plans. Such an approach could align consumer expectations with legal realities, reducing the temptation to “kill” games without notice.

14.2 Consumer Protection Law in the UK

The UK petition accompanying the European Citizens' Initiative forced Westminster to clarify the legal position. In a February 2025 response, the government stated there is no requirement in UK law for software companies to support older versions of their products²²⁴. The Consumer Rights Act 2015 (CRA) only obliges digital content to be of “satisfactory quality” and “fit for purpose”; if a game is sold as playable offline and then rendered unplayable, players may seek repair, replacement or refund. The Consumer Protection from Unfair Trading Regulations (CPRs) prohibit misleading omissions, so if marketing implies the game will remain playable indefinitely the seller might need to provide an offline mode or clearly disclose limitations. However, the CRA imposes no duty to keep servers running, and the government sees decision-making about discontinuations as a commercial matter.

In June 2024 Parliament passed the Digital Markets, Competition and Consumers Act (DMCC), which will come fully into force in April 2025. The DMCC empowers the Competition and Markets Authority (CMA) to directly enforce a revamped unfair commercial practices regime, with fines up to 10 % of global turnover for businesses that mislead consumers. Pinsent Masons notes that

²²⁴ House of Commons Library, E-petition relating to consumer law and videogames: UK government response to petition, emphasising that UK law imposes no obligation to support older software and that consumer remedies are limited <https://commonslibrary.parliament.uk/research-briefings/cdp-2025-0195/>

this new regime could apply to games sold with implied promises of longevity²²⁵. Nevertheless, the government's position during the November 2025 parliamentary debate on the UK petition remained unchanged: ministers reiterated that online games are dynamic services; requiring perpetual support would impose disproportionate burdens and undermine innovation. They promised to monitor the market and enforce existing laws but ruled out legislative change.

14.3 The EU Regulatory Landscape

At EU level, the petition has drawn attention to gaps in consumer protection for digital goods. The 2019 Directive on digital content and services establishes that digital goods must conform to agreed characteristics and that sellers are liable for defects. However, the directive does not oblige providers to maintain support indefinitely; consumers can only demand repair or price reduction during the conformity period. Against this background, the Stop Killing Videogames petition proposes amending EU law to require publishers to provide offline modes or release server code when discontinuing games. Ross Scott has argued that if planned from the start, implementing end-of-life plans could be low cost and in some cases “inconsequential”. He urges regulators to add a provision to the Digital Fairness Act requiring publishers to leave sold video games in a working state when support ends²²⁶.

The European Commission's 2030 consumer agenda, published in November 2025, confirms that a Digital Fairness Act (DFA) will be proposed in 2026 to protect consumers in the digital environment²²⁷. The DFA aims to tackle “dark patterns”, influencer marketing, and addictive design practices; it may also address digital subscriptions and loot boxes²²⁸. During the summer of 2025, the Commission launched a public consultation on the DFA; supporters of SKG were

²²⁵ Pinsent Masons, Gamer movement demands consumer rights for discontinued online games: discussion of the DMCC Act and the CMA's new enforcement powers. <https://www.pinsentmasons.com/out-law/news/gamer-demands-consumer-rights-discontinued-online-games>

²²⁶ EU Perspectives, 1.4 million Europeans sign petition to keep online games alive <https://euperspectives.eu/2025/08/1-4-million-europeans-demand-stop-killing-games/>

²²⁷ European Commission, 2030 Consumer Agenda https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/2030-consumer-agenda_en

²²⁸ Osborne Clarke, Digital Fairness Act and Digital Omnibus

encouraged to submit evidence about game shutdowns. An Eneba article notes that the Digital Fairness Fitness Check identified issues including personalised targeting and addictive design, and that supporters can still contribute evidence to the consultation²²⁹. Ross Scott urged people to describe instances of game removal and to argue that end-of-life plans should be included. Whether the DFA will incorporate SKG's proposals remains uncertain; the initial focus is on harmful commercial practices rather than digital obsolescence, but the consultation demonstrates policymakers' openness to broadening its scope.

14.4 Policy Proposals and Tension with IP Rights

The petition's central demand — to require publishers to keep games functional or allow community preservation — collides with intellectual property laws that grant publishers and rights holders exclusive control over reproduction and distribution. Pinsent Masons summarises the tension: IP law gives publishers ongoing control, while consumers reasonably expect that ownership confers the right to use a game indefinitely. Their expert Jane Bourke notes that if access is revoked without a clear expiration period, it may constitute an unfair commercial practice. Yet compelling publishers to hand over source code could breach copyright and trade secret protections. The petition's request to release IP for discontinued games is thus likely to face significant resistance²³⁰.

The Columbia Journal article highlights that games are assembled from leased parts and third-party licences. Releasing full source code would require renegotiating rights to music, branding, and licensed middleware. For example, The Crew, whose shutdown sparked the petition, contained dozens of licensed car brands²³¹. Because publishers cannot unilaterally transfer these rights, policy proposals focusing on transparency and time-limited offline modes may be more feasible than demanding open source. Feiyang Peng suggests that a self-regulatory

²²⁹ Eneba, Stop Killing Games Supporters Can Piggyback on the Digital Fairness Act: encourages supporters to submit evidence to the DFA consultation and lists issues identified by the Digital Fairness Fitness Check <https://www.eneba.com/hub/news/stop-killing-games-supporters-can-piggyback-on-the-digital-fairness-act/?srsltid=AfmBOooXzo0CAolsP-xtbFOQNYe3AHCCmioJr20XEC7udJ3GKOfyyn4X>

²³⁰ See footnote 225

²³¹ See footnote 223

framework could offer a “menu of options” for end-of-life plans, similar to the ESRB rating system. This would pre-empt fragmented legislation by providing clear and predictable outcomes.

14.5 Balancing Consumer Rights with Innovation

Legislators must balance consumer rights with the need to foster innovation and protect IP. Video Games Europe argues that shutting down services is a complex, multi-factor decision taken with care; online games are designed to be live services, and imposing offline requirements would curtail developer choice and make games prohibitively expensive. Publishers also highlight privacy, safety, and reputational risks associated with releasing server code or sanctioning private servers²³². UK ministers echoed these concerns during the November 2025 debate, describing games as dynamic services and emphasising that forcing offline modes could undermine security and hamper creative innovation²³³.

On the other hand, consumer advocates argue that destroying purchased games is unfair and sets a dangerous precedent for digital goods. The European Commission’s 2030 agenda underscores that the digital economy requires modernised consumer protections²³⁴. The DMCC Act’s new enforcement powers signal a shift toward stronger penalties for unfair practices²³⁵. The petition has already prompted the European Parliament to schedule expert workshops and debates, and once signature verification is complete, the Commission will decide whether to propose legislation²³⁶. The fact that more than 1.4 million citizens signed the petition indicates significant political momentum, which could influence the DFA’s drafting or inspire sector-specific rules.

14.6 Normative and Ethical Implications

Beyond legal reforms, the movement raises ethical questions about cultural preservation and corporate responsibility. EU Perspectives notes that digital games

²³² See footnote 226

²³³ See footnote 224

²³⁴ See footnote 227

²³⁵ See footnote 225

²³⁶ See footnote 226

can vanish when servers close, erasing cultural artefacts and depriving consumers of cherished experiences. Ross Scott likens the practice to authors repossessing books sold to readers. He argues that most games already comply with the proposed rules and that requiring “end-of-life” plans would affect only a minority of titles. Critics counter that the market has always operated on licences; rewriting the rules could drive prices up and disrupt the broader digital economy²³⁷.

Lawmakers must therefore weigh the moral intuition—that consumers should keep what they buy—against the legal and economic infrastructure of digital markets. Some jurisdictions are experimenting with transparency solutions. In the United States, California’s 2025 statute requires digital marketplaces to specify whether a product is licensed rather than sold. Such disclosures may align expectations with reality, reducing frustration. However, simply forcing fine-print information onto consumers may not suffice; the Columbia article warns that disclosure alone has limited effect²³⁸. A combination of transparency, self-regulation, and targeted regulation may offer a more effective way forward.

14.7 The Current Outlook

The Stop Killing Videogames movement has galvanised a debate at the intersection of intellectual property, consumer law and cultural policy. By November 2025, it has spurred governments and regulators to reassess whether existing frameworks adequately protect digital consumers. The UK government maintains that current law does not compel publishers to keep servers running and has resisted changes²³⁹, although the DMCC Act introduces stronger enforcement for misleading practices²⁴⁰. At EU level, the upcoming Digital Fairness Act and the European Commission’s 2030 consumer agenda present opportunities to address digital obsolescence²⁴¹. Yet any legal intervention must navigate complex IP rights and the realities of modern game development, where third-party licences and DRM make perpetual support impractical.

²³⁷ See footnote 223

²³⁸ See footnote 223

²³⁹ See footnote 224

²⁴⁰ See footnote 225

²⁴¹ See footnote 227

Ultimately, the petition underscores a societal desire for digital permanence. Whether through mandatory end-of-life plans, enhanced consumer information, or industry-led standards, the challenge will be to craft rules that respect both creators' rights and consumers' legitimate expectations. The next phase of the debate will occur in 2026, when the Commission presents its Digital Fairness Act. Until then, the movement serves as a catalyst for policymakers to rethink the balance between innovation, ownership, and digital longevity.

15. Future Scenarios & Regulatory Pathways

As the Stop Killing Videogames initiative moves into its next phase, the central question is no longer whether players have a valid grievance but how public institutions will respond. By November 2025 the European Citizens' Initiative (ECI) petition had closed with more than 1.4 million signatures and verification results looked strong. Campaign organisers emphasise that reaching 145 % of the required threshold ensures a comfortable buffer, with 15 countries already meeting their national quotas²⁴². This outpouring of support, along with a parallel UK petition, has placed game preservation on the political agenda. The future now hinges on a handful of regulatory processes: EU-level procedures, the evolving Digital Fairness Act (DFA), national legal actions, and the possibility of self-regulation by the industry. This section assesses the likely pathways and scenarios based on events and commentary up to November 2025.

15.1 The EU Legislative Roadmap

The first milestone will be the conclusion of the verification process. European national authorities are checking the 1.4 million signatures to ensure they are legitimate; early results suggest that 97 % are valid, leaving organisers in a "very strong position". Once the checks are complete, each government will issue a certificate with its number of validated signatures, which the petition organisers will then submit to the European Commission. According to the petition's leaders,

²⁴² See footnote 185

this formal submission will mark the beginning of a legislative phase: the Commission is obliged to hold a structured discussion with them, after which the European Parliament typically organises a public hearing²⁴³. Only then will the Commission decide whether to propose legislation²⁴⁴. This process ensures that the SKG petition is not simply a moral statement but a potential legislative trigger. Yet the Commission retains broad discretion; it could propose a new law, amend existing digital content rules, or conclude that current frameworks suffice.

Lawmakers are already signalling interest. In September 2025 the European Parliament’s Internal Market and Consumer Protection Committee (IMCO) voted to hold a special expert workshop on the issue. Organisers have been briefing Members of the European Parliament, national governments and European Commission officials to keep the pressure on²⁴⁵. If the Commission opts to act, one pathway is to integrate game preservation requirements into the forthcoming Digital Fairness Act: an omnibus regulation aimed at curbing dark patterns, addictive design and exploitative digital practices. Petition co-founder Ross Scott argues that adding “server shutdowns” to the DFA’s list of unfair practices would be an effective “sixth element” because it piggybacks on existing legislative momentum. Public interest is exceptionally high: over 4,300 submissions were filed during the DFA consultation, a record level of engagement. An EU Observer analysis notes that many of these responses came through the Stop Killing Games campaign, and they called for clear prohibitions on practices such as loot boxes targeting children and “server shutdowns rendering purchased games unplayable”²⁴⁶. These submissions provide the Commission with evidence that current law fails to address digital obsolescence and may compel regulators to explicitly outlaw remote deactivation.

²⁴³ ScreenHub, Stop Killing Games initiative issues major progress update: reports that 97 % of signatures are valid and that once verification concludes <https://www.screenhub.com.au/news/games/stop-killing-games-initiative-update-2679432/>

²⁴⁴ Euronews, Citizens’ petition to ‘Stop Killing Games’ reaches 1 million signatures, likely triggering EU review, <https://www.euronews.com/next/2025/07/08/citizens-petition-to-stop-killing-games-reaches-1-million-signatures-likely-triggering-eu->

²⁴⁵ See footnote 185

²⁴⁶ EU Observer, The new EU Digital Fairness Act needs teeth to tackle Big Tech platforms, <https://euobserver.com/3950/the-new-eu-digital-fairness-act-needs-teeth-to-tackle-big-tech-platforms/>

15.2 Digital Fairness Act and 2030 Agenda: Opportunities and Limits

The DFA is scheduled for proposal in 2026 as part of the European Commission's 2030 consumer agenda. Early drafts aim to harmonise the EU's patchwork of consumer-protection laws by targeting manipulative design, influencer marketing and opaque subscription models. The Stop Killing Games campaign argues that game preservation fits naturally within this remit because remote deactivation manipulates consumers into rebuying games and erases cultural heritage. Some legal commentators agree that the DFA could extend to server shutdowns; the EU Observer article suggests that consultation responses point to this practice as a candidate for prohibition. However, there is also scepticism. The DFA's current focus is broad, and there is a risk that adding complex obligations around game preservation could dilute its impact or create conflicts with intellectual property law. An opinion piece warns that an overly expansive DFA might generate "undesirable interactions" with existing regulations, emphasising that the Commission must choose clear prohibitions over ambiguous principles²⁴⁷. Thus, while the DFA presents the most promising vehicle for EU-level reform, its scope and clarity will determine whether server shutdowns are addressed or sidelined.

Beyond the DFA, other EU instruments could be amended. The Digital Content and Services Directive (2019/770) could be revised to require that digital goods remain functional after sale, or the Commission could introduce a targeted directive on digital obsolescence. The success of the SKG petition creates political momentum: few ECI campaigns have reached one million signatures²⁴⁸. Yet legislative proposals must navigate complex intellectual property rights. Game software contains third-party licences for music, trademarks and middleware; compelling companies to release server code or assets would require renegotiating these licences and risk violating copyright law. Regulators may therefore favour solutions that stop short of mandatory code release, such as requiring offline modes or making server software available under controlled conditions²⁴⁹. The tension

²⁴⁷ See footnote 246

²⁴⁸ See footnote 244

²⁴⁹ Gaming Amigos, French Watchdog Backs Stop Killing Games and Is 'Strongly' Considering Legal Action

between consumer expectations and IP protections will shape the final text of any law.

15.3 National Routes: Litigation and Policy Innovation

While EU legislation is the principal pathway, national authorities are not passive. In France, consumer advocacy group UFC-Que Choisir has publicly backed the SKG campaign and is considering legal action against publishers that block access to games. The organisation argues that players were never informed of an “expiration date” and calls for clear disclosure and compensation. Given UFC-Que Choisir’s track record — pressuring Nintendo to repair Joy-Con controllers and prompting the French Competition Authority to fine Sony — Its involvement raises the stakes for publishers. If national courts rule that destroying games constitutes unfair commercial practice, such decisions could accelerate EU-wide reform or spur other national regulators to act. France’s move is part of a wider pattern: consumer rights groups across Europe are exploring whether existing unfair-contract laws can be used to challenge remote deactivation.

In the United Kingdom, the government has thus far resisted legislative change, emphasising that games are licences rather than sold goods and that no UK law requires companies to keep servers online. Ministers argue that mandating offline modes would impose disproportionate burdens and could be addressed by consumer law enforcement²⁵⁰. However, the Digital Markets, Competition and Consumers Act empowers the Competition and Markets Authority to levy heavy fines on companies that engage in unfair practices, providing a lever for future action if evidence of consumer harm emerges. Activists may therefore shift their focus to ensuring that regulators interpret “misleading omissions” broadly enough to cover cases where marketing implies enduring playability. Other national parliaments could consider similar measures; for instance, Italy and Spain, which have extended consumer warranties, might become receptive to right-to-use reforms.

²⁵⁰ See footnote 244

15.4 Self-regulation and Industry Adaptation

Given regulatory uncertainty, one plausible scenario is industry-driven self-regulation. Game publishers and platform holders could adopt voluntary standards — similar to the Entertainment Software Rating Board or France’s repairability index — requiring that every game released in the EU include a publicly disclosed “end-of-life plan.” Such a plan could specify either a date when support will end or a commitment to provide offline functionality or private server tools. Academic commentators have suggested that a self-regulatory framework may deliver practical solutions while avoiding the legal morass of forced code release²⁵¹. The SKG movement itself emphasises that its fight is not against developers but against a handful of publishers who treat games as disposable²⁵². Engaging developers and industry associations in drafting standards could help align creative and preservation goals, reducing the likelihood of heavy-handed regulation.

There is evidence that publishers are already adapting. Ubisoft, whose shutdown of *The Crew* sparked the movement, has promised an offline mode for *The Crew 2* and committed to including offline functionality in future titles²⁵³. Video Games Europe insists that shutting down services must remain an option but acknowledges the reputational risks of disappointing consumers. As legal pressure mounts, more publishers may voluntarily add offline or private-server options to avoid litigation and maintain goodwill. Should this trend take hold, regulators might view industry initiatives as sufficient, focusing instead on transparency and enforcement of existing consumer laws.

15.5 The Future

By November 2025, the Stop Killing Videogames campaign has achieved something rare: it has forced governments and legislators to confront the reality of digital obsolescence. The next steps will be protracted. Verification is expected to conclude in early 2026; the Commission’s structured dialogue and Parliament

²⁵¹ See footnote 223

²⁵² See footnote 185

²⁵³ See footnote 249

hearing will follow; any legislative proposal will then undergo trilogue negotiations. The Digital Fairness Act could become law by 2028, with implementation perhaps by 2029, meaning consumers may not see immediate benefits. In the interim, national litigation, consumer activism and voluntary industry changes will shape the landscape. Even if the Commission declines to legislate, the petition's success has irrevocably raised awareness. Record participation in the DFA consultation proves that citizens want stronger digital consumer protections²⁵⁴. Consumer watchdogs like UFC-Que Choisir are poised to test legal theories in court. Publishers, under scrutiny, are beginning to offer offline modes. These dynamics make some degree of reform — whether statutory, regulatory, or contractual — almost inevitable.

²⁵⁴ See footnote 246