

February 1, 2021

Letter of Testimony for SB412

What is the Problem solved by the Fair Repair Act?

Over the past 10-15 years, manufacturers around the world have taken advantage of consumers in increasingly bold ways to monopolize repair as a business model. What began as a benign and simple use of the internet to host repair documentation for easy download turned into a login requirement, then a pay-wall, then a way to block all competition.

We are now at the point where monopolized repair is “normal” despite being illegal under antitrust law for over 100 years. Manufacturers do not have the right to demand they alone repair their products -- and yet consumers believe that to be true. The point of antitrust law is known as an illegal tying agreement where the buyer is forced to buy an additional product or service, such as repair or a software license, in order to use the first purchase.

The US DOJ and FTC are setup to litigate against one manufacturer at a time. With thousands of products in the market which are all repair-monopolized we are advised by these agencies that the solution is legislative. State law has proven effective in restoring competition to the marketplace of automotive repair, and SB412 merely extends the scope of repairable products beyond the computers within automobiles to computers that are embedded in other shapes and sizes.

The bill treats all modern products with embedded electronics the same way because they are repaired the same way. Repair is very simple. Something doesn't work -- the technician runs manufacturer-created diagnostics to identify the problem. A part is ordered. The part is pulled out and a spare part installed. The technician re-runs the diagnostics to confirm the repair is complete. Without access to the diagnostics, parts, tools, service documentation and firmware, that is made by manufacturers to facilitate repair, repair is easily monopolized.

Repair is also specifically legal under current copyright and patent law. Trade secrets are not useful for repair and are disclaimed. Repair techs are not given cyber security back door tools by OEMs because such tools would be giant security risks. Personal injury law is not changed by Right to Repair -- and common contracts already include disclaimers and limitations of liability that protect OEMs up to the limit of state law, which is not changed by Right to Repair.

Consumers should have a consistent set of rules that they can trust when they spend money to buy a product. Consumers will not be well served if the rules for repair of a coffee machine are different from purchases of laptops, tractors or widgets. We do not see a logical reason to allow anti-consumer monopolies to persist based on a specific brand.

Consumers are handed contracts they cannot understand and cannot negotiate which undermine important legal rights of owners to control their property. Manufacturers variously claim proprietary rights as a reason to monopolize repair, but under current Copyright, Patent and Trade Secret law repair is specifically legal.

Legislation is now necessary to restore our existing legal rights to repair. The nature of ownership is being thrown overboard by a wide variety of manufacturers in many industries in order to sell more stuff more often. Manufacturers are selling equipment and then preventing the buyer from using it as they see fit. That arrangement is normally called a rental -- not a sale.

The problem is not a technology problem but a business model problem. Manufacturers are using the presence of a computer chip to control repair for their purposes -- and not to support the customer.

The three advantages of monopolized repair are:

- a) Charge excessively for repair services and parts.
- b) Limit the useful life of products so as to sell replacements more frequently.
- c) Block the used market from selling in competition to new.

Monopolized repair is bad for consumers, bad for innovation, and bad for our resiliency in the face of the pandemic. Without repair, we're not able to educate our children, care for the ill, or even keep our appliances running. We can now estimate that 90% of all new products are repair-monopolized due to either design or policy. There are no longer any product options that do not trap consumers, business, industry, agriculture, or government into replacement cycles they cannot control.

Why is repair central to reuse and extended useful life?

Without the option of repair, equipment owners are prevented from continuing to use their equipment from the moment of the first glitch. Problems cascade into many areas not associated with repair directly.

For example:

- Retailers need to be able to recover value from returned products -- which often requires repair or the ability to thoroughly test equipment condition before being resold.
- Lenders and Lessors expect to be able to recover some of their risk in event of default through resale. But if equipment cannot be repaired or resold due to manufacturer limitations -- collateral value is lost.
- Insurance companies offering repair contracts also need to be able to control the costs of repair or the policies will have to be higher priced.

- In-warranty repairs are not free -- the OEM is paying someone to perform the service. Larger OEMS often outsource repairs overseas where labor costs are lower literally taking away domestic employment.
- Products that are made poorly (as in planned obsolescence) can be kept in service only with availability of repair.
- Recyclers can offset processing costs when there is a market for harvested parts. Otherwise recycling is a taxpayer burden that continues to grow with each new product.

Requirements in some end user license agreements (“EULA”) require the owner to get permission to resell the equipment which destroys the advantages of ownership instead of rental.

Manufacturers continue to innovate negatively against the option of owner controlled repair such as by making excessive use of adhesives instead of mechanical fasteners, or adding passwords or even cryptographic locks to prevent parts replacement by any party other than the OEM. Firmware updates are being used to remove functions or block repair. The overall situation is bad and getting worse by the day.

About the Repair Association:

The Digital Right to Repair Coalition - d/b/a Repair.org was founded in July of 2013 by multiple trade associations with the specific purpose of promoting repair-friendly legislation, regulations and standards. We are 100% member funded, totally virtual, nearly entirely all volunteer and proudly non-partisan.

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