



July 18, 2023

The Honorable Darryl Issa
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet
Committee on the Judiciary
U.S. House of Representatives
Washington D.C. 20515

The Honorable Henry C. “Hank” Johnson, Jr.
Ranking Member
Subcommittee on Courts, Intellectual
Property, and the Internet
Committee on the Judiciary
U.S. House of Representatives
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Dear Chairman Issa and Ranking Member Johnson:

The Center for Democracy & Technology (CDT) is pleased that the Subcommittee is holding this hearing concerning the importance of securing a meaningful right for consumers to choose where to get their products repaired, and of securing for independent repair shops a fair opportunity to compete to provide their services to consumers.

The rights of ownership have been recognized in law for many centuries, and the right to repair has either been inherent in ownership or has been protected and supported by law. In the U.S., this right is reinforced by the Magnuson-Moss Warranty Act, 15 U.S.C. §2302(c), which generally prohibits manufacturers from conditioning a warranty on the consumer having to use parts and repair services sold by the manufacturer. When manufacturers have failed to comply with this prohibition, the Federal Trade Commission has issued warnings to remind manufacturers of their obligations¹ and has brought legal action to enforce compliance.²

With technological advances, an increasing number of products now depend for their functioning on electronics that are embedded in or attached to the product. This has given manufacturers additional means to block competition and monopolize the maintenance and repair aftermarket for their products.

Manufacturers can design the electronics to make repairs more difficult, such as with uniquely configured tools that are not made available to owners and independent repair

¹ <https://www.ftc.gov/news-events/news/press-releases/2018/04/ftc-staff-warns-companies-it-illegal-condition-warranty-coverage-use-specified-parts-or-services>.

² <https://www.ftc.gov/news-events/news/press-releases/2022/07/ftc-takes-action-against-weber-illegally-restricting-customers-right-repair>.

technicians. They can refuse to make diagnostic manuals and other information available. They can engineer special parts and refuse to make them available. They can booby-trap the electronics with locks that cannot be easily opened without breaking the product, or that when opened render the product dysfunctional unless a secret software code is applied to restore functionality. These and other anticompetitive, anti-consumer practices were illuminated in a workshop the Federal Trade Commission held in July 2019 and are described in its May 2021 report, “Nixing the Fix.”³

When manufacturers are able to block competition in the repair aftermarket, they can prioritize their own interests and downplay or disregard the interests of their consumers. They can charge more for repairs. They can limit the number of repair providers to maximize their own profits, resulting in longer waiting periods and other inconveniences for consumers. They can decide which repairs they will make, and when it’s more profitable for them to make their consumers toss out the product and replace it.

This issue is being addressed in state legislatures around the country. For example, last December, New York Governor Hochul signed the Digital Fair Repair Act into law.⁴ Although in some respects this Act stops short of a full right to repair, it marks a strong beachhead for further action in other states and in Congress to secure this right, promoting free choice and healthy competition.

Various associations representing manufacturers of electronics-enabled consumer products have proffered concerns that permitting this access to enable repairs would somehow jeopardize privacy and security. Protecting privacy and security throughout the digital ecosystem has been among CDT’s top goals since our founding more than 25 years ago, and remains so today. But those concerns are not materially implicated by ensuring consumers a right to repair. The access needed for maintenance and repair of these products does not involve revealing core software that protects the privacy and security of user data. Nor does it involve exposing the product to infringement of intellectual property. It simply gives independent repair providers, and product owners, the same access to parts, tools, and information needed to repair the product that the manufacturer is already giving its own hand-picked repair providers.

Indeed, there is no technological impediment for manufacturers to provide this access. The impediment is the desire, on the part of those manufacturers and hand-picked repair providers, to preserve the inflated profit stream that comes from keeping the repair aftermarket as closed off to competition as possible.

Manufacturers also raise concerns about quality of repairs by independents. Quality of repairs has always been an issue, for as long as there have been products to repair. But with equivalent access, independent repair providers and tech-savvy product owners are fully capable

³ https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

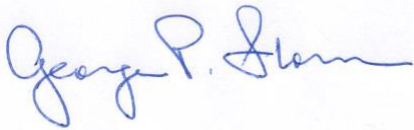
⁴ https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S04104&term=2021&Actions=Y&Text=Y.

of performing quality repairs. And importantly, in a free marketplace, those judgments are left to consumers, to weigh against cost and convenience and other considerations. Those judgments are not for the manufacturer to dictate and deny consumers the benefits of competition that are at the heart of a free marketplace.

Unleashing the healthy forces of competition provides consumers the leverage of choice, the ability to look elsewhere for a better deal – which tends to bring them lower prices, more convenience, and greater satisfaction. This fundamental free-market principle applies in the repair aftermarket for consumer products that run on digital electronics just as it does throughout the economy.

We look forward to working with you to establish this important protection for consumer choice.

Respectfully,



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Hannah G. Babinski
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Cc: Members Subcommittee on Courts, Intellectual Property, and the Internet