



Right to Repair and What it Means for Entrepreneurs

Statement by Ken Taylor, President of Ohio Machinery Co.

**On Behalf of Associated Equipment Distributors
before the U.S. House of Representatives
Small Business Committee's Underserved, Agricultural, and Rural Business
Development Subcommittee**

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Chairman Golden, Ranking Member Tenney, and other distinguished members of this subcommittee, it is an honor to appear before you today both as Associated Equipment Distributors' (AED) 2022 Chairman and as president of Ohio Machinery Co.

AED is the international trade association representing companies that sell, rent and service equipment used in many applications, including construction, agriculture, forestry, energy, mining, material handling and industrial production. If you see a hydraulic excavator or a wheel loader moving dirt on an infrastructure project or a combine working on a farm during harvest, it was likely sold or rented by an AED member.

Established in 1919, our more than 800 members, including nearly 500 equipment dealerships, generate \$60 billion in revenue annually, employ 125,000 workers and operate more than 5,300 locations across North America. Most AED members are small, family-owned, multigenerational companies.

Ohio Machinery Co. is a multifaceted, family-owned company that supplies the agriculture, construction, energy and transportation sectors. Essentially, our company is segmented into five divisions that operate like small businesses—a construction equipment dealership, an agricultural equipment dealership, a medium- and heavy-duty truck dealership, a school bus distributor, and a hydraulic and diesel component remanufacturing operation.

The company was founded in 1945, and I am the third generation from my family to run Ohio Machinery, following both my father and my grandfather. The entrepreneurial spirit is embodied in Ohio Machinery and our employees, which has allowed our organization to thrive for more than 75 years.

"Right to repair" is a simple slogan; however, as my testimony will highlight, the policy proposals surrounding the issue are complex with significant consequences. To that end, I will discuss the concerns of AED and its members, which are shared with many other economic sectors and industries surrounding the right to repair discussion.

For the equipment industry, the overly broad legislative proposals being considered in many states, and introduced in Congress, are based on a false narrative that customers are unable to fix their own tractors and machinery. To the contrary, equipment manufacturers and distributors make available diagnostic tools, repair information, parts, and remote customer support. Idle, non-functioning equipment equals lost time and money. Whether it's on a farm during harvest or a road building project there is absolutely zero incentive to not do everything we can as equipment dealers and manufacturers to keep a machine running. That can mean repairs completed by a dealership service technician, the customer, or a third-party provider. The equipment industry is highly competitive, and if Ohio Machinery Co. isn't providing proper and timely service, nothing is stopping the customer from moving to one of my many competitors and their products.

In fact, a significant percentage of our parts sales are sold directly to customers so they can repair their own equipment. However, the tractors we're selling today are not the same as those sold by my grandfather or even my father. While customers can complete most repairs to their machinery, government environmental and safety regulations, as well as technological developments that have made equipment more efficient and productive, necessitate restrictions in access to source code and software that ensure key operational functions aren't modified or disabled.

Consequently, while AED members support the right for customers to repair their machinery, we don't support unfettered access to critical on-board software and information pertaining to environmental and safety protections. Unfortunately, right to repair bills, including the Fair Repair Act (H.R. 4006/S. 3830) and similar legislative proposals, have serious environmental, safety, legal, economic, intellectual property and cybersecurity implications.

The Environment, Safety & Legal Liability

The equipment industry has invested significant time and resources to meet the Environmental Protection Administration's (EPA) Tier 4 diesel emissions standards. These specifications, applicable to engines used in off-road equipment, have resulted in a significant reduction in emissions. Of great concern, right to repair proposals threaten important environmental gains as they would permit unfettered access to embedded software to circumvent emissions protections.

Similarly, modern equipment has numerous safety features to protect both equipment operators and the public, the latter who oftentimes are driving or walking past construction sites and other areas while machinery is in use. Granting access to override safety features poses undue risk for operators and bystanders. Additionally, equipment dealers invest countless resources to train certified technicians to work on complex machinery. By mandating access to embedded source code, unqualified individuals will attempt to repair the world's most advanced and sophisticated equipment, at significant risk to themselves, operators, and the public.

The aforementioned begs the question, why would someone want to circumvent emissions or safety protections? The answer is simple: machine performance. Limits on horsepower and other functions the machine might be able to carry out are necessary to ensure equipment meets government emissions and safety standards. A simple Google search yields a plethora of vendors offering products and services that assist equipment owners to illegally modify their machines. Requiring access to source code and embedded software will only proliferate this practice, with significant negative ramifications for the environment and safety.

Proponents of right to repair initiatives tout the environmental benefits because customers won't need to discard products as readily if they are able to fix products themselves. However, heavy equipment is among the most durable manufactured products commercially available. Equipment will oftentimes be sold to a customer, traded-in when the customer purchases a new machine, and subsequently either resold or rented. Improper maintenance or modifications, related to granting unfettered access to source code, jeopardizes a machine's operation and longevity, which may cause negative environmental and safety impacts, and shorten its productive life.

Right to repair policies also create enormous liability issues for equipment dealers and manufacturers. Permitting access to source code allows end-users the ability to modify the equipment. If a tampered tractor causes personal injury or doesn't meet government regulatory standards, liability could fall on the dealer and manufacturer depending on a state's product liability laws. While many equipment manufacturers are large companies that can absorb litigation costs, distributors, which are

overwhelmingly small businesses, will be forced to endure costly litigation and possible judgments should modified machinery cause injury or not comply with laws and regulations.

Economic Impact

Right to repair proposals will completely alter the equipment industry's distribution model, putting countless small businesses at risk. Manufacturers of equipment rely on a network of independent, mostly family-owned small-to-medium-sized companies to sell, rent and service the equipment. These dealers make significant investments in their employees, including training service technicians to repair and maintain the latest high technology machinery. Many AED member facilities are located in rural and underserved areas, creating well-paying careers and economic opportunity.

Equipment dealers also invest extensive capital in parts inventories to ensure repairs and maintenance can occur as soon as possible. Out of service equipment isn't merely an inconvenience—it can ruin a farmer's harvest or delay completion of a bridge or roadway. However, many right to repair proposals require original equipment manufacturers to sell parts and diagnostic tools directly to the public at cost (without profit), completely circumventing the equipment dealer. Aside from effectively dismantling the equipment distribution industry's aftermarket parts business and thereby putting many equipment dealers out of business, logistically it is impractical and would only exacerbate inflationary pressures in the equipment market and create long delays in parts availability.

For many equipment dealers, parts revenue produces the majority of income for the business, though parts margins are far from inordinate. According to AED's most recent Cost-of-Doing Business Report, in 2020, the gross profit margin on parts sales was 27 percent, representing a stable stream of revenue for dealers (in 2014 it was 26 percent), which doesn't even approach price gouging territory. If parts are required to be provided at cost, many dealers would be put out of business, as the average net income for an equipment dealer is only around 3.8 percent.

Anyone can walk into an AED member facility (or go online) and buy OEM parts for their tractor. There's no restriction on who can purchase parts, whether it's an equipment owner, a third-party service provider, an equipment operator, or a member of the general public. However, there will be no incentive for an equipment dealer to carry parts inventory if the manufacturer (or the dealer) is forced to sell without the ability to make a profit.

Intellectual Property and Security Concerns

Manufacturers invest substantially in research and development to produce the most efficient, safe and environmentally conscious equipment possible. The technology is more complex than ever, but the benefits to consumers and the public are immense. As we move to electrification, autonomous tractors and precision agriculture and construction technologies, the complexity and sophistication of the machinery as well as the benefits to society will only increase.

It is this research and development and technological advancement that gives each manufacturer a competitive advantage in providing customer solutions. Forcing manufacturers to provide unfettered access to source code and software disincentivizes future research and development. Why would a manufacturer invest in research and development when the intellectual property developed will be available to anyone?

Additionally, the cyber and national security implications are substantial with broad access to embedded software and source code on equipment. The dangers associated with someone remotely hacking into a

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machine for nefarious purposes or an adversary of the United States having access to this technology has broad security and economic ramifications.

Conclusion

For the equipment industry, right to repair proposals are a solution in search of a problem. AED members provide customers and third-party repair providers with parts, tools and other resources to complete the overwhelming majority of tractor repairs.

Enacting these proposals will stifle entrepreneurship and the result will be an unprecedented intrusion by government into the free enterprise system. I reflect on my grandfather and the reasons he got into the equipment distribution industry. He was looking for a better life for his family, the opportunity to create well-paying jobs and careers for his employees, and the privilege of giving back to the community, including in underserved areas like Appalachia.

Most equipment dealers have similar stories because the United States allows entrepreneurs to pursue their dreams. Unfortunately, I worry that should these right to repair policies become law, the viability of the equipment distribution industry will be severely hampered, resulting in lost economic activity, job creation, technological advancements, and a less competitive America.