



Testimony in Support of LB 1072 from The Repair Association, February 25, 2016

Why do we need LB 1072?

The digital world does not have any ground rules for repair. Without options for repair, consumers are stuck with whatever limited repair services the manufacturer chooses to offer. Farmers, business, industry, education and government are also consumers and big users of repair services. Manufacturer service options may be reasonable, available and effective, or not. Without competition, repair becomes monopolized. We believe that monopolies are always bad, even when we like the products.

Repair monopolies are bad for consumers for exactly the same reasons as product monopolies. Without competition, consumers pay more. Without competition, service quality goes down, availability and flexibility go down, and innovation is stalled. Why would any manufacturer invest in improvements when there isn't any payback? It is competition that drives our world.

Many of us have personal relationships with the dealerships, distributors, and authorized repair techs that help us. Healthy competition doesn't destroy those jobs – it adds jobs - particularly in support of out of warranty equipment that manufacturers have abandoned but consumers have not. Unlocking the option of repair for out of warranty devices will enable an explosion of repair work.

We have solid evidence there is a huge and growing need for repair. McKinsey & Company, an industry think-tank, has estimated in 2011 that the average US household already owns 24 digital electronic devices. With roughly 725,000 households in Nebraska – this is at least 18.6 million gadgets to support. Without Fair Repair, only about 14% of these products are competitively repairable. 86% of the market for repair goes un-served.

Repair is Unfairly Limited

LB 1072 is intended to restore competition to the marketplace for repair based on existing state and federal law. Repair is not the same business activity as manufacturing. Consumers may assume there is some legal or proprietary connection behind manufacturing and repair, but there is not.

Anti-trust law is supposed to prohibit manufacturers from tying the purchase of a product to the purchase of something else. That “something else” is often repair. The link between manufacturing and repair has been abused for so long it seems normal. It is not normal. It is a monopoly and is unfair and deceptive.

Why States and not Congress?



States have proven to be the appropriate place for right to repair legislation. Under state legislative pressure, both the motor vehicle industry and the commercial truck industries have come to voluntary national agreements that are nearly identical to LB1072. Massachusetts was only the first to pass a law of about a dozen states that had bills under consideration.

Congress is in control of Copyright law, and there have been recent actions taken by the Librarian of Congress that are moving towards allowing equipment owners more control of the embedded software that comes with equipment. These options to unlock and tinker with firmware are hugely important to owners of any “Land Based Motor Vehicle” but are wholly separate from Fair Repair.

LB1072 does nothing to change copyright law or patent law. There are no changes to warranties, distribution and franchise agreements, nor any mandates for development of any particular standards for documentation, diagnostics or tools. Manufacturers that engage in the business of repair are only asked to provide access to the same information and materials that they already provide for their in-warranty repair providers. None of that material is trade secret so trade secrets are disclaimed.

Are manufacturers harmed?

Some manufacturers have business models that rely heavily on controlling products from cradle to grave. LB 1072 isn't directed at hurting these businesses. However, by restoring the rights of owners to repair their property, these businesses will lose their monopolies. It is almost certain you will hear parties using this business model come forward in opposition.

Businesses in opposition are not going to attempt to protect their monopolies on the merits. They will most likely try to claim harm will befall their customers or that their proprietary rights will be at new risk. We saw this during the battle over automotive right to repair. Manufacturers claimed that allowing outsiders to touch cars would result in terrible accidents, breaches of all sorts of privacy and security, and expose their proprietary materials to the world. This didn't happen and isn't going to happen with Fair Repair either. The reason is the nature of ownership.

No matter how protective manufacturers may feel about their products and customers, the cash register marks the transfer of responsibility from manufacturer to buyer. Purchase contracts are loaded with disclaimers of responsibility and liability. Warranties are carefully crafted to avoid responsibility for damage caused by use. It cannot be both ways. The contracts tell us the owner is in charge.

There are only 3 types of proprietary rights related to repair. Patents are legal to repair. Trade Secrets are irrelevant and disclaimed. Copyrighted software is already legal to backup and restore under copyright law.

Software licenses are not purchases. Putting purchases and licenses together in the same agreement creates the fiction that owners are licensing property. Contracts that attempt to do both at the same



time are inherently unfair and deceptive. Fair Repair is not about software, it is only about physical repair.

The ultimate in self-serving claims is that of Brand Image. Brand image is a marketing concept and nothing more. Owners have no responsibility whatsoever to brand image.

Why Now?

Monopolies will not disappear by themselves. The longer monopolies persist – the more financial harm is done to consumers. Overspending on repair doesn't make the repair better. Electronics are either working or not. Electricity flows through wires exactly the same way regardless of which technician solders the connection.

Limitations on repair do great harm to the efficiency of agriculture. If repair is not readily available directly under the control of the farmer, crops cannot be planted and harvested at critical times. It is wholly unacceptable that farmers can repair their cars and trucks but not their farm equipment. Nebraska legislators are in the ideal position to assure repair is readily available for all forms of high-tech agriculture.

In consideration of these issues, we urge you to join us in supporting the rights of all consumers to repair their purchases as they see fit.

About The Repair Association

The Repair Association is a non-profit 501 (c) 6 member-owned organization representing the common interests of high-technology repair technicians, businesses, and related aftermarket services providers.

The Repair Association began as the Digital Right to Repair Coalition founded in July of 2013 by leaders in B2B computer repair, B2C electronics repair, recyclers, used equipment traders and digital rights activists. As The Repair Association our membership and focus has expanded to include all forms of technology repair including repair of agricultural equipment, industrial equipment, major appliances and everything mobile and internet.

Exhibits in Support of LB 1072

Institute of Scrap Recycling Industries (ISRI.org) Repair and Reuse Policy 2016



NY Farm Bureau Memorandum of Support for Fair Repair 2016

Copy of the Automotive Right to Repair Memorandum of Understanding (January 2014)

The Repair Association partial list of members