Insight

An Update on Right to Repair

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This piece has been updated to include information on Minnesota's right to repair law, which was enacted in May 2023. While this version of the bill has many similarities to the New York legislation, it also contains major differences that could have significant consequences for both companies and consumers.

Executive Summary

- New York recently enacted a comprehensive "right to repair" law, which would require device manufacturers, primarily those in the consumer technology sector, to provide manuals and parts to third-party repair services.
- Right to repair laws can provide consumers with more options to repair their devices, potentially lowering costs and extending the life of their property; granting third-party repair services access to parts and diagnostics could harm device manufacturers, however, as faulty repairs could harm brand trust, important trade secrets could become public, and device security could be jeopardized.
- The New York law balanced these concerns by not requiring manufacturers to provide information that would weaken the security of devices and allowing them to provide part assemblies rather than individual parts.
- As lawmakers across the country consider additional right to repair laws, they should evaluate these competing concerns and look to compromise legislation such as the New York law as a potential model.

Introduction

At the tail end of 2022, New York enacted the Digital Fair Repair Act, which would require device manufacturers, particularly those in the consumer technology sector, to provide manuals, schematics, and parts to third-party repair services. This so called "right to repair"

legislation provides manufacturers more flexibility with how manufacturers can comply with the law than previous iterations in different states. Proponents of these flexibilities argue that they are critical to protecting both consumers and manufacturers, while critics see the last-minute additions as loopholes designed to take the teeth away from the legislation.

As legislatures across the country consider their own right to repair laws, lawmakers should carefully weigh the competing costs and benefits of such a policy. The New York bill may be able to serve as a template for balancing these interests. This primer summarizes the current debate on right to repair and how the New York legislation approaches this issue.

Right to Repair Benefits and Challenges

Proponents of right to repair argue that increased competition and access to repair service benefits consumers for a variety of reasons. First, in many rural areas, original equipment manufacturers do not have local repair services, making it challenging for consumers to quickly repair their equipment. Second, third-party repair services often offer repair for a wide array of brands and products, meaning one vendor can serve customers who have multiple products rather than the customer being required to go to each individual vendor. Third, right to repair increases the number of devices consumers will repair rather than discard, producing environmental and supply-chain benefits.

Critics, however, raise a number of concerns. First, opening up devices to third-party repair services could allow them to bypass security features and thus make devices vulnerable to unauthorized software, which could result in higher exposure to malware and spyware. Moreover, ill-intentioned repair workers would be better able to access user data. Second, faulty repairs at third-party vendors could harm the reputation of brands if the repair causes service degradation or failure. Third, the proprietary information manufacturers must disclose under these laws could fall into rivals' hands, disincentivizing investment and innovation. Finally, for many devices, third-party repair comes with potential safety risks if the independent repair vendor fails to install dangerous components correctly.

A Compromise Approach

New York recently enacted the Digital Fair Repair Act, a right to repair law which attempts to balance the concerns of critics with the benefits promised by proponents. Like most right to repair laws, the New York approach will require manufacturers to provide manuals and parts to both consumers and independent repair providers. This approach, however, includes several limitations to address the security and financial concerns outlined above.

First, the bill wouldn't require device manufacturers to provide passwords, security codes, or materials to allow third-party repair services to bypass the locks on a device. Critics

worry that this will prevent consumers from repairing functional devices that they are otherwise locked out of, but these security features are useful for both consumers and the competitive advantage of companies that offer them. Manufacturers argue that allowing for a backdoor into devices for third-party repair services can be exploited, subjecting consumers to an increased risk of unwanted intrusion into their device. For firms that strongly promote their privacy features, the loss of this functionality will not only harm users but also their competitive advantage over rivals.

Second, another of the bill's compromises would allow manufacturers to sell assemblies of parts rather than the individual components when improper installation could heighten the risk of injury. This means that when an improper repair or replacement of an individual part could harm the consumer or even the repair serviceman, the manufacturer could instead supply the entire assembly. For example, if the instillation of a chip could increase the risk of injury, the manufacturer could instead offer the entire motherboard that supports the chip. This also presents significant cost savings for the original manufacturer, as providing assemblies is often cheaper and more efficient than offering individual parts. Nevertheless, critics worry that this could create a loophole whereby manufacturers could simply raise safety concerns to charge for more expensive assembly parts.

Despite these changes, the New York law doesn't address all the aspects of right to repair that many proponents would wish to see in such a law. As AAF has previously written, one of the main benefits to a right to repair law would be providing farmers with local third-party repair services for farm equipment. While John Deere recently reached an agreement with the American Farm Bureau Federation to provide similar information, the New York law focuses almost exclusively on consumer devices and doesn't cover such areas, nor does it cover motor vehicles and medical devices, for which improper repairs could significantly harm users.

Further, many proponents of right to repair wish for the legislation to act retrospectively, covering devices that users currently own. The New York law would only apply to devices manufactured or sold in New York after July 1, 2023. As a result, the law would do little to provide complete relief for many older devices.

Implications for Future Right to Repair Laws

The New York law will likely impact the behavior of manufacturers beyond the Empire State. Indeed, consumers across the globe may feel its impact as manufacturers develop strategies to comply with the law. New York is a large market, and sellers will likely comply with the law's provisions to maintain a presence in that market. As manufacturers design programs to comply with the New York law, other states and countries will likely receive the

same offerings. In fact, many manufacturers are already providing access to repair equipment and parts programs to comply with the law, resulting in immediate benefits to consumers and limiting the need for further state laws.

Still, other states will likely wish to enact their own right to repair laws, some of which may adhere closely to New York's legislation. Laws that add additional obligations, however, could cause confusion and produce additional regulatory compliance costs that harm both manufacturers and consumers. As it stands now, the New York law does not present an ideal outcome for either proponents or critics, but it seems increasingly likely that it is a status quo both sides can support. Lawmakers contemplating right to repair laws should consider the competing benefits and costs, and perhaps wait to see how New York's law impacts repairs offerings across the country, ensuring that consumers can repair their devices while still allowing manufacturers to protect user safety and privacy.

Minnesota Right to Repair

In May, Minnesota signed into law its own right to repair legislation, the Digital Fair Repair Act. The Minnesota law largely follows the same structure as New York's version but contains some major differences that could have significant consequences for companies and consumers.

First, the legislation applies retroactively to devices sold on or after July 1, 2021, rather than after the law goes into effect. The provision is designed to ensure that third-party services can repair consumer devices currently in the market rather than just new devices, meaning that the benefits of a right to repair law could be interpreted to extend to devices consumers currently use. Requiring manufacturers to provide support retroactively comes with significant costs, however, as companies never envisioned mandated support for these types of products. Supplier contracts, repair processes, and tool development will all need to be readdressed, and the legal and IP protections governed by commercial contracts will likewise be jeopardized. These additional costs will make it difficult for manufacturers to comply, while setting bad precedent for future retroactive laws.

Second, the Minnesota Digital Fair Repair Act allows for manufacturers to provide part assemblies rather than individual parts, but only for situations in which that manufacturer provides the assemblies to the authorized third-party repair services, rather than when the installation of the individual part could pose an increased risk of user harm if installed incorrectly, as is outlined in the New York law. For manufacturers, providing part assemblies to authorized repair services allows manufacturers to set the standard for all interactions with third parties, and gives manufacturers a bit more control regarding the types of parts and assemblies offered to repair services. At the same time, not all third-party

repair services operate with the same level of care and efficiency, and there may be cases where authorized repair services could benefit from an individual part, but the manufacturers don't provide that part due to a fear that independent services will install the part incorrectly and potentially harm the consumer. As a result, consumers could either be put at risk or the manufacturers will not deliver assemblies at all, raising costs for consumers.

Finally, the Minnesota legislation contains language excluding requirements to provide parts, documents, or tools related to cybersecurity, except as necessary for repair or maintenance of the equipment. Even if necessary for repair, manufacturers don't need to make available parts, documentation, or tools related to cybersecurity which could give third-party access to trade secrets or personally identifiable information, is protected from disclosure under state law, or could reasonably be used to compromise cybersecurity. This type of provision helps ensure manufacturers devices and the consumers using them are protected from potential cybersecurity threats.

As lawmakers consider alternatives to the New York model, they should contemplate the costs and benefits of the Minnesota approach, both for companies and consumers.