



February 7, 2018

Senator Michael Sirotkin, Chair, Senate Committee on Economic Development, Housing and General Affairs

Senator Alison Clarkson

Senator Philip Baruth

Senator Becca Balint

Senator David Soucy

Re: Testimony in Favor of S.180 Vermont Fair Repair Act

Dear Mr. Chairman and Members of the Committee:

The Repair Association is a non-profit trade association representing the modern industry of technology repair – from repair of cell phones and computers to major appliances and agricultural equipment. Our mission is to support repair-friendly legislation in states, with the federal government, with regulators and standards bodies. A list of our larger national members is attached in this packet.

We strongly support the passage of S.180 because it will restore the rights of all Vermont residents to repair their legally purchased equipment and use it for as long as they see fit.

Defining Repair

Repair is the process of restoring broken equipment to productive use. Anyone wanting to repair their equipment needs the same things for the same reason – one needs to know what broke, which part to order, get inside the gadget to replace the part, test it to make sure it works, and get back to using it.

Without competitive repair options, repair pricing is often an economic hardship. Without repair, massive quantities of costly electronic waste are generated – which burdens local taxpayers and threatens the environment and human health. Vermont businesses, industry and agriculture all need to keep their equipment operational – and repair contracts are a big factor in operational costs.

Losing the option of modern repair has enormous social and economic consequences in Vermont. Manufacturers that oppose repair should be held to a high standard for explaining why they alone should be granted a monopoly on repair.

Unfair and Deceptive Contracts

Right to Repair in states is about unfair and deceptive contracts, not any specific technology. We – meaning all of us - are now routinely “clicking to accept” terms and conditions at time of installation we are not expected to understand or negotiate. The very wording of these complex and lengthy agreements is itself unfair and deceptive to consumers. License-like terms, or references to associated licenses, are not adding any new protections for copyrights, patents, or trade secrets, but serve as a Trojan Horse to enable manufacturers to selectively grab control of use, repair, and resale.

Ownership and Responsibility for Use

Manufacturers do not want all the responsibilities of ownership such as consumer mistakes, consequential damages, maintaining risk of loss insurance or being responsible for personal injury. All of these responsibilities are disclaimed routinely in purchase contracts for good reason. Groups that come before you proclaiming their responsibility for consumers are ignoring their own contracts and the reasons for those contracts.

Contracts which include limitations on use or resale are killing the secondary market for these products. It is nearly impossible to sell broken equipment, and if the equipment cannot be legally repaired, that market is dead. Lenders and Lessors cannot lend against collateral that cannot be resold freely. Equipment owners must be complete owners, or our entire system of accounting and taxation makes no sense.

Repair Monopolies

Manufacturers are using the excuse of technology-enabled parts to command repair monopolies that were previously impossible. With low-tech equipment, independent craftsmen can mill or cast new parts. A welder can restore broken metal. But once parts become complex assemblies of tiny parts made in Asian factories – those options disappear without information. Parts are still parts but local repair shops cannot install spares without documentation, diagnostics, tools or the ability to restore firmware to its original. In order for there to be repair in the modern world, manufacturers have to be required to allow competition – which requires enabling legislation.

Anti-Trust Litigation

Consumers are at a huge disadvantage when it comes to anti-trust litigation. Court actions are expensive and time consuming. In one recent experience – it took 8 years for Continuant/TLI to get from the initial anti-trust filing against AVAYA in Federal Court to a Jury Trial. Over a 20 year period – only a handful of cases have concluded in court – including GE being found guilty of a repair monopoly

over anesthesia equipment and AVAYA being found guilty of a repair monopoly over telephone switching equipment.

Litigation is not practical when thousands of manufacturers can shift their policies overnight, as we have seen with Oracle, John Deere, IBM, GE and others. Consumers need consistent protection from unfair and deceptive contracts on principle -- regardless of the specific technology.

Copyright Law – Repair is Specifically Legal under Section 117

Copyrighted Software is legal to backup and restore for purposes of repair. Copyright Law also controls all permission to modify software, including for purposes of repair, and that law remains entirely intact. Certain products with digital locks will remain locked unless the Copyright Office rules to exempt them. S.180 cannot and does not address problems of copyright law related to repair.

Authorized Repair and Repair Availability

Most everyone understands the difference between taking a car to the dealership and using an independent mechanic. These same choices should be available to consumers widely for all products – for the same reasons. Independent repair keeps prices reasonable, allows more flexible options, supports older products, and encourages both innovation and excellence. Manufacturers have an enormous marketing advantage for their services in a competitive market and should not be afraid to compete on the basis of quality.

We at the Repair Association are ready and willing to discuss any matters of S.180 at length and with the help of subject matter experts on any points. Please consider us a resource.

Sincerely,

Gay Gordon-Byrne

Gay Gordon-Byrne, Executive Director

The Repair Association

PO Box 283

North River, NY 12856

About Gay Gordon-Byrne:

Prior to her work as the Executive Director, Gay had a lengthy career as a technology contracts expert, independent lessor, dealer of used mainframe and peripheral equipment, an IBM, EMC, HP, AVAYA, Sun (now Oracle) business partner, and a background in systems software products for IBM mainframe

operating systems. She is the author of “Buying, Selling, and Maintaining Software and Equipment – an IT Managers Guide to Controlling the Product Lifecycle”.