

**From:** Gay Gordon-Byrne [mailto:ggbyrne13@gmail.com]  
**Sent:** Thursday, February 08, 2018 10:59 AM  
**To:** Michael Sirotkin; Alison Clarkson; Philip Baruth; Becca Balint; David Soucy  
**Cc:** Christopher Pearson; Kayla Dewey  
**Subject:** Scope, Training, Loss Leaders, and Diagnostics

Dear Senators:

I work up this morning realizing I hadn't addressed several of the issues raised at the hearing yesterday.

### **Scope**

We recognize that the scope of the bill appears broad, because we are trying to cover a lot of common ground in one effort. We know it takes time to reconcile all the many questions and peel back and investigate the details to everyone's satisfaction in one session.

There is no need to do all or nothing. Please do something. As a practical matter - the more products you can cover with one bill – the fewer times you will see additional bills asking to de-monopolize repair for different categories of products. We will support all efforts to allow consumers to repair their own stuff in any category. Whatever you decide to pursue – we will support.

### **Training and Certification:**

It is true that some repair technicians lack training and official certifications from various manufacturers. This is intentional on the part of many OEMs since artificial labor shortages enhance the monopoly. Without access to repair information required under S 180 - trade schools, community colleges or non-profits cannot offer training. Independent certifications, such as those common for Master Mechanics in the auto industry – are impossible.

John Deere is a famous example. They will not train anyone not directly employed by a Dealership – charge huge sums to the dealership – and then the trained person loses their certification if they offer their services as an independent. Great mechanics in Vermont could be opening their own shops to deliver badly needed services in their community if their qualifications had not evaporated and their access to diagnostics parts tools etc were not blocked.

Consumer electronics techs and even high school students already acquire independent certs from companies such as CompTIA and iFixit. However, Apple doesn't "authorize" anyone independent – thus assuring all independents will remain officially "unqualified" regardless of their skills. Many of our members, such as Justin Wires, have outstanding skills and far more experience than any "Genius" but cannot acquire "certification" from Apple without giving up control of his business.

Repair.org strongly supports increased access to independent certifications and training.

### **Repair is a separate line of business from Manufacturing**

For purposes of financial reporting, sales revenue and services revenue are always separate. Sales revenue is booked in the year of the sale minus a hold-back for delivery of in-warranty services. The holdback percentage of revenue for potential warranty claims is also public for publically held companies. This is why most warranties are one year or less – OEMS want to book the most revenue possible as quickly as possible.

Consulting, post-warranty repair and other types of services are always reported separately as much of that revenue doesn't come in until after the sale and would be reported in future years.

### **Loss Leaders and Anti-Trust**

Under Fair Repair, manufacturers remain in total control of their pricing models. If an OEM wants to sell printers at or below cost and hope they sell a lot of ink – that's their business. However, as the Supreme Court recently affirmed in *Lexmark v. Impression Products*, the printer company cannot monopolize ink. Maybe printer prices will rise – that's a more honest deal for the consumer than the hidden requirement to buy OEM-only ink.

Under anti-trust law there is no entitlement to sell equipment as a loss leader and then demand a right to recover costs or profits in a separate transaction such as consulting, services, or repair. Anti-trust action might have been effective at forestalling repair monopolies if done ten years ago by an aggressive US DOJ – but its far too late to chase thousands of companies now engaged in practical tying agreements one by one. Class action litigation is also ineffective for more than one OEM at a time.

### **Diagnostics**

I recall that Kevin Callaghan of CompTIA used the phrase “sensitive diagnostics” in his testimony. I'm mystified as to what that might mean. Diagnostic tools, even when software tools, are designed to report on equipment condition. Such things as temperature or a lost connection. Knowing that part A isn't passing a signal to part B isn't useful information to anyone other than a repair tech seeking to repair that connection.

If CompTIA would provide an example of “sensitive”, we could draft language to allay their concerns.

Thanks again,

Gay

Gay Gordon-Byrne  
Executive Director  
The Repair Association  
<http://repair.org>  
PO Box 283  
North River, NY 12856  
**OFFICE: 518-251-2837**  
[ggbyrne@repair.org](mailto:ggbyrne@repair.org)  
[ggbyrne13@gmail.com](mailto:ggbyrne13@gmail.com)