

## **The Right to Repair Act: Pro-Consumer, Pro- Competition, and Pro-Property Rights**

The auto makers who came to Congress hat-in-hand last December and who received over \$17.4 billion in taxpayer bail-out money, now continue to ask for billions more. They also want to soak the American consumers by forcing car owners to have all their service and repair work done at authorized dealerships.

H.R. 2057, The Right to Repair Act, which was just introduced by Representative Towns, will guarantee consumers the right to continue using independent repair shops, which are often cheaper, more conveniently located, and provide just as reliable service as dealerships. Auto makers oppose the bill, claiming that the Right to Repair Act will infringe their intellectual property rights. And now they've got the attention of some in the pro-property rights community.

The Right to Repair Act breaks the strangle-hold that auto manufacturers increasingly have over auto repairs by requiring that auto makers disclose to independent repair shops the same information necessary to service a car that they provide to their dealers. The bill also requires that the auto manufacturers offer for sale, on a non-discriminatory and reasonable basis, the same specialized diagnostic tools, training, and equipment that are made available to their dealers. Finally, the bill requires that auto makers allow car owners to choose where diagnostic data generated by their cars is transmitted.

The auto makers who assert that their intellectual property rights will be jeopardized if this bill passes point to nothing specific in the bill in support of this assertion. Nor do they identify which of their property rights are at stake.

In point of fact, there is nothing in the Right to Repair Act that even implicates, much less infringes, the auto makers' intellectual property rights. The bill explicitly exempts trade secrets from its coverage. And, nothing in the Right to Repair Act authorizes anyone to reproduce or distribute any patented product or creative work, and all remedies for violations of patents and copyrights remain in force under the bill. Generally, a patent protects an inventor against another's manufacture and distribution of the invention and, in most (if not all) cases the unique qualities of the invention must be disclosed in order for a patent to issue. The Right to Repair Act reflects a well-established exception to these patent protections. The doctrine is set forth in a number of Supreme Court decisions, including one authored by Justice Oliver Wendell Holmes. Put simply, the manufacturer's patent on automobile systems does not prohibit the manufacture of

replacement parts nor the owner's right to repair the patented system when it breaks down.

Most car owners would be surprised to learn that they are increasingly losing control over who can diagnose and service their car. By using computerized components in virtually every aspect of the car, auto manufacturers are systematically acquiring a far greater say in who repairs your car than you do. And it's only going to get worse. The newer hybrid vehicles are virtual computers-on-wheels. Take the Prius, for instance. It has 14 different computer systems in it. And just wait until your car starts wirelessly transmitting diagnostic information to the dealer (while you sleep), setting up a time for you to take the car into the dealer to have the tire pressure checked. Automatic reporting and analytic communication devices over which the car owner has no control are the latest tools by which manufacturers lock car owners into a service and repair relationship with their dealers.

Ask any auto technician, and he or she will tell you that the first step in diagnosing a problem with a car today is not to open the hood and take a look. The starting point is to plug the car into a specialized computer that reads and interprets information generated by all the computer chips in the vehicle such as in the braking, steering, and heating and cooling systems. If an auto technician lacks the ability to "talk" to the car's computers (even after investing in specialized tools and training) because the technician can't access the repair codes for that computer system, the technician can't "tell" the car that a new replacement part has been properly installed—or even turn off an onboard diagnostic light.

And by controlling who can access the computer codes, and who has the specialized and most up-to-date diagnostic tools and training, auto makers are ensuring that only their authorized dealers can diagnose and repair your car. They refuse to disclose the same information with the independent repair shops, effectively shutting the independents out of the auto repair market. It's no wonder that some experts predict that a significant number of the independent repair shops in this country will be out of business in 10 years. This means that shopping for the best prices and the most convenient service locations may become a thing of the past for the car owner.

The day is fast approaching when the independent repair shop will no longer be able to access the sophisticated on-board computers at all, and automobile owners will have no choice but to use an authorized dealership to service and repair a vehicle. The Right to Repair bill is a much-needed, last chance to put car owners back in driver's seat.

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*This article was originally published in the May 4, 2009 edition of the Washington Times.*