



November 10, 2022

The Honorable Kathy Hochul
NYS State Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Hochul:

On behalf of the Center for Democracy & Technology, I am writing to urge you to sign the Digital Fair Repair Act, SB 4104, into law, to secure for consumers the right to choose where to get their electronic devices repaired, and to secure for independent repair shops a fair opportunity to compete to provide this service to consumers.

The act would simply require that manufacturers of consumer products that run on digital electronics make available the same parts, tools, and technical information needed for repairing those products to independent repair shops as they make available to their own authorized repair shops. And consumers would also have this same right of fair access for products they own, so they have the choice to do the repairs themselves if they can.

The rights of ownership have been recognized in law for many centuries, and the right to repair has either been inherent in ownership or has been protected and supported by law. With technological advances, an increasing number of products now depend for their functioning on electronics that are embedded in or attached to the product. This has given manufacturers additional means to block competition and monopolize the maintenance and repair aftermarket for their products.

Manufacturers can design the electronics to make repairs more difficult, such as with uniquely configured tools that are not made available to owners and independent repair technicians. They can refuse to make diagnostic manuals and other information available. They can engineer special parts and refuse to make them available. They can booby-trap the electronics with locks that cannot be easily opened without breaking the product, or that when opened render the product dysfunctional unless a secret software code is applied to restore functionality. These and other anticompetitive, anti-consumer practices were illuminated in a workshop the Federal Trade Commission held in July 2019, and are described in its May 2021 report, “Nixing the Fix.”¹

¹ https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

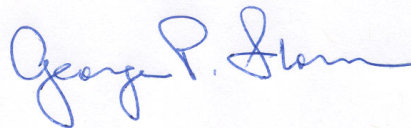
When manufacturers are able to block competition in the repair aftermarket, they can prioritize their own interests and downplay or disregard the interests of their consumers. They can charge more for repairs. They can limit the number of repair providers, to maximize their own profits, resulting in longer waiting periods and other inconveniences for consumers. They can decide which repairs they will make, and when it's more profitable for them to make their consumers toss out the product and replace it. And indeed, that is what is happening.

Various associations representing manufacturers of these consumer products have proffered concerns that permitting this access to enable repairs would somehow jeopardize privacy and security. Protecting privacy and security throughout the digital ecosystem has been among CDT's top goals since our founding more than 25 years ago, and remains so today. But those concerns are not materially implicated in this bill. The access needed for maintenance and repair of these products does not involve revealing core software that protects the privacy and security of user data. Nor does it involve exposing the product to infringement of intellectual property. It simply gives independent repair providers, and product owners, the same access to parts, tools, and information needed to repair the product as the manufacturer is already giving its own authorized repair providers.

Quality of repairs has always been an issue, for as long as there have been products to repair. But in a free marketplace, those judgments are left to consumers, to weigh against cost and convenience and other considerations. They are not for the manufacturer to dictate and deny consumers the benefits of competition that are at the heart of a free marketplace.

Unleashing the healthy forces of competition provides consumers the leverage of choice, the ability to look elsewhere for a better deal – which tends to bring them lower prices, more convenience, and greater satisfaction. This fundamental free-market principle applies in the repair aftermarket for consumer products that run on digital electronics as it does throughout the economy.

Respectfully,



George P. Slover
Senior Counsel for Competition Policy
Center for Democracy & Technology