



Repair & re-sell: Do you have the right to fix your own gadgets?

Sophia Bennett | 0 Comments | Feb 14, 2015



DIGITAL RIGHT TO REPAIR

Let's say it's the weekend and you're just getting ready to settle down with a book, leave on a business trip or enjoy a night on the town with friends. You grab your e-reader/tablet/cell phone – only to discover it's broken. The repair shops are all closed and you really need it to work right now. Desperation drives you to the Internet, and though it takes some serious searching, you finally discover detailed instructions for repairing your device on a site like iFixit (<http://www.ifixit.com>).

There's just one problem. By opening up that gadget, you may have jeopardized your ability to keep using it.

Take Barnes & Noble's Nook, for example. Section 2, part (d) of the Terms of Service agreement (<http://www.barnesandnoble.com/u/Terms-of-Service-NOOK-Simple-Touch/379003279/>) states the following: "Except as may be expressly permitted by this Agreement, you may not, directly or indirectly ... disassemble, reverse engineer, emulate, decompile, [or] tamper with ... the technology used to provide the Service." In other words, if you take the back cover off your Nook in an attempt to fix it, you've violated your "agreement" with Barnes & Noble and they can suspend your service.

The Nook is one glaring example of the trend toward making it harder, if not impossible, for consumers and businesses to repair and resell their own electronic devices. More and more manufacturers of items like video game systems, cell phones, servers, major medical equipment, even tractors are putting policies in place that bar you from fixing items you own. They don't have to provide manuals explaining how to make repairs, and they don't have to make tools and parts available. Even if the company doesn't currently have a policy like Barnes & Noble's, which threatens punishment if you tamper with the device, it's legal for them to alter their terms of service and limit the ways you can use your favorite electronics at any time – even after you've purchased it and come to rely on it.

In addition, there is some concern about the ability to resell these items because companies can lay claim to the software that makes them operate. E-readers are a good example of this. While it is legal for you to sell your device, it is not legal for you to transfer any of the software that makes the device work to the new owner unless you get the express permission of the manufacturer. And who wants to buy an e-reader they can't use to read?

The policy of discouraging or even prohibiting repair and reuse is definitely not a win for the environment, but it is also a serious consumer rights issue.

If you purchase an item, you should have the freedom to do what you want with it. Policies such as these limit your ability to use your property as you see fit.

"The array of things you can't fix right now is awful and getting worse," says Gay Gordon-Byrne with the Digital Right to Repair Coalition (DRTR) (<http://www.digitalrighttorepair.org/>). She reports that tons of electronic devices are thrown away because manufacturers have made it unfairly expensive or difficult to repair them. "It's totally a matter of policy and not physical repairability."

DRTR is one of a handful of organizations advocating for state and federal legislation that would require electronics manufacturers to do three things:

1. Share their Terms of Service and other mandatory agreements with consumers before they buy them, not after, and prohibit them from changing those agreements after a person has purchased the device.
2. Provide information and tools to anyone interested in repairing electronic equipment.
3. Allow individuals to transfer essential software with a device when they sell or give it away to someone else.

Background

How are manufacturers able to lay claim to a piece of equipment they no longer own? It has a lot to do with current U.S. copyright law. Manufacturers are claiming that the advanced electronics and customized software in things like MRI machines, tractors and servers are proprietary and they have a right to protect them.

That makes sense to some extent, but Gordon-Byrne says they've taken their case too far by not allowing anyone who is not a company certified technician to work on them – even if the repairs have nothing to do with the proprietary applications software.

“These companies won't provide tools, manuals, anything,” she says. “Anything that has a chip in it, if it isn't already a problem to repair it, it can become a problem at any moment because the manufacturer can say, ‘Oh, this is mine.’” In other words, the companies continue to lay claim to pieces of a machine even after they've sold it, and they have a right to limit how a person interacts with the entire machine as a result.

So far corporations have resisted seizing equipment from individual consumers. After all, a story about a Fortune 500 company preventing a college student from trying to repair his or her laptop wouldn't make for very good PR. Their preferred tactic is to go after the small, independently-owned repair businesses that fix things like medical equipment and consumer electronics. If a corporate giant sues a mom-and-pop repair shop for copyright infringement or sends them a cease-and-desist letter, they almost always back down, Gordon-Byrne says. Even if they know they could win in court, they can't afford a lawsuit that could drag on for years.

Once legal, independent repair shops are out of the way, corporations can push people to sign expensive service contracts or require them to use their own overpriced technicians. They often inflate repair prices to the point where it makes more financial sense to buy a new product – even if the old item needs only a minor repair.

About DRTR

DRTR was founded by a combination of environmental groups, individual consumers, digital advocacy groups, and industry organizations that represent private repair businesses. The coalition has more than 20 members. A full list is available on their website, but here are a few examples of participants:

- The Electronics TakeBack Coalition is a nonprofit that promotes green design and responsible recycling of electronics. Their goals include protecting the health of electronics users and workers, and convincing manufacturers to take responsibility for their products at the end of their usable life.
- iFixit provides free manuals to help people learn to fix their electronic devices, and sells parts and tools to complete the repairs.
- The International Association of Medical Equipment Remarketers and Servicers (IAMERS) is a trade association that represents the interests of independent businesses that repair and sell quality second-hand medical equipment.

Several factors converged and convinced these groups that an advocacy organization like DRTR was necessary. Consumer rights groups were alarmed by the increasingly stringent restrictions placed on electronic equipment consumers. Environmental organizations could clearly see how these restrictions, which made it harder to fix electronics, would lead to more e-waste cluttering landfills and overwhelming an already challenged recycling system. Trade associations were alarmed to see their members, many of whom are small to medium-sized businesses, being sent threatening letters or

forced to shut down by corporations who no longer wanted them to work on their equipment – even though they'd been doing it for decades. The task of fighting back was more than one organization could do by itself.

In 2013 these organizations came together and formed DRTR with the express purpose of ensuring that individuals have the right to repair and resell the electronic equipment they purchase. They also want to help small- and medium-sized companies retail the right to offer affordable products and services to industries across the country.

Legislative Fixes

Rather than trying to change U.S. copyright law, which would require an act of Congress, Gordon-Byrne and her colleagues at DRTR are working to make changes at the state level. New York, Massachusetts and Minnesota are considering legislation modeled after a bill proposed in South Dakota last year.

DRTR worked with several members of the South Dakota Senate to introduce SB 136 (<http://legiscan.com/SD/text/SB136/2014>) in the 2014 legislative session. The bill's purpose was to “ensure available replacement parts and services for consumers of manufactured goods.” SB 136 had two parts. It required manufacturers who sold electronic goods that cost \$100 or more to make repair instructions and parts available to independent repair shops and consumers. Manufacturers also had to communicate any limitations on the buyer's ability to repair or resell the item before the consumer purchased the item. If they didn't, the consumer could request a full refund for up to one year after they bought the product.

The South Dakota legislation would give the following message to electronics manufacturers, Gordon-Byrne says: “Whatever you've decided is copyrighted is fine, but the buyer of the equipment is entitled to know with some clarity what they bought and what they haven't bought. Right now you don't know that until you get your device home and turn it on.”

This policy would empower consumers by giving them the information they need to choose products that are easier to repair and resell. It would also, in theory, give them some negotiating power with corporations trying to sell them their favorite products.

“These policies have the potential to impact a lot of people,” Gordon-Byrne says. “If you can't resell something because there's a software license on it, how do you put up a blender that has a chip in it at a garage sale? This whole process needs to be more open. The digital future looks pretty bleak if the manufacturer controls not just the sale but also the resale.”

Even though SB 136 didn't pass, Gordon-Byrne says she learned a lot from the experience. It gave her and DRTR's members a good framework to move into 2015, when it hopes to make bigger gains in rule-making bodies.

At the federal level, the Electronic Frontier Foundation, a similar digital rights group, is working with Congressman Blake Farenhold (R-Texas) to introduce a bill designed to allow consumers to transfer operating software along with a device when they sell it or give it away. The You Own Devices Act (YODA) (<https://www.eff.org/deeplinks/2014/09/bill-introduced-congress-let-you-actually-own-things-even-if-they-contain-software>) would override current End of Use agreements and other contracts that prohibit consumers from reselling their electronics or giving them to a friend or family member when they are done with them. The bill stalled in 2014 but Congressman Farenhold plans to introduce it again in 2015.

Automotive industry provides a framework

DRTR's legislation draws heavily on a model agreement between car manufacturers and independent repair shops earlier this year. Automobiles come with plenty of electronics these days, and mechanics were concerned they might be forced out of business because the manufacturers were only sharing their diagnostic tools with their franchised dealers. People who wanted to repair their own cars were running into similar roadblocks.

In 2012 Massachusetts passed H. 4362, a “Right to Repair” (<http://massrighttorepair.com/about/2013-right-to-repair-law/>) law, which “ensures motor vehicle owners and independent repairers have complete repair information and diagnostic tools necessary to successfully repair a motor vehicle.” According to the Right to Repair Coalition's website, “for vehicles manufactured from 2002 and

thereafter, the law requires manufacturers to provide to owners and independent repairers the same website repair information and access to the same original equipment diagnostic tools that manufactures provide to dealers at a fair market price.”

When the law passed in Massachusetts, several additional states expressed interest in working on similar laws in 2013. Rather than ending up with 50 different policies in 50 different states, automobile manufacturers created a memorandum of understanding with the two largest associations representing independent mechanics. The MOU is very similar to the Massachusetts law in that it requires car manufacturers to provide everyone with the tools and information they need to repair used cars, not just their franchisees.

Gordon-Byrne hopes electronics manufacturers will eventually agree to similar legislation for things like smart phones, servers and medical equipment. “If it’s good for a car, why isn’t it good for a boat? Why isn’t it good for a washing machine?” For now, keep an eye on the DRTR and the Electronic Frontier Foundation websites for more information about their efforts to pass consumer protection laws this year.

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