"RIGHT TO REPAIR" LAW REQUIRES MANUFACTURERS TO GIVE UP THE FIX IN NEW YORK

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US Litigation and Dispute Resolution Alert

To give consumers the ability to repair their own electronic devices, New York is leading the way in “Right to Repair” legislation with its Digital Fair Repair Act, N.Y. Gen. Bus. Law § 399-NN (2022). The Digital Fair Repair Act (DFRA or the Act) requires manufacturers to provide digital electronic equipment owners and unauthorized repair providers with the information and tools necessary to make repairs to the manufacturers' equipment. The Act affects digital electronic equipment[1] manufactured for the first time and first sold or used in New York on or after 1 July 2023. The Act applies to manufacturers of digital electronic equipment at home in New York, and manufacturers of digital electronic equipment whose products are sold or used in New York must also comply. Thus, DFRA impacts any manufacturer of digital electronics, broadly defined, who has even one buyer or user in New York.

WHAT IS THE DFRA?

The Act requires original equipment manufacturers (OEMs) to provide certain documentation, parts, and tools required for the diagnosis, maintenance, or repair of digital electronic equipment to independent repair providers or owners of the equipment, either directly or via an authorized repair provider. For equipment that contains an electronic security lock or other security-related function, the OEM (on fair and reasonable terms) must similarly make available any special documentation, tools, and parts needed to access or reset the lock or function when disabled.

WHAT MUST BE MADE AVAILABLE AND TO WHOM?

OEMs must make the following items available to independent repair providers (i.e., providers who do not have an arrangement with an OEM) and equipment owners in New York to diagnose, maintain, or repair equipment:

Documentation

Manuals, diagrams, reporting output, service code description, schematics, security codes, passwords, or similar kinds of information;

Parts

New or used replacement parts; or

Tools

Software, hardware, or other apparatus.

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CAN OEMS CHARGE FOR PROVIDING THESE MATERIALS?

Yes and no. OEMs may not charge for documentation and tools (unless the tool is a physical tool, in which case it may charge the tool's reasonable, actual cost) but OEMs can charge for parts at reasonable costs and terms.

ARE THERE ANY LIMITATIONS ON WHAT MUST BE MADE AVAILABLE?

Yes, an OEM is not required to:

- Divulge a trade secret;
- Alter the terms of any arrangement with an authorized repair provider; or
- Make available documentation, parts, and tools for making modifications to the product.

IS ANY EQUIPMENT EXCLUDED?

Yes, manufacturers of the products listed below are not required to make documentation, parts, or tools available under DFRA:

- Certain public safety communications equipment used for emergency response or prevention;
- Any digital electronic equipment whose diagnosis, maintenance, or repair would be inconsistent with or in violation of federal law;
- Diagnosis, maintenance, or repair of any home appliance with a digital electronic product embedded within it;
- Motor vehicles and motor vehicle equipment;
- Medical devices;
- Off-road equipment (including, but not limited to, farm and utility, forestry, industrial, construction, and mining equipment);
- Commercial and industrial electric equipment; and
- Electronic bicycles.

In addition, an OEM or authorized repair provider does not have to make available parts, tools, and documentation for use in a manner inconsistent with or in violation of any federal law. The Act uses gaming and entertainment consoles and their related software and components as examples.

IS AN OEM RESPONSIBLE FOR DAMAGE TO EQUIPMENT REPAIRED BY INDEPENDENT SERVICE PROVIDER OR OWNER?

No, an OEM or authorized repair provider will not be liable for any damage or injury caused to digital electronic equipment during the course of repair, diagnosis, maintenance, or modification, including, but not limited to:

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- Indirect, incidental, special, or consequential damages;
- Any loss of data, privacy, or profits; or
- Any inability to use or reduced functionality of the digital electronic equipment.

WHO WILL ENFORCE THE DFRA AND WHAT ARE THE PENALTIES?

The New York State Attorney General has the authority to investigate and enforce violations, including assessing penalties of no more than US$500 per violation.

Manufacturers should carefully assess whether DFRA applies to them and, if they determine that it does, should identify the non-confidential documentation, parts, and tools that they must make publically available to those seeking to repair their own or customers' equipment.

This Act, as well as Right to Repair legislation subsequently enacted in states like California and Minnesota and contemplated federally or in other states, will certainly impact OEM's business and strategic planning. Stay tuned for specifics on the potential effects on warranties, product liability claims, and intellectual property protection.

We acknowledge the contributions to this publication from our first year associate Lael R. Franco.

FOOTNOTES

[1] Digital electronic equipment is defined as any product over US$10 that depends on digital electronics embedded in the product to function.

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