

**Automotive Right to Repair:
Legislation as Political Artifacts**

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On my honor as a University Student, I have neither given nor received unauthorized aid on this assignment as defined by the Honor Guidelines for Thesis-Related Assignments

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Introduction

Right to Repair, also referred to as ‘R2R,’ is a blanket term for bills, proposals, memorandums, and state laws which directly address consumer’s right to accessible repair and maintenance information or practices for automobiles and automobile systems. Barring several relatively recent state laws, government policy on Right to Repair has rarely seen the light of day. Instead, R2R has typically taken the form of an agreement called a memorandum of understanding (MOU), between several automotive non-government organizations. As MOUs and similar agreements are not legally binding, they are of questionable effectiveness and even-handedness. However, the US automotive industry is large, with many interest groups taking official positions and advocating action on the topic of Right to Repair.

Langdon Winner’s STS framework, written in 1980 in his landmark *Do Artifacts Have Politics?* allows one to research what these groups seek to accomplish via the politics of the proposed regulation. Winner claims that there are two ways in which technological artifacts can contain physical properties: “First are instances in which the invention, design or arrangement of a specific technical device or system becomes a way of settling an issue in a particular community.” (Winner, 123) “Second are cases of what can be called inherently political technologies, man-made systems that appear to require, or to be strongly compatible with, particular kinds of political relationships.” (Winner, 123) Winner’s first interpretation of his argument is that the inherent flexibility of the design and implementation of an artifact leaves an opening for social actors to influence and be influenced through the chosen design or arrangement. The second interpretation involves the ways in which the successful use of an artifact necessitates or is strongly linked with patterns of power and authority. “Here, the initial choice about whether or not to adopt something is decisive in regard to its consequences.”

(Winner, 134) Both interpretations will be valuable in discerning the purpose and position of R2R regulation and the groups which propose them.

History of Right to Repair

Repair as a concept underwent radical change during the industrial revolution. Prior to the industrial revolution, a majority of equipment and tools were handmade, and so it was seen as a matter of course to repair one's own home-made instruments. Repairing your tools was something one did because it was faster or easier than remaking a tool. Producing and repairing were both personal endeavors. The industrial revolution created the mass production model and allowed for complex production processes; these introduced a clear distinction between the producer and consumer. The average consumer could no longer recreate a product's complex production processes. Instead of making tools and equipment, one bought tools and equipment, and the same went for repair parts. Repairing was now something one did because it was cheaper than buying a new product. This distinction raised the potential problem of the ability to repair, with producers capable of prohibiting consumer access to repair parts. Manufacturers within the fledgling automotive industry were no exception. Beginning in the 1920s, The Ford Motor Company only provided repair parts to certified shops and made repairs impossible without using special tools supplied only to certified shops (Hatta, 2020). This is one of the earliest examples of automakers using the industrialized concept of repair to serve their own purposes.

As the industry grew, automobiles gained a reputation as durable goods, the repairability keeping it on the road for years, and by the 1960s, automobiles had gained widespread popularity. The Coase Conjecture of 1972 held that monopolies producing durable consumer goods would not be able to maintain monopolistic pricing because of competition with parts bought at a different point in time. Automakers, and indeed any producers of goods, have

complete agency in how they design their products (within legal limits). This grants the producer an inherent monopoly over their product. For example, the Ford Motor Company are the only people that make Ford Motor Vehicles. For durable goods which retain their value through repairs, (cars, for example) a monopolist will eventually enter price competition with itself over the cost of repair parts. Say that Ford Motor Company offers a repair service for \$100, and to turn a profit, they must make \$10,000 that year. That's 100 people that have to pay for the repair service. Then Ford decides to raise the price of the service to \$200. This way only 50 people have to get the service in order to turn a profit. However, say that 85 of the initial 100 customers remember when the repair only cost \$100, and decide that they won't pay twice as much for the same service. Ford won't be able to turn a profit this way, and provided the customers are patient enough, Ford will be pressured to lower the cost. The Coase conjecture prompted economists and management scientists to take a deeper look into the economics of a durable goods market. It was revealed that the solution was an aggressive approach to reduce durability by making repairs more difficult. Throughout the 1970s, further studies deliberated a system whereby material obsolescence encourages the consumer to replace an old model with a new one. "In concrete terms, material obsolescence functions in the following manner:

- Making items difficult to repair (by raising the cost of repair, requiring special tools, etc.)
- Failing to provide information (for instance, manuals are not provided)
- Systematic obsolescence (making parts among models incomplete or making it impossible to fix newer models with parts from older models)
- Numbering (frequently changing the model numbers to make it psychologically less attractive to use old models)

- Legal approaches (prohibiting access and modification to the internal structure of products by means of copyrights and patents)”

(Hatta, 2020)

Companies which adopted this approach ignored the right to repair in order to impose monopolistic pricing on the so-called durable goods which they produced. Another durable goods market is the software industry, where efforts for regulation of the right to repair led to an increased interest in the right to repair across all durable goods markets. Efforts for Right to Repair legislation in the automotive industry saw a resurgence beginning in the early 2000s with the introduction of the Motor Vehicle Owners’ Right to Repair Act in 2001. Though the 2001 Right to Repair Act was proposed in the United States Congress, it failed, as did a similar effort in 2005, to achieve Right to Repair legislation on a federal level. Then, in 2012, Massachusetts passed the United States’ first automotive Right to Repair law, wherein automobile manufacturers were required to sell the same service materials and diagnostics directly to consumers and independent repair shops as they provide to dealerships. This prompted action by automobile manufacturers, and in 2014, they signed a memorandum of understanding with several aftermarket associations in which they promise to follow the Massachusetts law in all 50 states. Though a landmark victory for Right to Repair, pursuit of federal R2R legislation continues, most recently with the REPAIR Act, introduced in the United States Congress in February of 2023.

Interest Groups

The most solidified example of R2R in the United States comes from a memorandum of understanding, signed in 2014 by several interested automotive parties. Repair coalitions and

manufacturer associations came together and agreed to follow the 2012 Massachusetts Right to Repair law in all 50 states. Here are the signing groups:

Automotive Aftermarket Industry Association (AAIA)

Coalition for Auto Repair Equality (CARE)

Alliance of Automobile Manufacturers (Alliance)

Association of Global Automakers (Global Automakers)

Several other significant groups are involved in this issue but were not a part of the original signing parties for the 2014 MOU. They are:

MEMA Aftermarket Suppliers

CAR Coalition

Automotive Service Association (ASA)

Society of Collision Repair Specialists (SCRS)

These groups are known to have interest in Right to Repair, so further investigation into these organizations is a suitable first step.

The AAIA is operating as the Autocare Association nowadays. They are a membership group, whose purpose is to “provide advocacy, educational, networking, technology, market intelligence and communications resources to serve the collective interests of our members” (*About Auto Care Association*, n.d.). This group is for more rigorous Right to Repair regulation and has worked together with MEMA Aftermarket Suppliers and CAR coalition to propose their own REPAIR (Right to Equitable and Professional Auto Industry Repair) Act.

The Coalition for Auto Repair Equality is a non-profit organization representing several big names in the automotive aftermarket, including NAPA, AutoZone, Advance Auto Parts, O'Reilly Auto Parts and Bridgestone-Firestone Retail Operations. CARE Recently added the CEO of the Auto Care Association to its board, other members include the CARE Chairman, NAPA CEO, AutoZone CEO, O'Reilly CEO, and the President of Bridgestone-Firestone Retail Operations (Staff, 2016). This organization is for Right to Repair legislation.

The Alliance of Automobile Manufacturers and the Association of Global Automakers merged in 2019 to form the Alliance for Automotive Innovation. This group represents vehicle manufacturers, autonomous vehicle innovators, equipment suppliers, battery producers and semiconductor makers, and is active in all 50 states. This group is still committed to adhering to the 2014 Memorandum of Understanding and has created OEM1Stop so that repair technicians can get repair information. The Alliance has come together with the Automotive Service Association, and the Society of Collision Repair Specialists to sign the Automotive Repair Data Sharing Commitment, which “reaffirms the belief that consumers should have access to safe and proper repairs throughout a vehicle’s lifecycle” (*Automotive Repair Data Sharing Commitment*, 2023). The parties further commit to “ensure consumer choice in vehicle repair decisions” in accordance with the 2014 Memorandum of Understanding. The Alliance insists that “independent repairers ALREADY have access to the same vehicle repair information provided to auto dealers” and that the current Right to Repair agreements are sufficient.

The Motor & Equipment Manufacturers Association Aftermarket Suppliers (MEMA) is another membership group that represents North American aftermarket suppliers. MEMA’s “mission is to champion the aftermarket supplier industry and advance the business interests of our members” (*Aftermarket Suppliers | MEMA*, n.d.). MEMA is one of the signing parties in

support of the REPAIR Act and is of the opinion that “Motor vehicle manufacturers and dealers are unfairly restricting access to vehicle-generated data and repair and replacement components” (*Right to Repair* | *MEMA*, n.d.). Further, they are firmly of the position that this is a bad thing, detrimental to the aftermarket service and repair market share.

Consumer Access to Repair (CAR) Coalition is the third supporting group behind the REPAIR Act. Similar to other groups, the Coalition believes that “Automakers want to steer vehicle owners to their own, higher-priced repair shops and prevent consumers from accessing their vehicle data” (*The Consumer Access to Repair (CAR) Coalition* | *CAR Coalition*, n.d.). In addition to the REPAIR Act, CAR Coalition also supports the Save Money on Auto Repair Transportation (SMART) Act. The SMART Act aims to reduce automaker patents on collision repair parts from 14 years to 2.5 years. This would allow independent manufacturers to design collision replacement parts without infringing on the patent at 2.5 years and allow aftermarket parts makers to make and test parts during the newly defined patent period. CAR Coalition claims 4 key principles. Place safety first, empower consumer choices, foster industry competition, and keep consumer costs low.

The Automotive Service Association (ASA) “has been the leading organization for owners and managers of automotive service businesses that strive to deliver excellence in service and repairs to consumers” (“Who We Are,” n.d.). This organization, along with the Alliance for Automotive Innovation and SCRS, signed the Automotive Repair Data Sharing Commitment. ASA’s code of ethics places “high quality repair service at a fair and just price” first and foremost, and requires all auto service businesses belonging to ASA to do the same (“Who We Are,” n.d.). ASA provides and updates a list of positions on issues. These range from industry practice of using adjacent panels to required use of OEM Service/ repair procedures for all

collision repairs. Position 1.14 states that ASA “supports the consumer’s right to choose their repair facility” (Automotive Service Association, 2023).

The Society of Collision Repair Specialists (SCRS) “advocates on behalf of the collision repairer” (Schulenburg, n.d.). SCRS represents over 6000 collision repair businesses and 58,500 specialized professionals. SCRS is the third signing party of the Automotive Repair Data Sharing Commitment. The SCRS objects to the proposed SMART Act, initially claiming that “Parts selection is a critical part of a safe and proper repair, and collision repair businesses have simply learned through first-hand experience that reverse engineered imitation parts are not the same as parts made and distributed by the OEM” (Greve, 2021).

The REPAIR Act

On February 9, 2023, Rep. Dunn, Neal P. introduced HR 906: the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act. The bill would ensure: That vehicle owners will continue to have choice when it comes to repair and maintenance. That all tools, equipment and critical repair information needed to repair any vehicle be made available to the independent repair industry at a fair price. That vehicle manufacturers are prohibited from restricting access to on-board diagnostic and telematic systems. That vehicle manufacturers provide direct access to repair-, service-, diagnostic-, and prognostic-specific vehicle-generated data. That vehicle manufacturers may maintain effective cybersecurity measures. The legislation would propose a mechanism for informing vehicle owners and ensuring transparency. The legislation would solidify enforcement measures, fair competition, and a mechanism for reporting investigations to congress (*Summary of The Right to Equitable and Professional Auto Industry Repair (REPAIR) Act*, n.d.).

The Automotive Repair Data Sharing Commitment

In July 2023, the Alliance for Automotive innovation (AAI, the Alliance) in conjunction with the Automotive Service Association (ASA), and the Society of Collision Repair Specialists (SCRS) Present the Automotive Repair Data Sharing Commitment (AAI commitment), whereby the three signing parties commit to “ensure consumer choice in vehicle repair decisions and support the independent repair community as provided below and as outlined in the existing 2014 Memorandum of Understanding.” Provided below are several commitments regarding Right to Repair. These include committing to make diagnostic and repair information, including service manuals and technical repair updates available (for purchase) to independent repair facilities. Similar diagnostics and vehicle systems will be made available (for purchase) to independent repair facilities. Telematics will not be used to circumvent any other commitments made. Diagnostic repair tools will be made available (for purchase) to independent repair facilities. Nothing in this commitment shall be construed to require a manufacturer to divulge a trade secret. As a complement to the existing process for resolving disputes involving diagnostics as established in the 2014 MOU, the parties commit to establish a Vehicle Data Access Panel to identify issues a party may have. The VDAP will be comprised of representatives from ASA, SCRS, and AAI. The parties commit to review and update the commitment annually. The parties also commit to working together in support of federal legislation to codify the various provisions of this commitment, ensuring consumer choice in vehicle repair across the country. The signing parties are the ASA, the SCRS, and the AAI. The 2014 MOU already has provisions in place to ensure third party access to diagnostic repair information, diagnostic repair tools, service manuals, and technical repair updates (*Automotive Repair Data Sharing Commitment, 2023*).

Analysis

Central to Winner's analysis framework is that instead of immediately reducing an object to its social factors, He "suggests that we pay attention to the characteristics of technical objects and the meaning of those characteristics." (Winner, 123) By treating the AAI pact in this way, you can see how its implementation and nature are what separates its objective from that of the REPAIR Act.

Winner explains that how an object is implemented betrays a purpose beyond the presumed. A key difference between the REPAIR Act and the AAI Pact is implementation, one is a proposed law, one is a signed pact. A proposed law is a slow thing, with the REPAIR Act taking several months to be approved to be heard before a committee. The specifics of the REPAIR Act also require the formation of independent groups, which will cost a lot of money. By comparison, a signed pact is quick and effective as long as the automakers agree to it, and as long as the contents of the pact show enough in common with the contents of the proposed bill. "Large manufacturers and industry groups like to flaunt these MOUs as a way of saying, 'No need to regulate us. No need for new laws. We're on this,' said Paul Roberts, founder of Secure Repair, an organization of IT and cybersecurity professionals who support the right to repair. 'They are purely public relations gestures, almost always intended to head off regulation that the industry in question would rather not see passed.'" (LaForest, 2023) The implementation of the AAI pact shows how it is uniquely suited to, and has been uniquely effective in slowing or stopping R2R legislation in the past. As with the 2002 pact, the 2014 pact, and this newer 2023 pact, representatives have claimed that it nullifies the need for policy on Right to Repair.

The second way in which technologies can be political is by their very nature, rather than by their organizational implementation. In this way, the technologies themselves are variable in

their arrangement, and thus in their political effects. Winner examines the idea “that certain kinds of technology do not allow such flexibility, and that to choose them is to choose a particular form of political life.” (Winner, 128) To participate in the implementation of a law requires one to submit to the imperious authority of the government, and so the REPAIR Act is an embodiment of the authority of the government. To participate in the implementation of a pact requires one to submit to the imperious authority of those signing parties. By making themselves one of the signing parties, automakers free themselves from that authority, and must submit only to the other signing parties. This is where the strength of the 2014 agreement lies, as the signing parties include not only several strong automaker groups, but the strongest aftermarket associations as well. Thus, a concerning consequence of the AAI pact is unearthed by its nature. It allows automakers to operate in the United States without implicitly submitting themselves to the imperious authority of the United States government. Automakers are ultimately the ones which decide how to follow the rules they have agreed to.

Conclusion

“At Issue is the claim that machines, structures, and systems of modern material culture can be accurately judged not only for their contributions of efficiency and productivity, not merely for their positive and negative environmental side effects, but also for the ways in which they can embody specific forms of power and authority” (Winner, 121)

In surveying Right to Repair regulation, I have focused on the REPAIR Act and the AAI Pact as artifacts. My analysis of the two approaches to Right to Repair, as well as my research into the involved groups has sought to find what Langdon Winner places at the center of his sociotechnical ideology. Namely, “the ways in which (artifacts) can embody specific forms of power and authority” (Winner, 121). I have found that the AAI pact embodies the continued

goodwill of the automakers and their desire to maintain authority over Right to Repair.

Meanwhile, the REPAIR Act embodies the authority of the government. More specifically it embodies the government's power to completely divest automakers of their authority over Right to Repair.

The US automotive industry has been a very intricate, powerful part of the economy since the automobile's invention. The type of product a car was in the 1920s is far different from the type of product a car is in the present. Following revolutionary economic discoveries of the 1970s, automakers began pursuing marketing tactics which encouraged the consumer to replace their vehicle every few years. To expedite this process, automakers chose to ignore the consumer right to repair by making cars difficult to repair, by making resources difficult to access, by making older generation parts obsolete, by masking similarities between generations with changing model numbers, and by pursuing legal prohibitions against modification with copyrights and patents. There is precedent in automakers ignoring the right to repair when it suits them, and when they can get away with it. Henry Ford, in the 1920s, did so by designing vehicles to be difficult or impossible to repair without specialized tools, which he also designed. He wanted to remain dominant in the service market for his vehicles, and ignored the right to repair to maintain that edge.

The Alliance, in creating the AAI pact and in their arguments against the REPAIR act, has promised to adhere to the bare minimum of what they have already agreed to do in the 2014 Memorandum of Understanding, and by doing so imply that new technological developments in telematics and diagnostics fall outside of the scope of that original 2012 law which the 2014 MOU is based upon. Further, this latest pact carries with it the same message as the 2002 and 2014 agreement, that the commitment will "preclude the need for current legislation" on Right to

Repair (*Alliance of Automobile Manufacturers - September 5, 2002 Press Release*, n.d.). The AAI pact, which in implementation will reinforce Right to Repair for several years, serves a second, political purpose of counteracting the most recent attempt at Right to Repair legislation, the REPAIR Act. In comparing the nature of the pact with that of a federal law, one discovers another consequence. A federal law places authority in the government, while a pact places authority in the signing parties. By making themselves a signing party, automaker groups get to maintain control over their interpretation of Right to Repair. However, the cooperation of automakers is often coaxed out by the proposal of a new law, with each new potential policy prompting a non-government agreement of similar effect. In this way, automakers are encouraged to adhere to a more equitable Right to Repair by the sheer authority that a federal Right to Repair law would entail. In essence, as long as automakers do not pursue monopolistic repair policies, and as long as they adhere to an agreed upon standard for Right to Repair, the federal government will not have to use its power to revoke the automaker's authority over repair in the US.

Acronyms Appendix

Right to Repair - The name of the laws and proposed regulation governing the right to repair

The right to repair - the right of the consumer or owner of a vehicle to maintain or choose where to maintain their vehicle

R2R - acronym for Right to Repair

MOU - Memorandum of Understanding

REPAIR Act - Right to Equitable and Professional Auto Industry Repair Act

AAIA - Automotive Aftermarket Industry Association

CARE - Coalition for Auto Repair Equality

MEMA - Motor and Equipment Manufacturers Association

CAR Coalition - Consumer Access to Repair Coalition

ASA - Automotive Service Association

SCRS - Society of Collision Repair Specialists

AAI - Alliance for Automotive Innovation

AAI Pact - Automotive Repair Data Sharing Commitment

VDAP - Vehicle Data Access Panel

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