

Intellectual property law experts endorse Right to Repair, refuting industry pushback

In a letter to the Senate Committee on Energy & Environment last month, a group of distinguished intellectual property scholars wrote in support of Right to Repair (SB 542). Going through each of the applicable IP laws, their letter argues:

1. **Manufacturers are incorrect when they claim that Right to Repair (SB 542) conflicts with copyright.**

"As early as 1901, courts have recognized a 'right of repair or renewal' under U.S. copyright law ... Facilitating the repair of consumer devices is consistent with federal copyright law and policy."

2. **Manufacturers patents are clearly protected.**

"If anything, the rules favoring repair under patent law are even clearer. Under the exhaustion doctrine, when a patentee sells a particular device to a consumer, it loses the right to control the use or subsequent transfer of that device. Exhaustion is why you can sell your used car without the manufacturer's permission. It's also why you can repair it free from any risk of patent liability."

3. **Trade secrets are protected.**

"Nor does SB 542 jeopardize manufacturers' trade secret rights insofar as it would enable access to information, replacement parts, or tools. SB 542 specifically exempts most trade secrets ... Since repair parts and tools are often generally known within the industry, they can't be considered secrets."

4. **There are no additional risks that devices will be counterfeited or reproduced.**

"Determined counterfeiters already have access to devices, either on the open market or directly from device makers' own suppliers. The idea that a bill designed to empower consumers and increase competition in the repair market would contribute to the problem of counterfeiting in any material way is implausible."

Finally, "As consumers as well as IP experts, we think that allowing people to repair the things they own makes common sense."

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Letter available at:
<https://docs.google.com/document/d/1eCHgJON-fC8eGYrm54JTazInTOXa7W1WrmlCmiKxvs/edit?usp=sharing>