



October 18, 2019

The Honorable Paul R. Feeney
The Honorable Tackey Chan
Co-Chairs, Joint Committee on Consumer Protection and Professional Licensure
The 191st General Court of the Commonwealth of Massachusetts
24 Beacon Street
Boston, Ma. 02133

Re: Electronics Manufacturers Opposition to House Bill 218 and Senate Bill 107 (“Digital Right to Repair”)

Dear Chairman Feeney and Chairman Chan:

On behalf of the hundreds of manufacturers and businesses our organizations represent, we respectfully oppose House Bill 218 and Senate Bill 107, legislation which would mandate original equipment manufacturers (OEMs) of digital electronic equipment or a part of the equipment sold in Massachusetts to provide independent repair providers with diagnostic and repair information, software, tools and parts.

Our organizations represent a broad spectrum of manufacturers of consumer electronics, home appliances, HVACR, security equipment, toys, lithium ion batteries, and other connected electronic products as well as companies that rely on the secure operation of these devices, such as entertainment software publishers. All of these companies stand behind the quality of their products. Our members develop products and services for a wide range of commercial, government, and consumer users that are often highly regulated. Their customers depend on these products to operate safely, securely, and accurately, whether they are being used to support banking and commercial transactions, transmit and store sensitive personal data, support industrial operations, medical applications, or securely deliver entertainment and other services. As businesses, government agencies, and consumers continue to increase their reliance on connected devices to help deliver efficiency, convenience and services, it is important to remain vigilant and focused on mitigating the risks associated with the safe and secure operation of those products.

H.218 and S.107 mandate that OEMs provision any independent repair provider in much the same way as authorized network providers, but without any protections, requirements, or restrictions, and in doing so, places consumers and their data at risk, undermines the business of Massachusetts companies that are part of OEM-authorized networks, and stifles innovation by putting hard-earned intellectual property in the hands of hundreds, if not thousands, of new entities. Further, the bill fails to account for the wide range of repair and refurbishment options currently available to Massachusetts consumers from both OEM-authorized and independent repair sources as well as advancements in sustainability by electronic product manufacturers. For these reasons, we urge the Joint Committee on Consumer Protection and Professional Licensure against moving forward with this legislation.

H. 218 and S.107 threaten consumer security and safety

One of our chief concerns with this legislation is its potential to weaken the privacy and security features of various electronic products. The security of user information on these products is of the utmost importance to consumers that rely on them. Industrial equipment, home appliances, smartphones, computers, services, consumer electronics, and other connected devices are at risk of hacking, and weakening of the privacy and security protections of those products will increase risks to consumers. With access to technical information, criminals can more easily circumvent security protections, harming not only the product owner but also everyone who shares their network. In an era of sophisticated cyberattacks, we should not make it easier for criminals to hack security provisions.

Consumers, businesses of all sizes, public schools, hospitals, banks and industrial manufacturers all need reasonable assurance that those they trust to repair their connected products will do so safely, securely and correctly. Commonwealth law should not mandate that all manufacturers must provide a “how to” manual for any product and provide it to anyone who asks.

Manufacturers offer authorized repair networks to provide consumers with assurance that their products are serviced by properly trained and vetted repair professionals that have the necessary skills to safely and reliably repair electronic products. Some types of repairs can be extremely detailed, complicated. Performing them in someone’s home, in some cases, can be dangerous to those without proper training. It is particularly important that products containing high-energy lithium ion batteries are repaired only by trained professionals who understand the hazards associated with these batteries.

Manufacturers want to ensure that their products are serviced by professionals who understand the intricacies of their products and have spent time procuring the knowledge necessary to safely repair them and return them to consumers without compromising those standards or undermining the safety and security of their products. Authorized repair networks not only include training requirements, but also ensure that only the correct parts and procedures will be used. Consumers can be protected by warranties or other means of

recourse. The legislation provides no such protections for consumers, repair shops or manufacturers.

When an electronic product breaks, consumers have a variety of repair options, including using an OEM's authorized repair network, which often include local repair service providers as well as mail-in, and even in-house repair options for some categories of products. Consumers may also choose to use one of many independent repair providers; although they do so without the quality assurance provided by using a manufacturer's authorized network provider. The point is that the free market economy already provides a wide range of consumer choice for repair with varying levels of quality, price and convenience without mandates imposed by the legislation.

Manufacturers' authorized networks of repair facilities guarantee that repairs meet OEM standards. If an OEM's brand and warranty are to stand behind repair work and assume product liability, it is only reasonable that the repair facility demonstrates competency and reliability. Without the training and other quality assurance requirements of authorized service providers – implemented through enforceable legal contracts that ensure compliance and accountability that protect consumers – manufacturers would not be able to stand behind their work, warranties, technical support, ongoing training, and business support.

H.218 and S.107 mandate the disclosure of protected proprietary information

Manufacturers make significant investments in the development of products and services, and the protection of intellectual property is a legitimate and important aspect of sustaining the health of the vibrant and innovative technology industry. However, H.218 and S.107 put at risk the intellectual property that manufacturers have developed.

Consumer electronics' on-board software (i.e., firmware) help to control the product. That firmware is subject to copyright under federal law, and Section 1201 of the Digital Millennium Copyright Act, a related federal law, ensures that bad actors cannot tamper with the digital rights management that copyright owners use to protect this software. The problem is that making repairs to hardware components may necessitate modifying the firmware so that the product will work again.

Importantly, however, firmware controls many other product functions, and opening it up for repair purposes exposes other more sensitive functions, such as security features, to potential tampering. Given the scope of products covered and what must be provided under the legislation – including diagnostics, tools, parts, and updates to software – it is highly likely some of the information would be proprietary. Providing unauthorized repair facilities and individuals with access to proprietary information without the contractual safeguards currently in place between OEMs and authorized service providers places OEMs, suppliers, distributors and repair networks at risk.

H.218 and S.107 fail to account for advancements in sustainability by electronic product manufacturers

These bills are partly based on an inaccurate assumption that the bill will aid in the reduction of electronic waste in the Commonwealth of Massachusetts. According to the Rochester Institute of Technology Golisano Institute of Sustainability, e-waste generation in the U.S. peaked in 2013-14 and is in a period of extended decline¹. This trend is corroborated by the most recent data from the U.S. Environmental Protection Agency².

Electronic product manufacturers have developed robust policies and programs to ensure that they are continuously improving the sustainability of their products for their whole lifecycle, from design, to material sourcing, product performance, reuse and responsible end of life management.

This has led to continued innovation and the use of new technologies which provide consumers improved devices while simultaneously reducing the overall amount of e-waste generated – all under the existing product repair environment. And with new technologies like OLED and additional light-weighting across the electronics industry, additional declines in e-waste generation are expected to continue during the coming decades.

Repair and reuse are important elements of electronics manufacturers sustainability efforts. Not only is repair and reuse in the OEM's best interest so that consumers can continue to enjoy their products, but many OEMs are returning still-useful electronic products to active service to get the maximum benefits out of the resources used to make them. Additionally, under revised "green" procurement standards, federal agencies and other purchasers will be required to purchase computers that meet certain environmental performance criteria under the Electronic Product Environmental Assessment Tool (EPEAT) rating system. These existing policies and programs promote repair and reuse without the consumer safety, security or business concerns raised by the bills.

H.218 and S.107 Open a Pandora's Box of Litigation

¹ Rochester Institute of Technology Golisano Institute of Sustainability (July 2017). *Sustainable Materials Management for the Evolving Consumer Technology Ecosystem*. Accessed at: <https://www.rit.edu/gis/ssil/docs/Sustainable%20Materials%20Management%20for%20the%20Evolving%20Consumer%20Technology%20Ecosystem.pdf>

² Office of Resource Conservation Recovery, U.S. Environmental Protection Agency (December 2016). *Electronic Products Generation and Recycling in the United States, 2013 and 2014*. Accessed at https://www.epa.gov/sites/production/files/2016-12/documents/electronic_products_generation_and_recycling_2013_2014_11282016_508.pdf

Conflicting language in both H.218 and S.107 could cause unwarranted and unneeded litigation.

Section 9 states “An independent repair provider or owner who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this chapter shall notify the manufacturer in writing and give the manufacturer 30 days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures such a complaint within the cure period, damages shall be limited to actual damages in any subsequent litigation.”

Simple dissatisfaction of response could trigger a tidal wave of class action suits and immense pressure to settle suits, greatly reducing the desire for innovators to do business in the Bay State and increasing costs for Massachusetts consumers.

Conclusion

Thank you for considering our perspective on this complicated issue. Our members bear a significant responsibility to the businesses, governments, and individual consumers that depend on us to protect the safety and security of their electronic products, as well as the sensitive data that they contain. We are committed to working with you to promote digital privacy and security, while resisting unwarranted Commonwealth intervention in the marketplace with one-sized-fits-all mandates that compromise consumer safety and protection. For those reasons, we oppose H.218 and S.107.

Sincerely,

Air Conditioning, Heating and Refrigeration Institute (AHRI)
Association of Home Appliance Manufacturers (AHAM)
Computing Technology Industry Association (CompTIA)
Consumer Technology Association (CTA)
CTIA – The Wireless Association
Entertainment Software Association (ESA)
Information Technology Industry Council (ITI)
Internet Coalition
National Electronic Manufacturers Association
NetChoice
PRBA – The Rechargeable Battery Association
Security Industry Association (SIA)
State Privacy and Security Coalition, Inc.
TechNet
Telecommunications Industry Association (TIA)
The Toy Association

CC: Members, Joint Committee on Consumer Protection and Professional Licensure