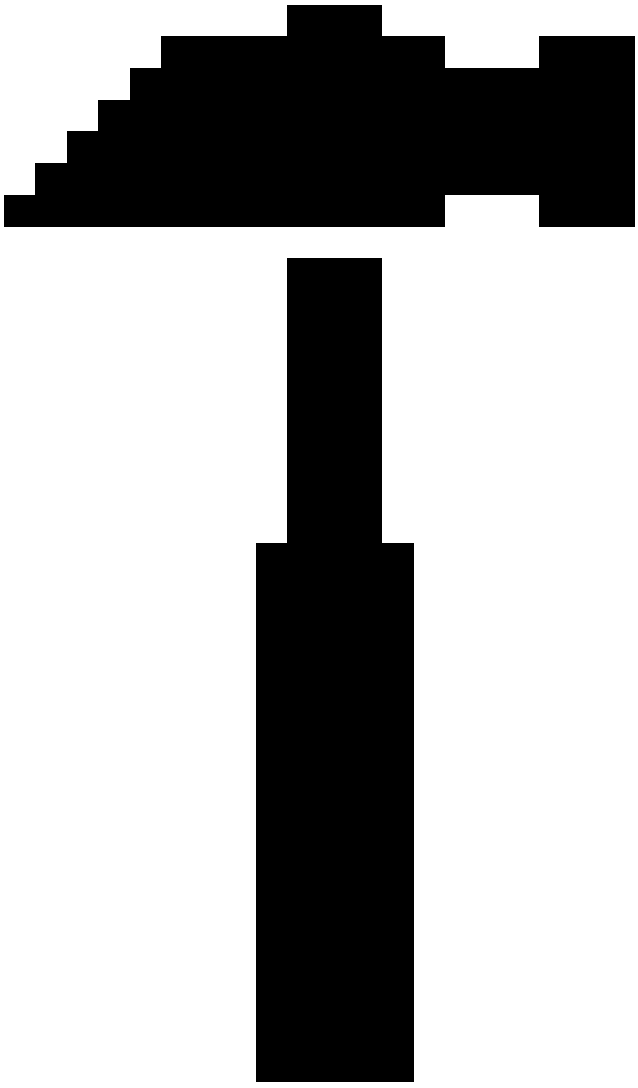
WHO CAN FIX IT? ANTITRUST, IP RIGHTS, AND THE RIGHT TO REPAIR



BY ROSA M. MORALES[1]

1 Rosa M. Morales is Counsel in the Antitrust & Competition Group at Crowell & Moring LLP. The views expressed in this article are solely those of the author and do not necessarily reflect the opinions of the firm, its clients, or any of their respective affiliates. This article is provided for general informational purposes only and should not be construed as legal advice.

CPI ANTITRUST CHRONICLE
November 2025

Visit www.competitionpolicyinternational.com for access to these articles and more!

WHO CAN FIX IT? ANTITRUST, IP RIGHTS, AND THE RIGHT TO REPAIR

By Rosa M. Morales

The convergence of antitrust law, intellectual property rights, and emerging right-to-repair statutes continues to reshape how product ownership and competition are understood in a connected economy. This article explores how manufacturers can navigate a changing enforcement landscape marked by shifting federal priorities, expanding state initiatives, and growing private litigation. Although federal agencies have adopted a more selective posture, the FTC remains active in pursuing right-to-repair theories, including its ongoing litigation against Deere & Company, signaling continued attention to aftermarket conduct. Drawing from recent developments—including the FTC actions under the Magnuson-Moss Warranty Act and cases such as *Lambrix v. Tesla* and *In re Deere & Co.*—it examines the interaction between IP protections and repair restrictions under antitrust scrutiny. The article concludes that transparent, well-documented repair policies, grounded in legitimate safety, cybersecurity, and innovation considerations, provides a more reliable path for supporting innovation and constructively engaging in the right-to-repair debate.

I. INTRODUCTION: OWNERSHIP IN A CONNECTED, REGULATED ERA

The modern concept of ownership has become increasingly complex due to rapid technological advancements and an ever-expanding array of laws dictating how — and by whom — products can be repaired. In past decades, ownership conferred autonomy: vehicle owners could swap brake pads and homeowners could fix appliance pumps.[2] Today, essential maintenance is often complicated by embedded software, encrypted firmware, and cloud-based services, creating intricate legal and operational challenges across devices from agricultural machinery to consumer electronics. Alongside technical hurdles, manufacturers confront growing tension between protecting proprietary technology and meeting expanding demands for repair access and interoperability.[3]

Advocates — including consumer groups, independent repair providers, and state regulators — frame repair restrictions as threats to competition and consumer choice.[4] Manufacturers counter that product safety, cybersecurity concerns, and intellectual property concerns demand structured oversight of who repairs what — and how. Risk management — encompassing liability, privacy, and safety compliance — also motivates tighter oversight. That debate now unfolds in a somewhat different federal environment — one that appears less centralized and more attuned to market dynamics. As the policy environment shifts, manufacturers face a regulatory landscape that remains active but increasingly defined by state initiatives and private litigation rather than coordinated federal direction.

II. HOW MANUFACTURERS RESTRICT REPAIR AND WHY IT MATTERS

Repair restriction mechanisms are shaped by both design and legal architecture. Some limitations are tangible — specialized fasteners, soldered internal components, and sealed modules that make DIY repair impractical and direct consumers to formal service networks.[5] Others are digital and arguably more impactful: access to diagnostic tools, firmware, and manuals is frequently confined to authorized technicians within original equipment manufacturer ("OEM") networks.[6] Connected products often require manufacturer-issued credentials for software resets and updates, keeping independent repairers out even when technically qualified to conduct repairs.

Legal restrictions center around IP protections. Patent rights and design patents guard component designs, while copyrights protect embedded software. Trade-secret law also shields diagnostic methods and service algorithms, while trademarks manage aftermarket branding.[7] The Digital Millennium Copyright Act ("DMCA") overlays these protections, restricting unauthorized circumvention of digital security systems.[8] Contract law intensifies these effects: end-user license agreements ("EULAs") and warranty provisions frequently warn that third-party repairs may void the product's warranty.[9] And while federal legal standards limit the scope of such clauses, these remain core components of manufacturer compliance strategies.

Manufacturers advance four overlapping justifications for these restrictions:

- Safety. Unauthorized repairs can create genuine hazards — failed sensors in autonomous vehicles, unstable voltage in heavy equipment, or electrical shocks in consumer devices.[10]
- Cybersecurity and information privacy. As internet-connected products proliferate, unauthorized access risks malware, code theft, and data compromise. Manufacturers cite these threats, along with recent regulatory actions and data breach litigation, to justify limiting repair access.[11]

2 Federal Trade Commission, Nixing the Fix: An FTC Report to Congress on Repair Restrictions 17–18 (2021), https://www.ftc.gov/reports/nixing-fix-ftc-report-congress-repair-restrictions.

3 *Ibid.* at 23–24.

4 U.S. PIRG Education Fund, The State of Right to Repair (2025), https://pirg.org/edfund/resources/the-state-of-right-to-repair/.

5 *Ibid.* at 18.

6 Nixing the Fix, *supra* note 2, at 23–24.

7 17 U.S.C. § 1201(a)(1)(A); 35 U.S.C. § 101; 15 U.S.C. § 1051.

8 17 U.S.C. § 1201.

9 16 C.F.R. § 700; 15 U.S.C. § 2302(c).

10 Nixing the Fix, *supra* note 2, at 27–32; Emma Roth, Colorado Governor Signs First Right-to-Repair Law for Farmers, THE VERGE (Apr. 28, 2023), https://www.theverge.com/2023/4/27/23700448/colorado-right-to-repair-law-farmers-farming-equipment.

11 *Ibid.* at 31–32.

- Warranty and Liability. Defective third-party repairs can damage brand reputation and increase claims exposure.
- Innovation and IP protection. Restricting unauthorized access to proprietary technology preserves investment incentives and supports continued research and development ("R&D").[12]

Together, these factors underpin a policy calculus that increasingly defines modern product governance.

III. ANALYZING THE LEGAL FRAMEWORK: IP, ANTITRUST, AND THE RIGHT TO REPAIR

The right-to-repair debate exists at the intersection of antitrust and intellectual property law. While manufacturers rely on IP rights to control the use of products and technology, antitrust statutes limit the ability to use that control if its exercise will stifle competition. Section 1 of the Sherman Act prohibits agreements that condition access to replacement parts or diagnostic tools on the purchase of associated services, which may be viewed as unreasonable restraints of trade.[13] Section 2 targets monopolization, including exclusion of rivals from aftermarket repair businesses.[14] The Clayton Act and Section 5 of the Federal Trade Commission ("FTC") Act may further address unfair restrictions on repair.[15]

The Supreme Court's landmark decision in *Eastman Kodak Co. v. Image Technical Services* acknowledges that a manufacturer may hold monopoly power in a product's aftermarket even without controlling the primary market itself.[16] In *Kodak*, a change in policy to restrict replacement parts and manuals to its own service network effectively locked in customers and locked out third-party independent service providers, triggering the Court's warning that undisclosed competitive barriers could violate antitrust law.[17]

Subsequent courts have clarified the boundaries of this doctrine. Most require clear proof of post-sale policy changes and concrete harm to consumers.[18] For example, *Data General Corp. v. Grumman Systems Support Corp.* upheld a refusal to license diagnostic software, recognizing protection of copyrighted code as a lawful, procompetitive justification.[19] Similarly, under *In re Independent Service Organizations Antitrust Litigation* (*CSU v. Xerox*), IP holders may decline to sell or license protected technology unless their conduct is a pretext or sham conduct.[20] Together, these cases anchor the principle that legitimate, documented business interests — rooted in IP protection — can justify repair restrictions.

Despite these defenses, judicial scrutiny persists at the margins. The Court in *Illinois Tool Works Inc. v. Independent Ink, Inc.*, cautioned against extending IP protection "shutting out wholesale competition."[21] Courts therefore continue to closely examine both the rationale and the process by which restrictions are implemented, emphasizing the importance of contemporaneous documentation. Maintaining detailed records showing that repair limitations serve legitimate safety, quality, or IP objectives — rather than exclusion alone — thus remains a critical defense against antitrust challenges.

IV. COMPETING VISIONS: JUSTIFYING AND CHALLENGING REPAIR RESTRICTIONS

Arguments over repair restrictions are multifaceted. When restrictions are supported by sound safety, IP, and regulatory considerations, they often stand up to scrutiny. Manufacturers assert that limited repair access helps protect proprietary code and embedded firmware, preserving innovation investment in markets increasingly shaped by wireless updates and software integration.[22] Controlled repair networks, they argue,

12 John Deere, Letter re. Kansas HB 2122: Digital Electronic Repair Requirements (2017), https://fr.scribd.com/document/339340098/John-Deere-letter.

13 15 U.S.C. § 1.

14 15 U.S.C. § 2.

15 15 U.S.C. § 45(a)(1); 15 U.S.C. §§ 15–27.

16 *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 476–77 (1992).

17 *Ibid.*

18 *PSI Repair Servs. v. Honeywell, Inc.*, 104 F.3d 811, 820 (6th Cir. 1997); *Clark Mem'ls of Ala., Inc. v. SCI Ala. Funeral Servs.* LLC, 991 F. Supp. 2d 1151, 1164 (N.D. Ala. 2014).

19 *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d 1147, 1187 (1st Cir. 1994).

20 *In re Indep. Serv. Orgs. Antitrust Litig. (CSU v. Xerox),* 203 F.3d 1322, 1328 (Fed. Cir. 2000).

21 *Illinois Tool Works Inc. v. Independent Ink, Inc.*, 547 U.S. 28 (2006).

22 H.B. 8544, 118th Cong. §§ 2, 4 (2024) (Fair Repair Act); 17 U.S.C. § 1201.

lower the risk of trade secret or confidential data leakage, protecting years of R&D and meeting fiduciary obligations. Federal law typically upholds this model unless fraud, collusion, or overt anticompetitive practices are evident.[23]

Safety remains a critical justification — especially in the automotive, medical, and agricultural sectors — where improper repairs can lead to physical harm, equipment malfunctions, lost revenue, or legal violations.[24] Policymaker requests for additional empirical evidence notwithstanding, recalls and lawsuits frequently illustrate that these hazards are not just theoretical.

Cybersecurity and privacy concerns further reinforce the need for controlled repair. As devices become interconnected, unauthorized access to diagnostic systems or repair software can introduce systemic vulnerabilities. Regulatory agencies such as the Food and Drug Administration ("FDA") and prominent industry bodies increasingly recommend embedding cybersecurity protocols directly into repair frameworks, underscoring how limited access aligns with modern compliance demands.[25]

From an operational standpoint, authorized repair networks offer predictability and accountability. They ensure consistent service quality, warranty protection, and product traceability — key factors in consumer safety and brand reputation. Empirical data indicates most product failures are efficiently resolved through official repair channels staffed with certified technicians and using up-to-date specifications.

Advocates of repair access, by contrast, frame the policy question as one of consumer rights, market entry, price competition, innovation, and environmental stewardship. They emphasize ownership, price competition, aftermarket innovation, and environmental sustainability — arguing that restrictive repair policies limit choice, raise costs, and hinder small repair businesses.[26] Environmental concerns further animate this critique: when devices cannot be repaired, disposal rates rise, contributing to electronic waste and resource depletion.[27]

Consequently, the debate lies at the intersection of law, economics, and public policy. For manufacturers, the most defensible approach is to anchor repair limitations in demonstrable objectives — protection of IP, safety, quality assurance, cybersecurity, or regulatory compliance — while avoiding the appearance of revenue-driven exclusivity or ambiguous policy rationales lacking contemporaneous documentation.

V. SECTOR FOCUS: WHICH INDUSTRIES FACE THE MOST RISK?

The right-to-repair debate cuts across several sectors, with the most intense scrutiny in agriculture, consumer electronics, home appliances, medical devices, and automobiles. Each sector reveals distinct tensions between safety, innovation, and access.

Agricultural Equipment. Farmers have played a central role in national advocacy, highlighting expensive downtime and dependency on OEM service networks. Legislation like Colorado's 2023 statute was the first to grant access to diagnostic software and essential tools by law.[28] Manufacturers, for their part, counter that emissions requirements, warranty reliability, and safety of increasingly software-driven tractors demand controlled repair protocols.

Consumer Electronics and Home Appliances. This is another area of rapid legislative action. States such as New York, California, Minnesota, and Oregon now require manufacturers to make certain documentation and replacement parts available on "fair and reasonable" terms.[29] Noncompliance can mean penalties or civil enforcement, raising the stakes for internal compliance systems and supplier management.

23 *Ibid.*

24 Nixing the Fix, *supra* note 2, at 28–32.

25 *Ibid.* at 31–32.

26 *Ibid.* at 41.

27 *Ibid.*; Emma Bowman, "A new copyright rule lets McDonald's fix its own broken ice cream machines," NPR (Nov. 3, 2024), https://www.npr.org/2024/11/02/g-s1-31893/mcdonalds-broken-ice-cream-machine-copyright-law.

28 H.B. 24-1121, 74th Gen. Assemb., Reg. Sess. (Colo. 2024).

29 Digital Fair Repair Act, N.Y. Gen. Bus. Law § 399-nn; Right to Repair Act, S.B. 244 § 42488.1 (Cal. 2023); Digital Fair Repair Act, S.R. 2744, 93rd Leg., 1st Sess. (Minn. 2023); S.B. 1596, 82d Leg. (Or. 2024).

Medical Devices. Since the COVID-19 pandemic crisis, the ability to timely repair critical patient equipment has become a focus. While Congress has debated bills like the Critical Medical Infrastructure Right-to-Repair Act, broader mandates remain pending.[30] For device manufacturers, patient safety and strict documentation of cybersecurity, cleanliness, and regulations are paramount.

Automotive. The 2014 industry Memorandum of Understanding established ground rules for sharing diagnostic and repair data with independent repairers.[31] But newer wireless data systems and telematics often fall outside that framework, resulting in clashes in Massachusetts and Maine over statutes mandating access to in-vehicle data — which have in turn led to litigation concerning cybersecurity and federal jurisdiction.[32]

These sector-specific challenges unfold against a rapidly evolving regulatory backdrop. Federal agencies like the FTC have intensified scrutiny of repair restrictions, emphasizing antitrust and warranty enforcement. Simultaneously, an expanding patchwork of state right-to-repair statutes imposes varied and often divergent obligations on manufacturers. Together, these overlapping federal and state frameworks create a complex compliance environment that manufacturers must navigate carefully.

This regulatory landscape — marked by intensified federal enforcement priorities and fragmented state mandates — is the focus of the next section.

VI. AGENCY ENFORCEMENT: FEDERAL TRENDS AND COMPLIANCE TAKEAWAYS

Federal regulatory scrutiny over repair restrictions accelerated following former President Biden's 2021 Executive Order on Promoting Competition in the American Economy ("Biden's EO on Competition").[33] That directive encouraged the FTC and other agencies to examine market concentration and barriers to repair. As a result, the FTC took the lead as the primary enforcer, resulting in enforcement actions under the Magnuson-Moss Warranty Act ("MMWA") and Section 5 of the FTC Act[34] and consent orders against Harley-Davidson, Weber-Stephen, and Westinghouse.[35]

In August 2025, President Trump revoked Biden's EO on Competition, ending the prior "whole-of-government" coordination framework and signaling a policy shift toward case-specific enforcement under existing antitrust statutes.[36] The revocation was followed by agency statements emphasizing that competition enforcement would focus on traditional statutory standards rather than broad, cross-agency initiatives.[37] FTC Chair Andrew N. Ferguson described the change as a reaffirmation of traditional free-market principles, noting that the Commission will continue pursuing clear violations of the Sherman, Clayton, and FTC Acts while avoiding expansive regulatory mandates.

At the same time, the FTC continues to pursue select right-to-repair cases under traditional statutory authority. In *FTC v. Deere & Co.*, No. 25-cv-50017 (N.D. Ill.), the Commission and several states alleged that Deere unlawfully limited access to its Service ADVISOR diagnostic software. In June 2025, the court denied Deere's Rule 12(c) motion, allowing the Section 2 and Section 5 claims to proceed past the pleadings

30 Press Release, Ron Wyden, Wyden and Clarke Introduce Bill to Eliminate Barriers to Fixing Critical Medical Equipment During the Pandemic (Aug. 6, 2020), https://www.wyden.senate.gov/news/press-releases/wyden-and-clarke-introduce-bill-to-eliminate-barriers-to-fixing-critical-medical-equipment-during-the-pandemic-.

31 AUTOMOTIVE SERVICE ASSOC., Automotive Repair Data Sharing Commitment (2023), www.autosinnovate.org/about/advocacy/right-to-repair/1%20-%20National%20Automotive%20Repair%20Data%20Sharing%20Commitment%20July%202023.pdf.

32 29-A M.R.S. § 1810 (Maine); Complaint, *Alliance for Automotive Innovation v. Frey*, No. 1:25-cv-41 (D. Me. Jan. 31, 2025).

33 Exec. Order No. 14,036, 86 Fed. Reg. 36,987 (July 14, 2021) (revoked on Aug. 13, 2025).

34 Nixing the Fix, *supra* note 2, at 23–25; Federal Trade Commission, Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers (2021), https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf.

35 *BMW of North America, LLC*, 132 F.T.C. 3150 (2015); *Harley-Davidson Motor Company*, 212 F.T.C. 3140 (2022); Press Release, Federal Trade Commission, FTC Approves Final Orders in Right-to-Repair Cases Against Harley-Davidson, MWE Investments, and Weber (Oct. 27, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-approves-final-orders-right-repair-cases-against-harley-davidson-mwe-investments-weber.

36 Office of the Press Secretary, Revocation of Executive Order on Competition, The White House (Aug. 13, 2025), https://www.whitehouse.gov/presidential-actions/2025/08/revocation-of-executive-order-on-competition/.

37 Fed. Trade Comm'n, FTC Chairman Applauds Revocation of Biden-Harris Executive Order on Competition (Aug. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-chairman-applauds-revocation-biden-harris-executive-order-competition; see also U.S. Dep't of Justice, Antitrust Div., Statement on Revocation of Biden-Harris Executive Order on Competition (Aug. 13, 2025), https://www.justice.gov/opa/pr/statement-revocation-biden-harris-executive-order-competition.

stage.[38] While the decision reflects the FTC's continued interest in repair-market conduct, it remains procedural rather than substantive. And, consistent with Chair Ferguson's recent remarks, the case exemplifies a narrower, statute-driven approach to enforcement — focused on clear legal theories rather than expansive policy initiatives.

This policy shift narrows — but does not eliminate — federal oversight of repair practices. The FTC and DOJ have moved to streamline merger review, restore early terminations for non-controversial transactions, and reduce inter-agency coordination on issues sector-specific issues, such as agricultural equipment and digital devices. While the agencies remain active in addressing explicit anticompetitive conduct, manufacturers can expect less prescriptive policy directives and greater reliance on traditional enforcement tools. In practice, this means a shift toward a more decentralized structure in which states and private plaintiffs play a larger role.

Even under a more measured federal posture, proactive compliance remains critical. Manufacturers should continue to maintain contemporaneous documentation supporting repair policies grounded in safety, cybersecurity, and IP protection. Courts and state regulators may view prior FTC consent orders and policy statements as persuasive authority in assessing conduct. For manufacturers, this evolving landscape underscores the importance of proactive compliance. Robust internal review processes — particularly for marketing, warranty, and service policies — remain the most effective safeguard against overlapping federal and state scrutiny.

VII. THE STATE-BY-STATE PATCHWORK: COMPLIANCE HEADACHES AND STRATEGIC CHALLENGES

Since 2019, state-level right-to-repair statutes have far outpaced federal legislation, leaving manufacturers grappling with inconsistent, rapidly changing frameworks in key markets — including California, Colorado, Minnesota, New York, Massachusetts, Maine, and Oregon.[39] With reduced federal coordination following the revocation of Biden's EO on Competition, these state regimes through attorneys general and private suits — effectively define the baseline for compliance. But each state law presents unique definitions, obligations, and enforcement mechanisms, resulting in a complex "patchwork" that complicates compliance for any manufacturer operating nationally.

These laws generally require OEMs to make select parts, tools, and technical materials available to owners and independent repairers — often on "fair and reasonable" terms — but their details are highly variable. For instance, California's S.B. 244 applies only to electronics and certain appliances above a set price, while Colorado's H.B. 24-1121 covers digital electronics, farm machinery, and expressly prohibits "parts pairing."[40] New York's Digital Fair Repair Act, in contrast, provides broad coverage for most digital items but exempts vehicles, select appliances, and security devices.

But even within these broad categories, key differences persist: some states permit private lawsuits for enforcement, while others rely on their attorneys general.[41] Penalties range from fines to injunctive relief, and some states impose reporting or record-keeping for distributed repair tools and parts. And further complicating matters for manufacturers is the interaction between state mandates and federal IP or trade secret protections. Standardizing documentation or repair protocols across markets is rarely feasible; most businesses must conform to the most restrictive jurisdiction in which their products are sold. Multi-state operations thus require cross-functional oversight — spanning legal, engineering, and service divisions — to ensure that disclosures, warranty language, and digital-access controls align with each state's terms.

A further complication lies in the intersection between state repair mandates and federal IP or trade-secret protections. And while most statutes now disclaim any intent to compel violations of federal law, gray areas remain. Ambiguous discovery requests or broad enforcement interpretations could thus inadvertently pressure disclosure of sensitive technical information.[42] Manufacturers would be wise to maintain contemporaneous documentation demonstrating that any withheld material qualifies as protected IP or cybersecurity-critical data — a record that may prove persuasive if state regulators later scrutinize compliance.

38 *Fed. Trade Comm'n v. Deere & Co.*, No. 25-cv-50017 (N.D. Ill. June 9, 2025) (mem. op. & order).

39 Right to Repair Act, S.B. 244 (Cal. 2023); H.B. 24-1121, 74th Leg., 2d Sess. (Colo. 2024); Digital Fair Repair Act, N.Y. Gen. Bus. Law § 399-nn; Digital Fair Repair Act, S.R. 2744, 93rd Leg., 1st Sess. (Minn. 2023); An Act Relative to Automotive Repair, Ch. 93K (Mass. 2013); S.B. 1596, 82d Leg. (Or. 2024); Automotive Right to Repair Law, 29-A M.R.S. § 1810 (Me.).

40 S.B. 244, § 42488.1(b) (Cal. 2023); H.B. 24-1121, *supra* note 28.

41 Minn. Stat. § 325E.72(4); Ch. 93A § 2 (Mass.).

42 S.B. 244, § 42488.8 (Cal. 2023); H.B. 24-1121, *supra* note 28.

VIII. LITIGATION UPDATE: REPAIR, AFTERMARKETS, AND THE SINGLE-BRAND CHALLENGE

Repair restrictions have increasingly become the subject of federal and state antitrust litigation. Plaintiffs in recent cases have alleged that OEMs controlling the supply of repair tools, software, and parts unfairly restrain competition and violate antitrust principles.

Single-Brand Aftermarket Theories. In *Lambrix v. Tesla, Inc.*, a federal court found that consumers and independent repairers plausibly alleged that Tesla's repair ecosystem restricted access to "Tesla-compatible" parts and services, raising single-brand aftermarket monopoly concerns.[43] The court permitted claims under Sections 1 and 2 of the Sherman Act to proceed, emphasizing allegations that warranty-voiding provisions, proprietary diagnostic controls, and exclusive-dealing requirements effectively "locked in" customers absent downstream competition.[44]

Agricultural Equipment and Parallel Enforcement. In *In re Deere & Company Repair Service Antitrust Litigation*, farmers and independent shops claimed Deere's limitations on repair software and tools unlawfully foreclosed competition. The court cited limited interchangeability and high switching costs as evidence of "lock-in."[45] P In parallel, the FTC and several state attorneys general filed a public enforcement action alleging monopolization of the farm-equipment repair market.[46] Together, these cases illustrate the convergence of private and public enforcement targeting the same aftermarket practices.

Federal–State Conflicts. Auto manufacturers have also litigated against data-access mandates in Maine and Massachusetts, arguing that state repair laws conflict with the Federal Vehicle Safety Act, the Clean Air Act, and related federal policy frameworks.[47] While district courts have generally allowed those statutes to remain in effect, appeals are pending, and preemption arguments continue to shape the boundary between state innovation and federal oversight.

Judicial Emphasis on Documentation and Justification. Courts increasingly focus on the manufacturer's ability to demonstrate clear, consistent, and legitimate business justification. As articulated in *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.,* a well-documented, safety- or quality-based repair policy remains the strongest defense to Sherman Act or unfair-exclusion claims.[48] Manufacturers that can show contemporaneous evidence of product-integrity, safety, or IP-protection objectives are far better positioned to withstand scrutiny.

IX. COPYRIGHT LAW, DMCA EXEMPTIONS, AND LEGISLATIVE UPDATE

The DMCA anti-circumvention rule remains a recurring flashpoint in the repair debate. Embedded code and firmware often receive technological protections that block unauthorized access or changes. Recently, the U.S. Copyright Office expanded rulemaking exemptions so that certain circumvention activities — deemed necessary for diagnosis, maintenance, or repair — are allowed across sectors from automotive to medical. These exemptions extend across sectors — from automobiles and agricultural machinery to medical and commercial food-service equipment.[49]

Despite agency support, the Copyright Office has consistently declined to adopt broad, permanent exemptions. Despite support from the FTC and the Department of Justice, Antitrust Section for greater flexibility, the agency continues to balance repair access against IP integrity and cybersecurity risk.[50] Its cautious approach reflects enduring concern that broad disclosure of code or firmware could jeopardize trade secrets, expose vulnerabilities, or erode incentives for innovation.

Federal legislation has likewise stalled. Successive introductions of the Fair Repair Act and REPAIR Act have not advanced beyond committee. Each proposal would preserve carve-outs for safety-critical products and core IP protections — acknowledging that innovation incentives

43 *Lambrix v. Tesla, Inc.*, 737 F. Supp. 3d 822, 835–48 (N.D. Cal. 2024).

44 *Ibid.* at 839–41.

45 *In re Deere & Co. Repair Serv. Antitrust Litig.*, 703 F. Supp. 3d 862, 899 (N.D. Ill. 2023).

46 Complaint, *FTC v. Deere & Co.*, No. 3:25-cv-50017 (N.D. Ill. Jan. 15, 2025).

47 Complaint, *Alliance for Automotive Innovation v. Frey*, No. 1:25-cv-41 (D. Me. Jan. 31, 2025).

48 *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1184–85 (9th Cir. 2016).

49 37 C.F.R. § 201.40 (2024).

50 Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 89 Fed. Reg. 85437, 85443 (Oct. 28, 2024).

and risk management remain essential to competitive markets. Parallel efforts, such as the SMART Act, seek only limited reforms by shortening the term of automotive design-patent protections, offering a narrow, sector-specific remedy rather than a universal repair mandate.[51] Taken together, these developments suggest that federal right-to-repair initiatives are unlikely to accelerate under the current administration, which has emphasized case-by-case enforcement and statutory consistency over new rulemaking or cross-agency coordination. For manufacturers, these trends reinforce the critical role of IP and copyright compliance. Aligning repair policies with DMCA requirements, clearly documenting cybersecurity rationales, and establishing robust IP ownership procedures help reduce exposure and support sustainable business models.

X. PRACTICAL COMPLIANCE FOR MANUFACTURERS: A ROADMAP

The right-to-repair landscape now constitutes a permanent compliance obligation. Manufacturers must treat evolving repair requirements as core compliance issues, requiring multidisciplinary coordination among legal, engineering, and customer-service teams.

A structured, multi-step strategy can mitigate exposure while demonstrating good-faith alignment with evolving laws, including the following:

1. *Audit and Update Policies.* Conduct thorough reviews of all sales, repair, and warranty documents to ensure alignment with applicable federal and state requirements. Regularly update warranties, manuals, web content, and service agreements. Develop clear categories for repair information and tools — distinguishing trade secrets, copyright-protected assets, and items likely subject to disclosure.
2. *Document Justifications.* Retain contemporaneous memoranda and supporting materials detailing the legitimate reasons for limiting repair access, such as safety validation, cybersecurity, IP, or regulatory mandates. Legal counsel should confirm all restrictions are reasonable, consistent, and evidence-based.
3. *Formalize and Train.* Create written policies, validated by compliance officers, and specifying how and when information may be shared — especially for products containing embedded software or licensed third-party IP. Train staff in the technical and legal differences across jurisdictions, with periodic audits to maintain best practices as regulations change.
4. *Engage and Monitor.* Track agency enforcement, litigation, and state policy developments. Join industry working groups and participate in legislative consultations. Consider voluntary, good-faith disclosure of non-critical information when possible, to build goodwill and mitigate regulatory pressure.
5. *Prepare for Conflicts.* In instances where compliance may clash with federal IP or safety requirements, seek formal regulatory guidance and keep records of the conflict. Pursue preemption challenges proactively if necessary.

A proactive compliance roadmap — grounded in documentation, transparency, and cross-functional coordination — offers the strongest defense in this fragmented regulatory environment.

XI. CONCLUSION: STRIKING THE BALANCE AS REGULATORY AND LEGAL UNCERTAINTY CONTINUES

As right-to-repair laws proliferate and federal oversight adopts a more measured, case-specific approach, manufacturers stand at a crossroads of product design, competition, and intellectual property law. The legal landscape remains unsettled, marked by diverging state statutes, a narrower but still active federal enforcement role, and evolving debates about the scope of antitrust and copyright protections.

Despite the uncertainty, a core principle endures: successful navigation of this environment depends on disciplined, well-documented compliance practices. Companies that anchor their repair policies in objective safety, quality, and IP-protection grounds — while avoiding opaque, revenue-driven restrictions — are best positioned to withstand regulatory and litigation risks. Transparency in communications, cross-jurisdictional consistency, and careful management of proprietary information remain essential strategies for maintaining trust with regulators and consumers alike.

Ultimately, however, antitrust and IP law should not be viewed as inevitably conflicting forces. Properly balanced, they can advance the same goals — innovation, competition, and consumer welfare. In the current enforcement climate — where federal agencies continue to litigate alongside increasingly assertive state and private plaintiffs — disciplined compliance is more than a defensive strategy; it is a competitive advantage, enabling manufacturers to safeguard valuable intellectual property, foster innovation, and engage constructively with the evolving right-to-repair framework.

---

51 H.R. 8544, 118th Cong. (2024); S. 442, 118th Cong. (2024); H.R. 906, 118th Cong. (2024); Press Release, Darrell Issa, Issa Introduces Bipartisan Bill to Reduce Car Repair Costs (Mar. 22, 2023), https://issa.house.gov/media/press-releases/issa-introduces-bipartisan-bill-reduce-car-repair-costs.

CPI COMPETITION POLICY® INTERNATIONAL

CPI Subscriptions

CPI reaches more than 35,000 readers in over 150 countries every day. Our online library houses over 23,000 papers, articles and interviews.

Visit competitionpolicyinternational.com today to see our available plans and join CPI's global community of antitrust experts.