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FTC, Congress could intervene in the Right-to-Repair battle

RICK POPELY
foj@autonews.com

The right-to-repair issue that pits consumers and independent repair shops against automakers and franchised dealerships over access to repair information and parts could soon move from the current battleground in Massachusetts to Washington, D.C.

The latest fight started over a Massachusetts law that would require automakers to equip vehicles that use telematics — which collect and wirelessly transmit information such as crash notifications and remote diagnostics — with a standardized, open-access data platform starting with the 2022 model year. Such a platform would be accessible to vehicle owners or third parties such as independent repair shops.

Automakers are challenging the law in federal court, arguing it is preempted by several U.S. laws, including ones that cover intellectual property and design patents.

But the Federal Trade Commission is hinting that it could write new regulations, and right-to-repair advocates are trying to generate interest in Congress for federal legislation.

Joshua Sarnoff, a DePaul University law professor, says Washington is the proper venue for the right-to-repair argument because most intellectual property rights can be regulated only at the federal level. Moreover, legislation has been proposed in several other states, and manufacturers don't want to deal with the prospect of complying with differing state laws.

"The problem is, getting federal legislation passed when there are well-funded opposing parties is incredibly difficult," Sarnoff says.

FTC steps in

The FTC issued a report May 6 calling for solutions to right-to-repair complaints across a range of consumer products, not just automobiles, either through federal law, voluntary cooperation by industry or new FTC regulations.

"The problem is, getting federal legislation passed when there are well-funded opposing parties is incredibly difficult."

JOSHUA SARNOFF, law professor,
DePaul University

Repair shops and aftermarket parts suppliers for cars, cellphones, computers, appliances and farm machinery have complained at FTC hearings that manufacturers are freezing them out by restricting access to repair information, technology and parts.

Among the auto-related complaints is that with the built-in telematics systems, automakers can monitor maintenance needs and steer vehicle owners to their own dealers. Another grievance is certain parts are available only through dealers.

The auto industry negotiated peace on the right-to-repair issue after Massachusetts adopted a law in 2013 that gave independent shops access to repair information. In 2014, automakers signed a memorandum of understanding with the aftermarket industry that effectively made the law national, giving shops in all states the same access.

But a ballot issue approved by 75 percent of Massachusetts voters last November would add the new requirement about telematics data availability.

The Alliance for Automotive Innovation, which represents all major automakers, sued Massachusetts to declare the law unenforceable. The telematics access was supposed to take effect with 2022 models, but the alliance said it needed

time to develop an open-access platform.

The alliance, which would not comment for this report, also argues that the 2013 law gives independent shops full access to data needed for repairs, including that transmitted via telematics, and that providing universal access to telematics information would create cybersecurity problems. One industry spokesman, speaking on background, likened it to every house in a neighborhood having the same front door lock.

Opportunity in Congress

While the case is litigated, the timing in Washington might be right for federal legislation because Democrats will hold the White House and Congress at least through the 2022 election cycle.


"If the Democrats continue to control both houses of Congress, it makes it procedurally simpler, but it's not clear that there is yet the political will, much less the political understanding, to figure out how to resolve this," Sarnoff says.

Justin Rzepka, executive director of the Consumer Access to Repair Coalition, a group that represents parts manufacturers, retailers and insurers in the collision repair industry, says there are members of Congress on both sides of the aisle interested in the issue, though he wouldn't identify any.

"We are very hopeful and optimistic that there will be legislation introduced in the near term that will address the consumer issues," Rzepka says.

He says the FTC report provides momentum because it was unanimously approved by the four current commissioners and concluded "there is scant evidence to support manufacturers' justifications for repair restrictions" across several industries.

Sarnoff agrees that the FTC report adds weight. "I think the FTC report really helps because it demonstrates there is a current problem of substantial magnitude across a wide spectrum of consumer goods," he says. "That's the kind of action that often can prompt legislation." ■



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