

John Deere And Farmers Get Creative On ‘Right To Repair’

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Deere & Co. and the American Farm Bureau Federation — an advocacy group for the agriculture industry — signed a memorandum of understanding in January.^[1] The MOU marks a significant moment in the “right to repair” movement.

It also serves as an example of creative collaboration between manufacturers and industry advocates to strategically respond to consumer pressures, before regulators and lawmakers step in to govern by mandate.

John Deere Commits to Increased Access to Repair Tools

Before John Deere and the Farm Bureau executed the MOU on Jan. 8, farmers who needed to repair their John Deere equipment were required to use authorized parts purchased from and installed at authorized service facilities.

Many farmers complained that this requirement made it time-consuming, difficult and costly for them to fix farm equipment like tractors — and impossible for them to modify the equipment for their unique needs.

Under the MOU, farmers will be able to take advantage of independent repair options, giving them increased flexibility and access to the parts and services needed to repair and modify their equipment. More specifically, John Deere agreed to allow farmers and independent repair facilities to purchase the tools, materials and software needed to service farm equipment on “fair and reasonable” terms.

In a press release celebrating the MOU, the president of the Farm Bureau emphasized John Deere’s commitment to “ensuring farmers and independent repair facilities have access to many of the tools and software needed to grow the food, fuel and fiber America’s families rely on.”

The agreement represents not only a win for farmers, but also provides several crucial protections for John Deere.

For instance, the agreement protects the company’s intellectual property by prohibiting farmers and independent technicians from divulging trade secrets. In addition, it prohibits any modifications that would disable safety

features or emissions controls installed on equipment.

By entering into this agreement with the Farm Bureau, John Deere is seemingly able to remove barriers to access while protecting its interests. While it remains to be seen whether the MOU will accomplish these goals in practice, the creative solution provides a template for manufacturers who desire a similar outcome.

The Right-to-Repair Movement

The MOU represents only the latest chapter in a larger campaign led by consumer advocacy organizations and policymakers known as the right-to-repair movement.

This popular movement seeks to curb manufacturer policies and practices — particularly in the technology, automotive and agricultural industries — that have historically restricted access to tools, components and software in the aftermarket, and restricted consumers' ability to have their devices serviced at independent repair shops.

Advocates for the movement are demanding that manufacturers offer consumer products that can be easily repaired at home or by third parties at a fair price, without sacrificing the manufacturer's warranty.

Government Adoption of Right-to-Repair Laws

Given the popularity of the right-to-repair movement, state and federal lawmakers have responded to constituent interests by passing legislation and engaging in policymaking aimed at addressing the movement's concerns.

For example, in 2012, Massachusetts required automobile manufacturers to sell service materials and diagnostic tools — which manufacturers once provided exclusively to their authorized dealerships — directly to consumers and independent mechanics.^[2]

More recently in 2022, New York passed the Digital Fair Repair Act to establish consumers' rights to access manuals, diagrams and original parts from manufacturers.^[3] More than half of U.S. states have introduced similar right-to-repair bills.

At the federal level, President Joe Biden asked the Federal Trade Commission to develop right-to-repair policies in 2021.^[4] The FTC continues to seek feedback regarding such policies and to prioritize right-to-repair enforcement efforts.^[5]

Private Companies React and Self-Regulate

Manufacturers in diverse industries are taking action by affirmatively responding to consumer concerns, rather than waiting for government actors to slowly impose burdensome regulations.

Some smartphone manufacturers now offer self-repair options and replacement parts for their mobile devices. Other companies have gone even a step further. For instance, some manufacturers have adopted the right to repair as a central tenet in their business models, while others have proactively released 3D-printable models for replacement parts.

John Deere's MOU with the Farm Bureau is an example of yet another way manufacturers can partner with right-to-repair advocates and the industry. By taking steps toward self-regulation, manufacturers may be able to avoid unduly burdensome regulatory solutions while protecting their own interests.

In taking this step toward increased self-regulation, John Deere followed a trend of voluntarily responding to consumer pressures as a strategic response to the threat of increased government oversight.^[6]

The John Deere MOU also represents a powerful tool that other manufacturers may be able

to employ to curb lobbying efforts by consumer advocacy groups. Indeed, the agreement between John Deere and the Farm Bureau acknowledged the industry goal of establishing "voluntary private sector commitment to outcomes rather than legislative or regulatory measures."

As part of the MOU, the Farm Bureau agreed "to encourage state Farm Bureau organizations to recognize the commitments made in this MOU and refrain from introducing, promoting, or supporting federal or state 'Right to Repair' legislation that imposes obligations beyond the commitments in this MOU."

Mitigating Legal Risk Through Private Agreements

Not only does the MOU serve as an example of how industry can take matters into its own hands with respect to implementing regulation, but it also shows how such private agreements may be a useful tool in preempting antitrust lawsuits.

Private litigants have pursued claims against manufacturers even in the absence of specific right-to-repair laws.^[7] These lawsuits typically allege that manufacturers have deliberately monopolized the repair industry, in violation of existing anti-competition and antitrust laws.

John Deere has not been immune to such legal challenges, and is currently entangled in Deere & Company Repair Services Antitrust Litigation, a federal antitrust lawsuit in the U.S. District Court for the Northern District of Illinois.

By entering into the MOU, the company memorialized its agreement to allow consumers the right to independently repair their equipment — thereby undermining the argument that the company restricted access in a monopolistic or anticompetitive way.

The implications of John Deere's MOU with the Farm Bureau extend far beyond agriculture and farm equipment. The company's self-regulation may demonstrate an effective strategy that other industry actors will want to consider, because industry self-regulation often generates less friction than government intervention.

[1] https://www.fb.org/files/AFBF_John_Deere_MOU.pdf.

[2] <https://malegislature.gov/Bills/187/H4362>.

[3] <https://www.nysenate.gov/legislation/bills/2021/s4104/amendment/a>.

[4] <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

[5] <https://www.regulatoryoversight.com/2022/07/ftc-makes-good-on-its-promise-to-ramp-up-right-to-repair-enforcement/>.

[6] <https://www.regulatoryoversight.com/2022/04/manufacturers-respond-to-the-right-to-repair/>.

[7] <https://www.regulatoryoversight.com/2022/03/right-to-repair-movement-without-right-to-repair-laws/>.

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