



Right to Repair Consultation 2024

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<https://www.naeda.com/farmers-fix-it/>

Interoperability Policy Brief Letter

NAEDA

The North American Equipment Dealers Association is a trade association representing approximately 4,500 farm, industrial and outdoor power equipment dealers in North America. In Canada, our association represents over 600 dealer locations across the country. Through the sale of equipment, parts, and service, our dealer members work in partnership with growers, farmers and ranchers to make them the world's most productive and competitive producers.

Position Statement

Defining Right to Repair

The Right to Repair is a complex issue with many technical and policy considerations wrapped up in that term. Defining the Right to Repair is essential to focus the discussion on constructive dialogue. From an emerging issue to legislation at all levels of government in North America, Right to Repair has been rationalized and distilled down to be defined as:

“Access and availability of parts, tools, documentation, and diagnostics for the purposes of repair and maintenance.”

This definition adequately reflects the heart of the issue, supporting self-repair of products. It does not include or equate to modification of products beyond manufacturer standard specifications, and it does not include the closely related but distinct issue of interoperability. By specifically defining what the Right to Repair is, we can dissect the components of each topic without conflating the important distinctions.

Reality of the Repair Landscape

Our industry is a leading example of one that supports customer self-repair. Equipment manufacturers and dealers are committed to providing owners and independent repair shops access and widespread availability of parts, tools, documentation, and diagnostic capabilities. The reality of the repair landscape for farm equipment demonstrates this commitment.

Even a cursory survey of equipment manufacturer's websites will lead to the discovery of self-repair resources. They include information about documentation, including manuals and repair schematics, for products going back decades. The same can be said for parts, tools, and diagnostics information. Since the latter are tangible items, they are most commonly available through a manufacturer's authorized dealer network. Our association has compiled major farm equipment manufacturers self-repair product offerings accessible here:

<https://www.naeda.com/farmers-fix-it/>

A third-party survey of our industry demonstrates our commitment to make parts, tools, documentation and diagnostics available and accessible to individuals and independent repair shops. The survey results showed that, on average, nearly 60 percent of all parts sold at a dealership are installed by someone other than the dealership. On average, a farm equipment dealership sells parts to nine different independent repair shops, with two independent repair shops typically in a dealership's top ten parts customer list. (See *Repair Done Right Infographic Survey Results Attachment*).

Dealer Demonstrations

If our industry commitment to making self-repair resources were not self-evident enough, we have also engaged stakeholders in dealer demonstrations across North America to showcase what manufacturers and dealers do to increase uptime for their customers. In Canada, dealer demonstrations have been held or are scheduled in five provinces. Producer groups, legislators, and government officials have engaged in transparent discussions about what is currently available and accessible to support self-repair, and those product offerings have been demonstrated in hands-on scenarios involving equipment technical issues at dealerships.

Our association will continue holding dealer demonstrations in partnership with manufacturers to provide transparency and understanding about product offerings. These events provide an opportunity to discuss this issue's technical and complex aspects in-depth. We invite committee members to participate in a dealer demonstration during the consultation process.

Industry Commitment & Memorandums of Understanding

In 2021, major farm equipment manufacturers made an industry commitment to provide owners and independent repair shops with access and availability of parts, tools, documentation and diagnostics. This industry commitment was publicized and shared with producer groups across North America, and our association conducted meetings across Canada to inform producers about its content and the industry commitment.

In response to producer groups in the U.S. seeking a more formal commitment, the major stakeholders on this issue agreed to Memorandums of Understanding. The MOUs between John Deere, CNHI, Kubota, AGCO, Claas, and the American Farm Bureau Federation are private-sector solutions that formalize the commitment to supporting customer repair and make legislation unnecessary for our industry. These MOUs cover nearly 80 percent of the farm equipment sold in North America and contain detailed provisions describing what manufacturers make available to support customer self-repair.

The MOUs are accessible here: <https://www.naeda.com/farmers-fix-it/>

The MOUs are a living document that provides for at least semi-annual meetings between the stakeholders to assess concerns, updates, and other issues related to the Right to Repair. To inform this process, the American Farm Bureau Federation has set up a website portal for individuals (both members and non-members) to provide complaints. In the year and a half since the inception of the comment portal, not one complaint has been filed against manufacturers for not adhering to or meeting the requirements of the MOUs.

NAEDA Canada has been pursuing a similar MOU with the Canadian Federation of Agriculture and its member organizations. We will continue to strive for a detailed formal commitment with Canadian producers.

Workforce Development

Even with our industry's commitment to Right to Repair, farmers and ranchers still face persistent challenges to increasing uptime. However, they are not attributable to availability and access to parts, tools, documentation, and diagnostics. The most prevalent challenge is the shortage of skilled technicians in our industry. The average farm equipment dealer would hire five additional technicians today, with a cumulative shortfall of technicians across North America numbering in the thousands. This gap continues to widen despite an industry-leading model where dealers cover complete tuition for a two-year diesel technician program with a guaranteed high-wage job upon completion.

NAEDA has proactively supported workforce development in numerous ways, including our industry-leading foundation efforts. Since its inception in 1998, the Canada Equipment Dealers Foundation has raised over \$3 million to support technician scholarships and technical education programs across Canada at high school and secondary education institutions. Despite dealers and our association's significant efforts to build the technician workforce, the need for skilled technicians remains a considerable challenge. However, our proactive approach gives hope for a future with increased uptime for our producer customers.

Rural Broadband

Another challenge our industry faces is the need for more rural broadband. Modern farm machinery is equipped with remote diagnostic capabilities that, when available, significantly decrease the amount of time required for a dealership to diagnose equipment issues. However, this technology is unusable for dealerships and their customers without ubiquitous rural broadband, resulting in increased service times across our industry.

Our association has supported and advocated for increased investment in rural broadband across North America to resolve the digital divide that increases downtime for our dealer's customers. We welcome a discussion about how expanded broadband would increase dealer's responsiveness, leading to increased uptime for their customers.

Legislation

The success of dealers depends on the success of their customers. Far from preventing a customer's right to repair their equipment, our dealers have every incentive to increase their customer's ability to work on their own equipment or have an independent repair shop perform the repairs. While we support a customer's Right to Repair, we oppose the need for legislation after considering our industry commitment and the reality of the repair landscape.

Far from resolving issues with uptime, the legislation we have seen across North America will have the paradoxical effect of increasing downtime for producers. Provisions relating to parts costs, unfettered access to emissions, and safety criteria will likely lead to less availability and access to parts and increased mechanical and software failures. Not to mention the overwhelming concerns relating to safety and emissions. With the industry commitment and MOUs, our industry has struck the right balance between access and availability of parts, tools, documentation, and diagnostics while retaining the integrity of safety and emissions controls.

Illegal Tampering, Modification & Intellectual Property Rights

Our industry opposes legislation making illegal tampering and modification of farm equipment more likely. We oppose unnecessary legislation because it would allow unfettered access to the software governing the safety and security of farm equipment, including the software controlling emissions technology.

Most legislation calls for unrestricted access to all security locks and security-related functions, which is unnecessary for nearly all repairs. Even authorized dealers do not possess the type of unfettered access to source codes that typical legislation would allow. With all the diagnostic tool capabilities that are currently available, the only reason to allow this type of access is to support bad actors seeking to modify equipment's safety and emissions criteria.

Modification of equipment creates serious safety hazards for dealership personnel. Technicians working on equipment that has been modified are put at risk by unknown and difficult-to-discover modifications affecting safety software controls. Unfortunately, these types of modifications have led to serious bodily harm to dealership technicians in the past, even resulting in permanent disabilities. Our industry adamantly opposes any legislation that would increase risks to technicians working on equipment.

Changing current law would lead to the destruction of copyright protections that would pose significant risks to product safety and security, the safety of dealer employees, and environmental emissions. None of this is necessary given the reality of the repair landscape in our industry; the MOUs between the major stakeholders formalizing the commitment to self-repair would do nothing to address the real challenges causing downtime for producers.

Our association is a member of the Illegal Tampering Coalition which comprises 26 international, national, and regional associations united in opposition to illegal tampering. Attached as an addendum to this brief are the coalition position statement and logo letter opposing legislation that would allow illegal tampering.

Conclusion

Our industry supports an owner's Right to Repair, not to modify. Additional legislation for our industry is unwarranted given the industry-leading self-repair options and support that exist today. While challenges create downtime for producers, they are not attributable to the access and availability of parts, tools, documentation, and diagnostics.

Emissions

Equipment Chipping and Tampering

In 2007, the federal government promulgated rules establishing the national emissions mark for off-road equipment, including farm equipment. The regulations were aimed at reducing emissions by providing a certificate of compliance, or emissions mark, for companies that imported, manufactured, and distributed off-road equipment in Canada.

The regulations adopted specifically prohibited the installation of a defeat device by a company holding the national emissions mark. However, the regulations did not cover third parties outside of the narrowly defined definition of company found in section 149 of the Canadian Environmental Protection Act. This oversight has allowed third-party vendors, equipment owners, and independent repair facilities to lawfully sell and install defeat devices that tamper with emissions control systems.

Issues Caused by Emissions Tampering

The loophole allowing modification of emissions controls for off-road equipment runs counter to the Canadian government's entire environmental framework. For dealers abiding by the spirit of the law and the prohibition against tampering included in their dealer agreements with manufacturers, this loophole has created significant problems. Authorized dealers have seen an increase in repairs, premature engine failures, and safety issues caused by modification of equipment emissions.

The additional wear and tear on farm equipment engines created by removing or bypassing emissions criteria is also skewing the used equipment market. Modification of emissions is not easily detectable, especially when equipment is restored to factory settings prior to trade-in. The diminished value and useful life of equipment resulting from modified equipment are then borne by the dealer and subsequent purchasers of used farm equipment. Modification of emissions criteria allowed by third parties under current law is tantamount to rolling back odometers on vehicles and should be prohibited.

Proposed Federal Regulation

To prevent the widespread practice of third parties trafficking in and installing emissions defeat devices, NAEDA proposes the federal government adopt the following language to close the loophole allowing engine chipping and tampering:

The following acts and the causing thereof are prohibited—

(A) for any person to remove or render inoperative any device or element of design installed on or in an Off-Road Compression-Ignition Engine for reducing, limiting or controlling emissions prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any Off-Road Compression-Ignition Engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in an Off-Road Compression-Ignition Engine for reducing, limiting or controlling emissions, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

Provincial Enforcement

Following the proposed regulation's adoption, provincial governments will be responsible for providing a method of compliance and enforcement. The Canadian Council of Ministers of the Environment (CCME) has provided a guidance document relating to emissions control systems anti-tampering requirements. Once the third-party loophole is closed, the guidance document and policy recommendations can be applied to off-road farm equipment.

Those regulations, standards, and restrictions include establishing possible certificates of compliance, registrations, tickets, fines, and summons or shutdown orders. These regulations will prevent emissions tampering by providing consequences to those persons trafficking in defeat devices or unlawfully chipping equipment. This is necessary to achieve Canada's environmental goals and preserve the integrity of our industry.

Interoperability

Defining Interoperability

In a policy briefing from 2020, interoperability was defined as the “capacity of two systems to communicate with each other” (Anthony D. Rosborough, *Impediments to Interoperability under Canadian Copyright Law*). The briefing quoted additional authors to further define interoperability as “the ability to transfer and render useful data and other information across systems (which may include organizations), applications or components.” This definition renders interoperability distinct from Right to Repair because interoperability relates to functioning systems working together instead of repairing those independent systems to functionality. This becomes more obvious in light of the fact that interoperability is an issue in the manufacturing of farm equipment. In contrast, the Right to Repair is an issue for end users of farm equipment.

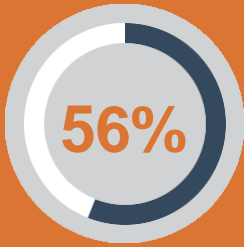
Support for Interoperability

Our association supports the inclusion of exceptions to copyright law for interoperability. Our position is that Canadian copyright law should mirror the exceptions found in U.S. copyright law that allows the circumvention of technology protection measures for the lawful purpose of interoperability. More specifically, Canadian Copyright Law Part 3, Section 30.61 should include the exemption found in 37 CFR, Section 201.40(13) allowing for circumvention of TPMs that are contained in or control the functioning of a mechanized agricultural vehicle. It is worth noting that those exemptions specifically do not create a defense to liability from violations of environmental protection regulations.

Over the last several years, our association has supported efforts to ensure Canadian implement manufacturers are allowed to sell equipment that is interoperable with imported agricultural equipment. That support is informed by our association’s stance that dealers should not be unduly restricted in carrying the products their customers need.

We have made our support for interoperability abundantly clear in previous submissions and testimony to the federal government. In 2021, NAEDA submitted a policy brief, in conjunction with the Agricultural Manufacturers of Canada et al. to the Deputy Minister of Innovation, Science, and Economic Development, expressing our desire for additional clarity under Canadian copyright law to allow interoperability (see attached).

While Interoperability and the Right to Repair are related in some respects, they are distinct from one another and should not be conflated. We encourage the further examination of interoperability under this consultation, but caution against combining the two issues under the same umbrella.



Fifty-six percent of dealer parts are sold out the door and are not installed by the dealership.

The average dealer has 2 independent repair shops as a top 10 parts customer.



On average a dealership sells parts and tools to 9 independent repair shops.



On average an equipment dealership stocks over \$1Million dollars in parts inventory.



The average dealership will spend over \$100,000 on technician training per year.

The average dealership needs to hire 5 additional service technicians to meet customer demand.



20 - 40 hours

Dealership technicians receive 20 to 40 hours of training each year to keep up with model and technology changes.



Seventy-six percent of equipment dealers agree that expanded broadband availability would improve the dealerships use of remote equipment diagnostics.





FARMERS FIX IT

NAEDA and our OEM (original equipment manufacturer) industry partners enthusiastically endorse and champion our customers' "right to repair." We are dedicated to collaborating with end-users to ensure optimal equipment uptime.

For farmers and other equipment users, this webpage serves as a comprehensive resource, providing easy access to information on repair and diagnostic resources provided by the industry's leading OEMs.

Extensive diagnostic, repair, and parts information is readily available to equipment owners and third-party repair providers alike.

To explore further details about diagnostic and repair services, please select your specific OEM from the options below:

***Self-Repair Resources Provided By Manufacturer**



Memorandums of Understanding Between Manufacturers and American Farm Bureau Federation





Agricultural Manufacturers of Canada

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RE: Providing clarity on interoperability under the Copyright Act — Ensuring Canada's agricultural manufacturing sector continues to innovate and thrive in a competitive post-pandemic economy

Dear Deputy Minister,

On behalf of Agricultural Manufacturers of Canada, North American Equipment Dealers Association, the Canada West Foundation, & Honey Bee Manufacturing we would like to share with you a policy briefing document regarding an important issue affecting our industry, which, if left unaddressed, will stifle innovation and economic growth. We have been working with Jennifer Miler, Tim Logan, Lambert Lorrain, Luc Laforest, and Patrick Hum at ISED to raise these issues and hope to work with you as well to ensure the Canadian agricultural manufacturing sector continues to succeed.

As you know, Canadian-made agricultural equipment is among the highest quality and most sought-out in the world. AMC's 250 member companies – 70% of which are located in rural communities with populations of 10,000 or less and are often the largest employer in the region - export more than \$2.3 billion annually in agricultural implements to 154 countries. Although the U.S. accounts for 80 per cent of these exports, other substantial markets include Australia, Russia, China, Chile, Germany, Brazil and New Zealand. For many of these innovative exporters, however, the lack of clarity on interoperability under the Copyright Act threatens to halt the success of Canada's agricultural manufacturing industry.

Interoperability in the 21st century

As the attached policy briefing titled Impediments to Interoperability under Canadian Copyright Law, notes: "As an increasing number of products and services rely upon integrated software and digitization for their functioning, we are experiencing an increase in the need to ensure that myriad products are interoperable in a number of different industries and settings. The range of products affected by these changes are effectively limitless: Toasters running on JavaScript, home appliances with central computers, 'smart' hot tub controls and sensor-monitored automotive components are just a few examples. The general trend is that physical product design is becoming increasingly reliant on software, networking and computerization."

From an agricultural manufacturing perspective, this means that "many pieces of industrial equipment, often a network of digital and analog components – including the mechanical interface, hydraulic components, onboard computer and sensors – is required to interoperate as a network." Canadian manufacturers need to be able to "reverse engineer" original equipment manufacturers (OEM) to be able



Agricultural Manufacturers of Canada

to innovate on a variety of products that help Canada's agricultural sector do more with less while addressing important public policy issues such as climate change.

Clarity needed on interoperability exceptions under Copyright Act

There already are exceptions for interoperability under the Copyright Act, but they are not clear and as technology increases in everyday life, the exceptions become diluted — in essence, everything then becomes an infringement on copyright. Because of the lack of harmonization with U.S. copyright laws, the innovation and market access for Canadian manufacturers becomes even more difficult. As AMC member Honey Bee explained at the House of Commons Industry committee in February: "U.S. copyright law makes exceptions for legally modifying motorized agricultural equipment for the purpose of interoperability. Canadian copyright law does not provide these exemptions, making it illegal for Honey Bee or any Canadian company to reverse engineer platforms to achieve interoperability."

We are urging the government, in its upcoming move to amend the Copyright Act to implement term extension under CUSMA, to provide clarity on "the nature and scope of the interoperability exception to the prohibition on TPM (technical protection measure) circumvention, including a comprehensive definition of 'interoperable.'"

Canada's statutory framework for interoperability under the Copyright Act is emblematic of an era prior to widespread computerization and software integration in myriad products and machinery. In the context of modern machinery, innovation and networked components, a more inclusive approach is needed.

Fostering innovation, producing world-leading products: Solutions for clarity

We recommend a realistic, expedient, and direct approach to reduce the chilling effect produced by the ambiguities in the Copyright Act through:

1. Interpretive guidelines issued by the Canadian Intellectual Property Office ("CIPO") (e.g., "Guide to Interoperability under Canadian Intellectual Property Law");
2. An amendment to the Copyright Regulations enacted pursuant to the Copyright Act, clarifying the nature and scope of the interoperability exception to the prohibition on TPM circumvention, including a comprehensive definition of "interoperable";
3. An amendment to CIPO's Guide to Copyright which clarifies the nature, scope and applicability of the interoperability exception to the prohibition on TPM circumvention;
4. Empowering an independent administrative authority to oversee the implementation of TPMs in the Canadian marketplace to ensure that Canadian innovators are able to take advantage of the interoperability exception to TPM circumvention under the Copyright Act.

By providing Canadian industry with the requisite clarity to move ahead, ISED will be ensuring that Canada is well positioned to foster an innovation environment that incorporates as few impediments as possible to producing world-leading products, services and technologies. This will also ensure that Canadian agricultural producers to continue to have access to Canadian made products and technologies.



Agricultural Manufacturers of Canada

As the government begins to develop a blueprint for renewed and improved economic achievements in the post-COVID period, AMC's members are focused on competitive development, global sales opportunities, and promoting productivity. However, we are currently facing an uncertain global competitive environment because of unclear domestic laws that stifle growth. It is imperative for the federal government to carefully address this interoperability issue in order to support a truly innovative, export-oriented and job creating Canadian agricultural manufacturing sector that is well positioned to contribute to our country's post-pandemic economy.

Request to meet

We encourage you to read the attached policy briefing and the recently released Western Economic Diversification study on this issue to learn more, and would also appreciate the opportunity to discuss this vital matter with you in more detail. We will reach out to your office in the coming days to hopefully find a suitable time in your busy schedule. Thank you for your consideration and support of Canadian agricultural equipment manufacturers.