

## Digital Right to Repair Expands to Influential State of California

January 19, 2024

By Jenny Frank, Matt Dunn and Jack Griem. Published in the [\*New York Law Journal\*](#).

New York was the first state to pass right to repair legislation for digital electronic devices with the New York Digital Fair Repair Act (the “NY DFRA”), effective December 28, 2023, revolutionizing the right to repair legal landscape across the country. Following New York’s lead, Minnesota passed its own Digital Fair Repair Act, effective on July 1, 2024, similarly requiring that original equipment manufacturers (“OEMs”) make available to independent repair shops and individuals all replacement parts, tools, and documentation for digital electronic devices that are made available to authorized repair providers. Now, California has passed its own Right to Repair Act for digital electronic devices and appliances, effective July 1, 2024.

This next development in right to repair legislation highlights the everchanging right to repair landscape and importance of understanding such legislation and related principles for compliance. In light of California’s leading position as the home of many large consumer product technology companies, the California Right to Repair Act is expected to significantly accelerate how OEMs that manufacture products dependent on digital and electronic components provide diagnostic information, equipment, tools, and replacement parts in their relevant markets.

More background on the NY DFRA can be found in our earlier articles [providing strategies for navigating it](#) and [highlighting latent ambiguities](#).

### Applicability of the California Right to Repair Act

The California Right to Repair Act is more broadly applicable than New York’s DFRA, which had many amendments and carveouts, and Minnesota’s Digital Fair Repair Act. Beginning on July 1, 2024, OEMs of electronics and appliances with a wholesale price over \$99.99 must make sufficient parts, tools, and documentation (including any published updates by the relevant OEM) for the repair, diagnosis, and maintenance of the product available to owners of the product and independent repair facilities on fair and reasonable terms for at least seven years after the last date the product was manufactured, even if exceeding the product’s warranty period. For electronics and appliances with a wholesale price of \$50-99.99, this period is shortened to three years.

The California Right to Repair Act defines:

- “[Electronic or appliance product](#)” or “[product](#)” as a product, manufactured for the first time, and first sold or used in California, on or after July 1, 2021, as described under California Business and Professions Code Section 9801 (h–k), for which the OEM makes available tools, parts, and documentation to authorized repair providers, **excluding** a product or component of an alarm system, such as a fire protection system, or a video game console.
  - As described under the relevant California Code, covered products include but are not limited to, electronic sets such as televisions, radios, recorders or playback equipment, video cameras, video games, video monitors, computer systems, photocopiers, or fax machines normally used or sold for personal, family, household, or home office use; appliances

or major home appliances such as refrigerators, freezers, ranges, microwave ovens, washers, dryers, dishwashers, trash compactors, or air-conditioners normally used or sold for personal, family, household, or home office use, or for use in private motor vehicles; antennas to a resonant device for capturing electromagnetic energy transmitted by direct satellite or commercial radio or television broadcasting facilities; and rotators when used in connection with an antenna installation or repair like electromechanical devices operated from a remote location to rotate an antenna on a horizontal plane.

- "Fair and reasonable terms" to mean (i) costs and terms that are equivalent to the most favorable costs and terms under which the OEM offers the part, tool, or documentation to an authorized repair provider, accounting for discounts, rebates, convenient and timely means of delivery, and enabling fully restored and updated functionality, rights of use, or other incentive or preference the manufacturer offers to an authorized repair provider, (ii) documentation must be made available without charge **except** when requested in physical printed form, in which case a charge may be included for the reasonable actual costs of preparing and sending the copy, (iii) tools must be made available by the OEM at no charge and without imposing impediments to access or use of such tools to diagnose, maintain, or repair and enable full functionality of the product, or without impairing the efficient and cost-effective performance of any such diagnosis, maintenance, or repair, **except** when a tool is requested in a physical form, a charge may be included for the reasonable, actual costs of preparing and sending the tool, and (iv) if an OEM does not have a program for authorized repair providers, "fair and reasonable terms" means at a price that reflects the actual cost to the OEM to prepare and deliver the part, tool, or documentation, exclusive of any research and development costs incurred.

Based on these defined terms, the California Right to Repair Act is broader than the NY DFRA because it requires that OEMs provide replacement parts, tools, and documentation to owners of a product regardless of whether they are provided to an authorized repair provider, even if such authorized repair provider does not exist.

#### Differences from the NY DFRA

Under the NY DFRA, motor vehicles, their related parts, and manufacturers of motor vehicles are specifically excluded. Under the California Right to Repair Act, the definition of "electronic or appliance product" includes appliances that are normally used or sold for use in private motor vehicles. Additionally, antennas and rotators, as defined under the California Business and Professions Code Section 9801 (h-k), could be found to be used in motor vehicles. This highlights one of the key differences between the California Right to Repair Act and the NY DFRA.

Further, the NY DFRA specifically excludes "gaming and entertainment consoles, related software and components." However, the relevant California Code section as referenced under the California Right to Repair Act includes digital electronic parts that are manufactured for video games and video monitors, albeit the definition of an "electronic or appliance product" excludes a product or component of a video game console. Thus, while the California Right to Repair Act does not cover all parts and components related to video game consoles, it does include video games and video monitors, meaning some parts of video game systems are covered.

#### Protections for Intellectual Property, Liability Limitations, and Public Right of Action in the California Right to Repair Act

The California Right to Repair Act specifically limits the terms of its applicability so that OEMs are not required to divulge any trade secrets or intellectual property to any owner of a product or independent repair facility. Also, OEMs do not have to provide information to owners of products nor independent repair facilities that discloses source code or aids the override of security measures.

OEMs and authorized repair providers are provided liability protection under the California Right to Repair Act such that they shall not be liable for any damage or injury caused to any electronic or appliance product, person, or property that is the result of repair, diagnosis, maintenance by an independent service dealer or owner.

For any person or entity that knowingly violates the California Right to Repair Act, a city, a county, or the state may bring an action in superior court to impose civil liability of \$1,000 per day for the first violation, \$2,000 per day for the second violation, and \$5,000 for the third and subsequent violations.

### Open Questions on the Interpretation of the California Right to Repair Act

Similar to the NY DFRA, there exist questions on how to interpret provisions in the California Right to Repair Act. First, the California Right to Repair Act defines “electronic or appliance product” as “a product, manufactured for the first time, and first sold or used in California, on or after July 1, 2021 . . .” Several interpretations are possible as a matter of English language construction.

It is unclear whether the California Right to Repair Act applies to digital electronics and appliances that are first manufactured anywhere that are first sold or used within the jurisdictional limits of California, or whether the California Right to Repair Act only applies to digital electronics and appliances that are first manufactured within the jurisdictional limits of California. The latter meaning would cause the California Right to Repair Act to only be applicable to digital electronics and appliances that are first manufactured in California, meaning consumers who purchase new digital electronics and appliances from OEMs operating and located outside of California would not be given the benefit of the California Right to Repair Act for the digital electronics and appliances that they first buy or first use within the State of California (and OEMs who manufacture such products outside of California need not comply). On the other hand, the former meaning would make the California Right to Repair Act applicable to new digital electronics and appliances that are purchased or used by California consumers for the first time such that OEMs operating and located outside of California would have to consider on a case-by-case basis each sale of digital electronic device or appliance, as the case may be, in light of the location of each purchaser.

Additional ambiguity comes from the application of the clause “manufactured for the first time.” One potential interpretation limits this clause to newly manufactured models of hardware or products. Another interpretation of this clause would mean that the California Right to Repair Act applies to existing models of products that are already in the stream of commerce for sale by retailers or awaiting distribution and sale in a storage facility. Moreover, questions exist as to when a particular product is considered to be “manufactured” and whether the method, duration, and process of production affect the determination of when such product is “manufactured.”

Further, the clause “first sold or used in California” is open to interpretation as to when products are “first” sold or used. Namely, what is required for products to be considered “first” sold or used? And, what limitations under the California Right to Repair Act are added by the use of the word “first” as a modifier to the words “sold or used?” For example, does this clause mean that products may be manufactured anywhere and then first sold or used in California, such as products manufactured in New Jersey and then first sold in California? Alternatively, does this clause when modified by “in California” mean that products must be manufactured in California and then either first used or sold in California as well? Also, if products are manufactured for the first time and “first sold” in California to a California consumer, then subsequently sold to a consumer in another state such as New Jersey, does the New Jersey consumer receive the benefit of the three- or seven-year warranty from the OEM under the California Right to Repair Act? Or, is the three- or seven-year warranty only available to the California consumer who was “first sold” for the first time the product manufactured in California?

### Conclusion

OEMs, owners of products, and repair facilities alike are waiting for regulatory guidance on the open questions regarding the California Right to Repair Act, as with the NY DFRA. Nonetheless, OEMs should consider their current policies and procedures for providing replacement parts, tools, and documentation to prepare for compliance with the California Right to Repair Act. Owners of products of digital electronics and appliances and independent repair facilities can begin to consider their upcoming repair options once the California Right to Repair Act expands the ability to obtain previously unavailable replacement parts, tools, and documentation. Moreover, OEMs, consumers, and

independent repair facilities across the U.S. who are not located in New York, Minnesota, or California may begin to consider their potential upcoming requirements and repair options as right to repair legislation inevitably expands.

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*Jenny Frank, Matt Dunn and Jack Griem are members of Carter Ledyard's Cybersecurity and Data Privacy practice.*

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#### **related professionals**

**Jennifer “Jenny” Frank** / Associate

D 212-238-8650

[frank@clm.com](mailto:frank@clm.com)

**Matthew D. Dunn** / Partner

D 212-238-8706

[mdunn@clm.com](mailto:mdunn@clm.com)

**John M. Griem, Jr.** / Partner

D 212-238-8659

[griem@clm.com](mailto:griem@clm.com)