



# PROPERTY



WARRANTY  
VOID  
IF REMOVED



## COMMENTARY PAPER

‘Void if broken or removed’  
equipment labels: the risks  
behind warranty seals

# ‘Void if broken or removed’ warranty labels: the risks behind warranty seals

## Asking for forgiveness

The late Rear Admiral Grace Hopper was known as a Yale graduate with a PhD in mathematics, computer pioneer, naval officer and awardee of the presidential medal of freedom. As a military officer in a large organization, she was cognizant that getting permission to do some things meant going up several levels in the hierarchy. Admiral Hopper was also known for employing and helping to popularize the expression “ask for forgiveness, not permission”. What she meant was to do the right thing within an organization, whether or not they know about it. That way you can help the people you work with and for.

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The phrase seems to have taken on new meaning these days. Under the 1975 Magnuson-Moss Warranty Act, which will be explained in this commentary, the feds mandated that a consumer could open their electronics without voiding the warranty. This is true regardless of what the warranty language stated or any seal that advised differently. If this is law, it is unsettling how comfortable manufacturers feel breaking it and the opposite of what asking for forgiveness means.

Pricing control or price fixing, cost-push inflation, low quality of products and lack of incentive for innovation, are characteristics of a monopoly. While a company may not be a monopoly in their industry, falsely advertising that a warranty would be void because of a broken seal, effectively creates a repair monopoly during the warranty period.

## The manufacturers perspective

Patrick Hope, executive director at Medical Imaging & Technology Alliance (MITA), a division of NEMA, published a letter on January 30, 2019 addressed to the Senate Committee on Technology. In this letter, Mr. Hope details his opposition to senate bill 425 (SB425) and requests a clear exemption for medical devices. SB425 would have required original equipment manufacturers of digital electronic devices to make diagnostic and repair information available – both to device owners and independent repair providers.

State of Hawaii SB425 section 1.0 states, “The legislature finds that the goal of “right to repair” laws is to make it possible for consumers to repair broken electronic equipment, such as computers, smart phones, and appliances, by requiring manufacturers to make repair manuals and other information publicly available and to sell to consumers and independent repair shops the parts, diagnostic software, and tools needed to fix their products. At least twelve states have considered right to repair laws over the past few years. Without the enactment of these laws, consumers must rely on the manufacturer for any repairs. To address this concern, the legislature concludes that it is appropriate to ensure that consumers have the ability to repair their own devices or pay an independent shop to repair their devices.”

On July 10, 2020, SB425 came to an end. However, the letter published by Mr. Hope conveys a concern that remains of paramount importance from MITA's perspective. "Servicing a medical device is a complex and often difficult activity that poses a range of serious risks to patients and operators if performed improperly. For this reason, satisfactory quality and regulatory performance of servicing activities is dependent on more than possession of proper materials. Suitable training, adherence to a quality system, and compliance with regulatory requirements set by the FDA are essential to proper device servicing.

Not only do manufacturers invest significant resources into the manufacture and design of medical devices, they also invest heavily in development of servicing tools, training and protocols. These proprietary resources are not necessary for the successful servicing of devices. In many cases, one manufacturer may service another manufacturer's device, doing so based on their own know-how and reverse engineering efforts. Many non-OEM servicers also already make this kind of investment in their own proprietary servicing tools, training and protocols. All independent servicing organizations need to accept the responsibility to ensure the return of the device to safe and effective operation and can do so by adopting appropriate quality systems and developing their own servicing protocols, tools, and training.



Medical imaging device servicing requires the highest level of technical and procedural training. This training needs to be regularly updated to reflect knowledge of the latest products, including software and hardware, and a deep understanding of and adherence to current best practices. Operating within a quality system ensures that devices consistently meet applicable requirements and specifications.

Currently, only OEMs are held to high regulatory requirements by the FDA. Non-OEM entities are not held to the same consistent quality, safety, and regulatory requirements as are OEMs. The MITA position is that all entities engaged in servicing medical devices should be held to consistent minimum quality, safety, and regulatory requirements. Independent service organizations requesting access to repair materials are no exception. It is unfortunate that these discrepancies currently exist and that operators and patients are not guaranteed an equivalent level of quality, safety, and regulation regardless of who services a medical device. For these reasons, we believe that medical devices should be exempted from S.B. 425."

EFI Global obtained additional letters and testimony from associations, coalitions and manufacturers, all voicing opposition to SB425. The concerns posed were similar to those detailed by Mr. Hope, excluding adherence to FDA regulations. Kathryn Gunter, director of state government affairs at the Entertainment Software Association (ESA), stated "We recognize that the vast majority of repair shops would not use the provided tools and documentation for any illegal purposes (e.g., removal of security features). However, at the rate in which knowledge is spread via social media and other online communication channels, it would only take a few bad actors to have a rapid and severely detrimental impact on the industry."

## The consumers perspective

Every day, consumers purchase residential electronics, manufacturing equipment and countless other electrical or mechanical items that are sold with a manufacturer's warranty. 30-day, 90-day, 6-month and 1-year warranties are common for new equipment. Imagine you purchase a new, \$27,000 high-end computer for graphic design purposes. The computer experiences a problem after 8 months. The computer is covered by a 1-year warranty. You contact the manufacturer, they acknowledge their responsibility under the warranty terms, and deem it necessary to replace a circuit board within the computer. The new board has a lead time of 10 weeks.



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As you lift your jaw off the ground, you start to consider all available options. A local vendor that has performed high quality repairs for you in the past, advises that they have the board in stock. They purchased equipment from a company that went out of business, and one computer had an identical board. Even though you could get the board replaced at no cost per the warranty, you are cognizant that serving your clients and fulfilling orders is far more important than getting a free board. Therefore, you agree to pay for the replacement board through the local vendor. Before the work begins, the vendor advises that a seal on the computer states that the warranty will be voided if broken. You would still like to have the warranty cover all remaining components. As such, what are you supposed to do?

## Regulation

### United States Public Interest Research Group

It would be an exercise in futility to address the illegality of warranty seals, if qualified third-party vendors did not exist. Since there are vendors that perform quality repairs and service, and plenty of talented individuals that can perform repair themselves, it is imperative to consider the right to repair legislation and how this all ties together.

In December of 2017, it was discovered that Apple was intentionally slowing down phones with older batteries. They defended this tactic by saying it was intended to reduce performance issues. Many people wondered if Apple was covertly pushing consumers to upgrade to a new phone. Regardless of intent, this issue could be resolved by replacing the battery – a battery that Apple doesn't make available to customers or third-party repair businesses.

There is also a growing problem as farmers attempt to repair newer tractors with modern electronic equipment. John Deere installs digital locks on some of its equipment, which blocks anyone but an authorized John Deere repair technician from performing repairs. Bloomberg Businessweek published an article titled, "Farmers fight John Deere over who gets to fix an \$800,000 tractor". The article details frustrations of individuals who grew up fixing equipment as an economic necessity, and the fight to keep their right to do so.



Right to repair legislation has attracted bipartisan support as a common sense reform. Right to repair has already been applied to the automotive industry. Parts and tools needed for repairs are available to customers and independent mechanics, not just dealerships. The goal is to expand this policy to all electronic products.

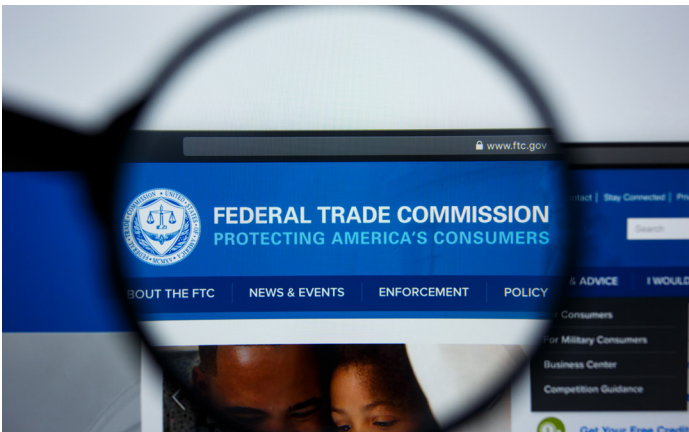
### Magnuson-Moss Warranty Act

According to the Federal Trade Commission Businessperson's Guide to Federal Warranty Law, the Magnuson-Moss Warranty Act (MMWA), passed by Congress in 1975, is the federal law that governs consumer product warranties. The act protects consumers' rights by detailing the obligations of warrantors that offer written warranties with their consumer products. While the act makes it easier for consumers to seek a remedy for breach of warranty in court, it also promotes resolving disputes informally. The act does not apply to warranties on products sold for resale or for commercial purposes. The act covers only warranties on consumer products. This means that only warranties on tangible property normally used for personal, family, or household purposes are covered. Note that applicability of the act to a particular product does not depend upon how an individual buyer will use it. As such, the MMWA would apply to the high-end computer described above.

The reason a prohibition on voiding warranties for unauthorized repair is included in MMWA, is to prevent "tying" conditions. You are not supposed to be able to use one sale to force or "tie" consumers into future connected services, such as repair. The FTC May 2021 Report to Congress stated, "*This provision, for example, bars an automobile manufacturer from voiding a warranty if a consumer has scheduled maintenance performed by someone other than the dealer, prohibits a printer manufacturer from conditioning its warranty on the purchaser's use of the manufacturer's branded ink, and forbids a smartphone manufacturer from voiding a warranty when a consumer has a new battery installed at a kiosk at the mall. In short, the anti-tying provision bars manufacturers from using access to warranty coverage as a way of obstructing consumers' ability to have their consumer products maintained or repaired using third-party replacement parts and independent repair shops.*"

## Federal Trade Commission

In a Federal Trade Commission (FTC) post, the FTC explains that according to the Magnuson-Moss Warranty Act, “no warrantor of a consumer product may condition his written or implied warranty of such product on the consumer’s using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name.” In other words, companies can’t void a consumer’s warranty or deny warranty coverage solely because the consumer uses a part made by someone else or gets someone not authorized by the company to perform service on the product. Additionally, a claim that creates a false impression that a warranty would be void due to the use of unauthorized parts or service may be a stand-alone deceptive practice under the FTC Act. Companies may, however, disclaim warranty coverage for defects or damage caused by the use of unauthorized parts or service.



On April 9, 2018, the FTC sent warning letters to six companies as a result of a review the FTC performed regarding published warranty language. While each letter addressed a specific violation(s), an example of one such letter to Sony stated the following:

The FTC’s Division of Marketing Practices has reviewed written warranty materials related to products offered by Sony Computer Entertainment America LLC (“SCEA”) available on SCEA’s website, [www.playstation.com](http://www.playstation.com), a website that markets gaming systems and other products to consumers. Staff has concerns about certain representations your company is making regarding its warranty coverage. Staff is particularly concerned about the following statements, included in SCEA’s written warranty:

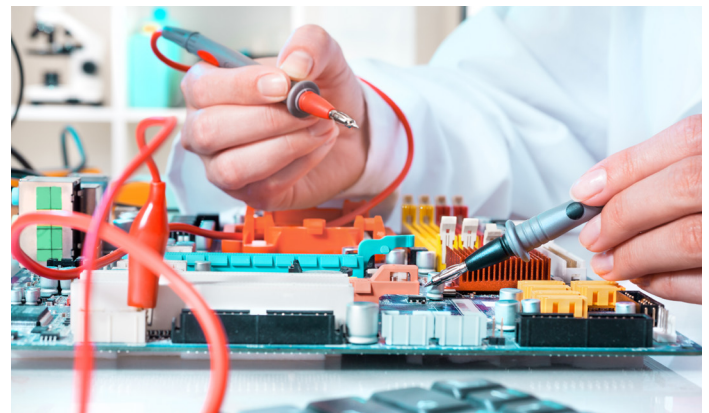
THIS WARRANTY DOES NOT APPLY IF THIS PRODUCT: ... (B) IS USED WITH PERIPHERALS SCEA DOES NOT LICENSE OR SELL, INCLUDING NON-LICENSED GAME ENHANCEMENT DEVICES, CONTROLLERS, ADAPTORS AND POWER SUPPLY DEVICES (“NON-LICENSED PERIPHERALS”); ... (G) HAS HAD THE WARRANTY SEAL ON THE PS4™ SYSTEM ALTERED, DEFACED, OR REMOVED.

Staff similarly would be concerned about any additional representations made by SCEA that state or imply that its warranty coverage requires a consumer to purchase an article or service identified by SCEA or another brand, trade or corporate name. Furthermore, staff would be concerned if SCEA, in practice, denied warranty coverage based on the warranty provisions quoted above or any similar provision.

This letter places you on notice that violations of the Warranty and FTC Acts may result in legal action. FTC investigators have copied and preserved the online pages in question, and we plan to review your company’s written warranty and promotional materials after 30 days. You should review the Warranty and FTC Acts and if necessary, revise your practices to comply with the Acts’ requirements. By sending this letter, we do not waive the FTC’s right to take law enforcement action and seek appropriate injunctive and monetary remedies against SCEA based on past or future violations.

## US Copyright Office

Manufacturers question whether the right to repair is legal under copyright law. Repair.org posted an explanation to this concern stating, “The US Copyright Office (“USCO”) concluded in December of 2016 that poor interpretation of copyright law has led to confusion, but that copyright law does not restrict repair, tinkering, customization, security research or resale. The USCO concludes that repair is not an infringement but that manufacturers have been removing existing legal rights through unfair and deceptive contracts which can only be addressed in state law.



Legislation has been carefully drafted to include protections for copyrights, patents and trade secrets. Intellectual property is not altered or pirated in the course of repair. Licensed software products or media backups can only be restored after repairs are complete. Embedded code (firmware) is either restorable as part of the purchase (under patent law), or legal (under copyright law) to back up and restore for purposes of repair. Right to Repair does not, and cannot, alter IP federal law.”

While software licensing is where the laws become a bit unclear, there is an exemption in the Digital Millennium Copyright Act that makes it legal to jailbreak devices such as phones, appliances, and nearly anything else (section 1201 exemptions to prohibition against circumvention of technological measures protecting copyrighted works). Jailbreaking is the process of modifying an electronic device to remove restrictions imposed by the manufacturer. The exemption theoretically allows a device to run third-party custom software, which can extend its life or functionality if the manufacturer sunsets support or declares an end of service (EoS) life. End of service is a phrase used to indicate the ending of service, updates and support. However, just because such modifications are legal does not mean they're possible, and manufacturers routinely push out updates to block jailbreaking.

### **The International Association of Medical Equipment**

#### **Remarketers and Servicers (IAMERS)**

The IAMERS is a trade association whose members include large OEMs and small companies that sell and service pre-owned medical imaging equipment. These entities install remanufactured or refurbished devices. The IAMERS advised that independent sellers and servicers of used medical equipment are facing pressures from the lack of adequate cooperation when attempting to obtain service access information. The IAMERS goes on to say that as the U.S. FDA noted in its 2018 report on safety and effectiveness of servicing of medical devices, “the objective evidence indicates that many OEMs and third-party entities provide high quality, safe, and effective servicing of medical devices.” Importantly, the FDA also noted “the continued availability of third-party entities to service and repair medical devices is critical to the functioning of the U.S. healthcare system.”

#### **European Parliament**

The European Parliament published an article in April 2022 titled “Right to repair: MEPs want more durable and more easily repairable products”. The article points out that 77% of European Union (EU) citizens would rather fix a device than buy a new one, consumers must be able to choose longer lasting repairable products, defining obsolescence as an unfair commercial practice, and a legislative proposal on a right to repair is a key EU initiative for 2022.

The article goes on to state that members of the European Parliament (MEPs) agreed that an effective right to repair should address a product’s lifecycle and take into account: product design, ethical production, standardization and consumer information, including labelling on reparability and public procurement. It should foster a more efficient use of resources, reduce waste and encourage an extended use of products. MEPs also want products to be designed to last longer, to be safely repaired and their parts easily removable. They believe repairers and consumers should have access to repair and maintenance information free of charge.

### **Key takeaways**

- Under the 1975 Magnuson-Moss Warranty Act, consumers can open their electronic equipment without voiding the warranty. This is true regardless of what the warranty language states or any seal that may advise differently.
- Manufacturers are not supposed to be able to use one sale to force consumers into future connected services, such as repair.
- The Copyright Law does not restrict repair, tinkering, customization, security research or resale.
- The FDA noted in a report that objective evidence indicates that many OEMs and third-party entities provide high quality, safe, and effective servicing of medical devices. The continued availability of third-party entities to service and repair medical devices is critical to the functioning of the U.S. healthcare system
- Right to repair legislation has attracted bipartisan support. Right to repair has already been applied to the automotive industry, and parts and tools needed for repair are available to customers and independent mechanics. The goal is to expand this policy to all electronic products.
- Right to repair legislation is being pursued by advocates and governments globally.

### **About EFI Global**

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## Get in touch with an expert



### Chris Andres

With more than 40 years of mechanical and electric engineering experience, Chris Andres is a senior forensic engineer. His expertise includes forensic experience in cases involving electrical and mechanical failures in automotive, appliances and electronics, HVAC, lightning strikes, power surges, boilers, heating and cooling systems, product liability evaluation, and fire suppression sprinkler systems. In addition, Chris is certified by NAFI-IAFI as a fire investigator and has over 22 years of experience in the design, analysis and manufacture of high-performance equipment. For more information, contact [chris.andres@efiglobal.com](mailto:chris.andres@efiglobal.com).



### Eric Lalli

As the assistant vice president of forensics, Eric Lalli has 35 years of experience in forensic investigations – leading multinational engineering firms, major regulatory agencies and manufacturing operations in North America. He has conducted thousands of multi-jurisdictional investigations involving equipment, infrastructure and complex integrated technical systems in all major industries and regulated products. Eric is an expert in occupational health and safety, as well as safety engineering. Additionally, he is a specialist in workers' compensation and personal injury investigations, is experienced in dispute resolution and mediation and has provided litigation support, expert evidence and testimony for civil and quasi-criminal cases. For more information, contact [eric.lalli@efiglobal.com](mailto:eric.lalli@efiglobal.com).

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