



by Rene Young

Major Development on the Right to Repair Front

Bills C-244 and C-294 Passed by Both Houses

On October 9, 2024, the Standing Senate Committee on Banking, Commerce and the Economy held hearings in Ottawa in connection with the study of Bills C-244 and C-294. Both Bills propose amendments to Canada's copyright law.

Bill C-244, a Private Member's Bill, introduced to Parliament in February 2022 by automotive and industry critic MP Brian Masse (Windsor West), allows consumers and businesses to bypass digital locks on products, including vehicles, to make repairs without violating copyright laws. Bill C-294 focuses on allowing different technologies

to work together without breaking copyright laws.

Representatives of automobile manufacturers, the aftermarket auto industry, the farming and farm equipment industries, and the gaming software industry testified during the October 9 hearing.

Beyond automotive repair, Bill C-244 encompasses everything from farm equipment to cell phones. It seeks to settle the question of who owns the data generated by consumer products and whether there is a valid argument for restrictions on who can access diagnostic and repair information for

those products.

Proponents of the Right to Repair movement and of this Bill are of the opinion that consumers own the data and have the right to choose where to obtain repairs and maintenance of products they have purchased. As this relates to automobiles, it means that independent repairers should not be restricted from having access to the diagnostic and repair information, tools, and training necessary to perform maintenance and repairs.

The auto manufacturers argue that untethered access can lead to security

and safety risks due to improper repairs or modifications to core vehicle software programming. They claim that the person making the repairs might be falling afoul of the Copyright Act, especially if they have to break a password, digital lock, or tamper with the digital rights management (DRM) system in order to perform as repair.

"There are serious implications for opening up critical vehicle systems to anyone and everyone," stated Lucas Malinowski, Director, Federal Affairs, Global Automakers of Canada, during his remarks. He cited the historic rates of auto theft in Canada and said the auto manufacturers often get asked why they can't make vehicles harder to steal. "One of the ways we do make them harder to steal and harden those systems is by updating the software and protecting that software. So, having a blanket opening under the guise of right to repair...will allow potentially more bad actors to access that software and bypass it to make it easier to steal a vehicle or change the safety parameters or even the emissions parameters of the vehicle."

“The ARA is lobbying on behalf of Industry for a Canadian based SDRM system.”

There's also the question of liability. If a safety system is tampered with and injuries resulting from a subsequent accident are linked to that system failing to perform as designed, who is liable? It may seem obvious that the manufacturer is off the hook in a situation like that, but it still may involve protracted legal challenges and costs.

The Canadian Automotive Service Information Standard (CASIS) is a voluntary agreement reached in 2009 and fully implemented in 2010 that allows independent repairers to access manufacturers' diagnostic and repair information, tools and training, equal to the access afforded to their franchised dealerships.

Do dealership service technicians have access to core vehicle software at a level that allows them to overwrite the parameters Mr. Malinowski referred to? Are they software programmers? Is that what the aftermarket automotive industry is after? Does the aftermarket want to steal cars? Of course not!

I participated in the discussions and

negotiations that led to the CASIS agreement and early on, the auto manufacturers were making similar arguments. I remember one of them directing a comment to a representative of the Automotive Industries of Canada (AIA) saying (and I'm paraphrasing here, slightly) "All you want is to get our proprietary engineering data so you can make your knock-off parts."

In a later meeting, I had the opportunity to debunk that accusation and made it clear that all we wanted is the ability to repair vehicles. Nothing more. I remember the look on the faces of the auto manufacturer representatives at the table, and to this day, I believe it was a turning point.

I agree that any amendments to the copyright act should protect critical vehicle software from being open to anyone. That said, there will always be bad actors, no matter what the rules are.

The CASIS agreement does not cover access to vehicle security information. That was defined as immobilizer resets, key codes, and certain other systems and components. But today's vehicles have systems and components that did not exist in 2009. The scope of what may be considered "vehicle security-related" is growing, and consequentially, so is the number of access points being restricted.

In the United States there is a system whereby vetted individuals can access vehicle security-related data, but not all auto

manufacturers participate. And even among those that do, some do not allow access by Canadians. The ARA is lobbying on behalf of Industry for a Canadian based SDRM system.

There is also a growing number of manufacturers restricting the ability of independent repairers to purchase certain replacement parts.

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While it is understandable that auto manufacturers would want to ensure that repairs to their models are performed properly, one cannot help but suspect that part of their motivation is to control how market share is distributed.

Bill C-244 had its third reading in the House of Commons on October 18, 2024, and was passed. It then moved to the Senate, where it had its third reading on October 31 and was passed. It now awaits Royal Assent.

I am not surprised that it passed because after listening to the recording of the October 9 Senate hearings, I sensed that the Senators on the committee weren't buying the arguments presented by the manufacturers' representatives.

Now we will have to wait and see what regulations will result from the amendments

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to the Act. As with most legislation, there may be unintended consequences. I admit, the CASIS agreement isn't perfect either, as there are still many in the industry pointing to its shortcomings or suggesting that the OEMs are not complying completely.

Whatever comes, I think there should be 100% compliance by all manufacturers and distributors of vehicles sold in Canada.

Australia appears to have developed a model Canada may wish to emulate: "Under the *Competition and Consumer Act 2010*, motor vehicle service and repair information must be made available to all Australian motor vehicle repairers and registered training organizations to buy at a price that does not exceed the fair market value."¹

The following description appears on the Australian Competition & Consumer Commission (ACCC) website:

Repairers and registered training organizations that meet certain criteria can also access safety and security information.

Data providers, such as motor vehicle manufacturers, are required to provide diagnostic, service and repair information

to repairers at a price that does not exceed the fair market value. Failing to comply with the main obligations of the scheme can result in penalties.

The Australian Automotive Service and Repair Authority (AASRA)² is a joint industry-led body appointed by the government as the Scheme Adviser.

The Scheme Adviser is responsible for the day-to-day operations of the scheme, such as:

- Providing guidance to repairers and registered training organizations on where to access information. For example, where on each manufacturer's website
- Assisting industry on how to use the portal and share information through it
- Nominating mediators or technical experts to conduct dispute resolution
- Reporting and providing advice to the ACCC about systemic regulatory or enforcement issues

AASRA has created an online portal for repairers and registered training organizations. The portal allows them to

verify they meet the criteria for accessing safety and security information.

In Canada, *OEMRepairInfo.ca* was designed to fulfil a similar role: a portal through which repairers can find OEM service and repair information websites. It also provides guidance for using the OEM websites and some third-party information resources where available.

Perhaps a Canadian solution to the right to repair issue is a hybrid like Australia's: legislation mandating the universal availability of all repair and diagnostic information, and an independent body with designated authority to oversee compliance and facilitate access to the repair information. With the passing of Bills C-244 and C-294, the framework has now been established.

The ARA, through its membership in the National Automotive Trades Association (NATA) is actively involved in the quest for a solution that works for all parties. This initiative is particularly important to the mechanical repair and collision repair subsectors, and is yet another example of the value of membership in the association. ■

¹ <https://www.accc.gov.au/by-industry/cars-and-vehicles/motor-vehicle-information-scheme-mvis>

² <https://aasra.com.au/>

BMW Canada to Begin Restricting Structural Body Parts

Starting November 1st, BMW Canada will restrict sales of certain steel, aluminum, and carbon fiber body parts to BMW Certified Collision Repair Centres only. This follows a similar move by BMW USA, which restricted steel structural parts starting October 1st.

With the increasing technology in vehicle engineering, repairs have become more complex, making OEM procedures and repair standards critical to ensuring a vehicle is returned to its original roadworthy condition and maintaining road safety. As



certified centres are required to meet specific standards, repair shops may need to adjust their processes accordingly.

The Automotive Retailers Association has reached out to BMW for more details on these developments. ■