

**Submission to the Standing Senate Committee on
Banking, Commerce and the Economy on Bill C-244
— *An Act to amend the Copyright Act (diagnosis,
maintenance and repair).***

October 2024

ABOUT LKQ

LKQ Corporation, a prominent S&P 500 and Fortune 300 company, employs over 50,000 people worldwide, with more than 22,000 employees and over 750 locations across North America. Operating a fleet of 6,000 vehicles, LKQ efficiently distributes automotive replacement parts and offers comprehensive diagnostic and calibration services throughout the United States and Canada. The majority of LKQ's parts are either new aftermarket components or high-quality recycled, remanufactured, or OEM refurbished parts, providing consumers with cost-effective alternatives to new OEM parts without compromising on quality or safety.

At the core of LKQ's mission is the support of a dynamic and competitive automotive repair aftermarket that empowers consumers with choices when it comes to repairing their vehicles. By offering parts that can cost up to 50% less than new OEM parts, LKQ ensures that the automotive repair industry remains accessible and affordable for all, while maintaining the highest safety standards.

LKQ serves a diverse range of customers within the automotive repair industry, including independent repair shops, automakers, and dealership repair facilities. As a global distributor of aftermarket and OEM products, LKQ leverages a robust supply chain that spans North America and Asia, sourcing OEM replacement parts directly from manufacturers. Additionally, LKQ has established licensing agreements with several automobile manufacturers, allowing the company to sell aftermarket versions of their parts. LKQ's portfolio includes a broad range of intellectual property, encompassing trade names, trademarks, patents, and technology-based assets, some of which are internally developed, and others acquired through licensing agreements and strategic acquisitions.

As the world's largest automotive recycler, LKQ plays a critical role in environmental stewardship. The company recycles approximately 900,000 scraps and end-of-life vehicles annually in North America, reusing and recycling up to 90% of each vehicle's materials. LKQ is committed to industry best practices, including the safe extraction and disposal of hazardous fluids and the procurement of intact parts for reuse in automotive repairs. These parts are either used as is or refurbished to like-new condition. The remaining vehicle carcasses are sent to scrap metal processing facilities, where they are shredded, and the raw materials are repurposed for the production of new automobiles, buildings, and other infrastructure.

CONTEXT

According to the Auto Care Association, total sales of automotive aftermarket goods and services exceeded \$392 billion in 2018. The automotive aftermarket is the largest consumer repair industry in America. Within the aftermarket industry, automaker-independent businesses account for 70 percent of the total parts and service market, while franchised auto dealerships account for the remaining 30 percent¹. With the average age of the U.S. light vehicle fleet at 11.8 years, most cars are not covered by original warranties. According to the Auto Care Association, local small businesses repair most Americans' vehicles.

¹ Auto Care Association Fact Book 2019, p. 12.

Of the more than 272 million light-duty vehicles in the United States, at least 100 million contain at least one type of restriction that prevents independent repairers from performing repairs.² Repair restrictions tend to be found in newer vehicles equipped with new technology, where access to data through a telematics system is required for repair purposes.

None of these repair restrictions existed ten years ago, and most did not exist five years ago. All of them have their origin in the increasing technical complexity of vehicles, such as software systems, telematics systems, and cybersecurity.³ It is clear that the current environment is not conducive to competition or consumer protection.

In order to fully understand the Canadian context, an analysis of the U.S. automotive aftermarket environment is essential. The following is that analysis.

UNITED STATES: THE FEDERAL TRADE COMMISSION (FTC) REPORT AND THE FTC/DEPARTMENT OF JUSTICE (DOJ) JOINT REPORT

The Federal Trade Commission's (FTC) mission is to protect consumers and competition by preventing anti-competitive, deceptive, and unfair trade practices through enforcement, advocacy, and education, without unduly burdening legitimate business activities.

Following a request from the U.S. Congress, the FTC launched a work session in July 2019, as well as a call for comments, to evaluate existing practices and assess whether automakers are limiting consumers' and independent repairers' access, and whether this impact consumer protection and rights.

In May 2021, following the submission of its report to Congress, the FTC identified numerous types of repair restrictions, such as the use of adhesives that make parts difficult to replace, limiting the availability of replacement parts, and the unavailability of diagnostic software. The FTC also reported having no evidence to support manufacturers' justifications for the repair restrictions.⁴

In its report, the FTC makes a number of recommendations to Congress to ensure that the auto repair market remains open. In particular, the FTC states that it could engage in rulemaking to declare certain types of repair restrictions illegal.

The FTC also stated that the burden of repair restrictions falls most heavily on communities of colour and low-income communities. The same conclusions could also be drawn for rural and remote communities, where many business owners may operate small independent repair garages.

² LKQ Report to the FTC, p. 3

³ Nixing the Fix: An FTC Report to Congress on Repair Restrictions, p. 44

⁴ FTC Report to Congress Examines Anti-Competitive Repair Restrictions, Recommends Ways to Expand Consumers' Repair Options | Federal Trade Commission

On July 9, 2021, President Biden introduced the Executive Order on Promoting Competition in the American Economy. The purpose of the Executive Order is to promote competition in the U.S. economy, lower prices for families, and increase wages for workers.

It also states that, to promote competition in the U.S. economy, the executive order will make it easier and cheaper to repair items you own by restricting manufacturers from prohibiting self-repairs or third-party repairs of their products, encouraging the FTC to issue rules against anti-competitive restrictions on the use of independent repair shops or the performance of DIY (do-it-yourself) repairs.⁶

Both the Biden administration and the FTC have stated that competition should be promoted and that appropriate enforcement and regulatory options, as well as consumer education, should be evaluated. The FTC says it is prepared to work with legislators, at both the state and federal levels, to ensure that consumers have a choice when they need to repair products they have purchased and own.

In this regard, Representative Neal P. Dunn of Florida introduced a bill on February 9, 2023, entitled the Repair Act, which proposes that the United States Congress enact a comprehensive right to repair legislative scheme dedicated to the automotive diagnostic, repair, and maintenance industry.

As the U.S. Copyright Office considers exemptions to copyright regulations that would facilitate consumers' and businesses' right to repair, the Federal Trade Commission (FTC) and Department of Justice (DOJ) have submitted public comment calling for the renewal and expansion of these protections. In their joint report⁷ from the Federal Trade Commission (FTC) and the Department of Justice (DOJ) identified a clear need to expand repair protection to protect market competition, small businesses and consumer choice. The two agencies also expressed support for an "additional exemption to allow vehicle owners or the repair shop of their choice to access, store, and share vehicle operational data, "needed for repairs—all without sacrificing safety and security⁸.

IN CANADA

Canadian consumers share the same concerns as their neighbours to the south regarding this issue, as similar anti-competitive practices are prevalent in Canada.

A survey conducted by Abacus Data in the summer of 2021 found that 94% of Canadians agree that consumers should have the option to service their vehicles at a facility of their choice. Additionally, 83% of Canadians believe that automakers should be legally required to share

⁵ FACT SHEET: Executive Order on Promoting Competition in the American Economy, The White House.

⁶ FACT SHEET: Executive Order on Promoting Competition in the American Economy, The White House.

⁷ Joint Comment of the United States Department of Justice and Federal Trade Commission Regarding Exemptions to Permit Circumvention of Access Controls on Copyrighted Works, The Federal Trade Commission, March 14, 2024

⁸ [FTC and DOJ File Comment with the U.S. Copyright Office Supporting Renewal and Expansion of Exemptions Facilitating Consumers' and Businesses' Right to Repair Their Own Products | Federal Trade Commission](#)

vehicle data with independent repair shops to enable them to repair vehicles effectively. Furthermore, over 75% of Canadians indicated they would be less likely to purchase a vehicle, or would avoid buying one altogether if they were restricted to having it repaired only at a dealership. However, only 32% of Canadians are aware that automakers retain ownership of their vehicle data.

In response to these concerns, AIA Canada launched the “Your Car, Your Data, Your Choice” campaign in late 2020. This campaign includes a petition urging the federal government to legislate on crucial issues of data ownership and portability, which are essential components of the right to repair. The campaign emphasizes the need for data control, consent, transparency, portability, and a level playing field—principles that align with the federal government’s broader data and privacy agenda. To protect consumer choice and control, it is imperative that the Government of Canada extends these principles to ensure that vehicle owners have individual access and control over their vehicle data.

The petition⁹ for this campaign has been signed by almost 45,000 Canadians in just a few months.

DATA ACCESS

As modern technology becomes increasingly integrated into the cars we drive, the issue of consumer access to automotive data becomes increasingly critical. Today’s automotive technology can be used by automakers to restrict access to this important data, allowing access exclusively to automakers and their authorized suppliers.

This raises significant privacy issues. Your car probably knows a lot more than you think, and today’s technology is increasingly linked to your personal devices, such as your phone, providing manufacturers with valuable data and information about car owners and their behaviours. As with any industry involving people’s personal data, car consumers should have the ability to access and control their data as they see fit.

It is important to understand that the right to repair is not tied to data generated by automobiles that are of a decidedly personal nature, such as location data or data related to entertainment devices. The data at issue in this discussion is strictly related to the diagnosis, repair, and maintenance of motor vehicles. This nuance is important for the reader to keep in mind, particularly when analyzing personal life issues of motor vehicle owners.

That said, by limiting access to this data, automakers are effectively forcing Canadian consumers to turn to a limited number of authorized service providers who have the tools to access the data. Having access to their car data would give Canadians more freedom to choose who services their vehicle and at what cost, potentially resulting in significant savings.

For Canadian families already struggling to make ends meet with high car payments, low-cost repairs allow them to better manage their car ownership expenses. Canadians pay up to 50% more to have their cars repaired with original parts than with safe aftermarket or recycled parts.

⁹ Canadians: Demand Access to, and Control of, Your Car’s Data, Automotive Industries Association (AIA) of Canada, 2020

By controlling who can access your data, automakers prevent consumers from going to a local garage to have their car repaired at a lower price than at a dealership, which means less money in their pocket if something unexpected happens.

The more choice for consumers will also lead to more success for small, independent businesses, especially those run by people of colour and those in rural and remote communities. FTC Chairwoman Lina Khan agreed with this statement at the House Energy and Commerce Committee hearing, saying that undue repair restrictions have a very detrimental effect on communities of colour and marginalized communities in particular. She outlined that the type of legislation envisioned could go a long way toward ensuring that manufacturers are not able to unduly control data in a way that limits our ability to repair our own cars.¹⁰

At the FTC hearings, the FTC concluded that the comments and data received could not dispute the arguments that restrictions on repairs have an impact on prices paid by consumers, as demonstrated by right-to-repair groups, including LKQ.

RIGHT-TO-REPAIR AND VEHICLE SECURITY AND SAFETY

We are aware that the issue of auto theft has been top of mind for legislators in recent months. While we acknowledge that auto theft is an issue that must be addressed, the aftermarket industry rejects the scare tactics deployed by manufacturers to limit repair data access. Amid rising automotive thefts, industry accountability is crucial. Manufacturers' claims that granting repair rights worsens thefts deflect from addressing their own vulnerabilities.

The right to repair ensures technicians access essential data for diagnosis and service. If providing such access compromised security, it implies that the vehicle lacked inherent security measures from its inception. By shifting blame onto external factors, manufacturers deflect attention from their own inadequacies in safeguarding products against theft and unauthorized access. Manufacturers have been sharing repair information for decades to great results. Evidence-based policy-making is essential to address genuine security concerns.

We strongly encourage legislators of all parties to work with the aftermarket in order to find solutions to counter auto-theft while promoting the right to repair to the benefit of consumers across the country.

BILL C-244

At its core, we understand that Bill C-244 is intended to have a similar purpose and effect as the U.S. Copyright Office's regulation adopted on October 28, 2018, entitled *Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies*¹¹.

We understand the objective of Bill C-244 is to amend the *Copyright Act* (CA) by ensuring that the section dealing with technological protection measures will now specifically cover the notion

¹⁰ FTC Chair at the House Energy & Commerce Committee

¹¹ <https://www.govinfo.gov/content/pkg/FR-2018-10-26/pdf/2018-23241.pdf>

of computer programs. Article 1 of Bill C-244 achieves this objective by adding the words “*or computer program*” and “*including a computer program*” when it is referred to, respectively, the definitions of the terms “circumvention” and “technological protection measures” that govern the scope of application of section 41 of the CA. On its face, we understand that the legislator’s intention here is to extend the scope of application of section 41 to so-called digital locks. In our view, article 1 of Bill C-244 will do this successfully.

Recommendation 1

LKQ Corporation recommends the adoption of article 1 of Bill C-244 as drafted.

Article 2 of Bill C-244 proposes to add a new section 41,121 to the CA, which, in conjunction with article 1 of the bill, adds a new exception to technological protection measures. This new exception will apply to the circumvention of a computer program in cases where the circumvention is for the purpose of diagnosing, servicing or repairing a product on which the program is embedded. Article 2 will also make it possible for suppliers of products or services that allow the above-mentioned circumvention to market or distribute such products or services. Consequently, in substance, the adoption of this provision will allow the consumer, either by himself or through a third party that he will have mandated for this purpose, to bypass the digital locks that are put in place by an original manufacturer in order to proceed with the repair of a motor vehicle without violating the CA. In this sense, LKQ believes that this provision advances the right to repair for Canadians.

Recommendation 2

LKQ Corporation recommends the adoption of section 2 of Bill C-244 as drafted.

CANADIAN CONSUMERS NEED BILL C-244... AND MORE

Clearly, Bill C-244 is a surgical tool for legislators. It is an important building block of right to repair for Canadians.

However, it must be noted that it remains a one-dimensional tool that is focused on the single issue of digital locks. The issue of the right to repair in the automotive sector is a multidimensional issue. Moreover, the industry is subject to such unbridled technological change that the experience of the past decade has demonstrated that even voluntary initiatives such as the *Canadian Automotive Service Information Standard Agreement* (CASIS Agreement) are fundamentally ineffective in ensuring a sustainable consumer protection instrument in our industry. LKQ takes the opportunity of this submission to indicate that voluntary agreements such as CASIS are not an acceptable option for the implementation of a true right to repair in the Canadian automotive sector. It is an instrument that is outdated in nature and cannot be reformed in light of the changing technology in our industry. That is why we believe that the only way for Canadians to protect their interests as consumers in this case is through legislation, which means

maintaining and restoring a healthy competitive environment in the automotive repair and service industry.

In this sense, unlike a voluntary agreement, the passage of Bill C-244 will be a definite step in the right direction.

That being said, as has been the case in the United States since 2018, we submit to the Committee that legislative action must extend well beyond the issue of digital locks if Canadians are to be adequately protected. In fact, the real threat to consumers in the area of vehicle repairs and maintenance is, in the absence of a legislative regime that specifically addresses this issue, the increasing technological innovations in the field that are organically driving the industry toward a closed-loop system controlled by original equipment manufacturers and their dealer networks. This is especially true since this control is now acquired through cloud-based data control. Since manufacturers are able to gain exclusive access to critical data, aftermarket players are *de facto* ejected from the system. Thus, it remains possible for original manufacturers to circumvent the devices that target these digital locks and, in our opinion, this is why it is also critical that the legislators take note of this phenomenon, and fill the resulting legal void by legislating as quickly as possible.

THE COMPETITION ACT

LKQ believes that a true right to repair in the automotive sector will not be achieved without the legislators mobilizing the legislative tool to maintain healthy competition in Canada, i.e., amendments to the *Competition Act*. It is important to remember that the issue of competition is indeed the central issue of the right to repair. It is therefore expected that the legislators will have to intervene in this matter, at least if they hope not to avoid their responsibility to act on the right to repair. We believe that the legislators have a duty to be consistent and that they must immediately take steps to amend the Competition Act.

Recommendation 3

LKQ Corporation recommends that parallel amendments to the *Competition Act* be included in Bill C-244 to provide for the inclusion of a specific right to repair the regime for the automotive diagnostic, repair and service sector. This inclusion should be seen as a necessary step for legislators who would otherwise have failed to provide Canadians with a true right to repair their motor vehicles.

THE NEED FOR A SPECIFIC LEGISLATIVE REGIME FOR THE AUTOMOTIVE SECTOR

First, as noted above, LKQ urges the legislators to move away from the old model of voluntary regulation of the automotive diagnostic, repair and service industry, as the passage of time and technological innovation have demonstrated both its obsolescence and the impossibility of reform. Secondly, LKQ supports Bill C-244 which effectively addresses the issue of digital locks but does not produce a true right to repair the regime for the automotive diagnostic, repair and service sector.

Thirdly, LKQ considers that the adoption of certain amendments that have already been proposed before the House of Commons Committee, for example by AIA Canada, and which are inspired by Bill C-231—*An Act to amend the Competition Act (vehicle repair)* sponsored by the Member of Parliament for Windsor West, Mr. Brian Massé, are also highly desirable initiatives. However, we also believe that the adoption of this legislation would still leave an incomplete right to repair the regime for the automotive diagnostic, repair and service sector.

Indeed, in the case of Bill C-231, we understand that the establishment of a right to repair the regime is left in the hands of the Commissioner of Competition who, on his or her own initiative, could refer a right to repair issue in the automotive diagnostic, repair and maintenance sector to the Competition Tribunal. The Tribunal could then, after considering the matter, issues an order requiring an original manufacturer to provide access to diagnostic and repair information and replacement parts to the party being denied its right to repair. Without question, the adoption of such legislation will help fill the legal void that has been created by technological developments in the automotive industry. LKQ therefore recommends the rapid adoption of such a provision which would, in our opinion, definitely be another step in the right direction for the legislator.

Although Bill C-59 tries to solve the competition problem by providing the right to go to tribunal in order to increase the right to repair in the country and to have better access to repair information, software, tools or documents, it does not solve the problem in a fundamental way and is very limited.

That said, if adopted on its own, such a scheme would risk subjecting Canadians' right to repair to potentially significant procedural delays and therefore significant costs for the parties involved. Moreover, it is not impossible that such a scheme could generate an asymmetrical right to repair, since the latter will essentially be based on an *ad hoc* assessment by the Tribunal and its jurisprudential activity. From a trade and investment perspective, this approach has the significant disadvantage of reducing the level of predictability of the rights and obligations of the parties involved. We therefore reiterate that only a specific legislative regime that clearly and expressly codifies the elements of the right to repair in the automotive diagnostic, repair and service sector will succeed in providing Canadians with a full right to repair.

Recommendation 4

In the event that the legislators does not quickly consider the adoption of a legislative regime for the right to repair in the automobile diagnostic, repair and maintenance sector, LKQ recommends the rapid adoption of amendments to the *Competition Act* inspired by Bill C-231. LKQ emphasizes that while this legislation has the advantage of filling a part of the legal void that is omnipresent in its field, such amendments would not be able to provide a complete, predictable and affordable right to repair to Canadians. In this context, such amendments should be accompanied by a specific right to repair legislative regime.

FOR A RIGHT TO REPAIR LEGISLATIVE FRAMEWORK

As demonstrated in this submission, in order to provide a true right to repair for Canadians in the automotive diagnostic, repair and service sector, legislators must undertake to codify this right through legislation based on a set of principles. LKQ believes that these principles should be as follows:

- **The need to maintain competition through access of data:** The repair and maintenance of motor vehicles in Canada require access to a great deal of vehicle-generated data, as well as software. Canadian consumers and their designees need access to the vehicle-generated data and replacement parts that are necessary to maintain consumer choice and access to competitive pricing;
- **Compatibility between maintaining security and maintaining competition:** Cybersecurity and security are valid concerns that are not mutually exclusive with respect to the right to repair imperatives. OEMs should not use unfounded technological or legal pretexts to block the transmission of data, as this would impede the ability of the consumer or their designee to access data generated by their vehicle or to access an aftermarket part;
- **The right to decrypted data:** An aftermarket parts manufacturer, independent motor vehicle towing or repair shops, their distributors and service providers must be able to access the repair information and tools essential to repair a vehicle. Consumers or their designees must be able to diagnose, repair and service a motor vehicle in the same manner as any original equipment manufacturer or original equipment dealer. These tasks must be performed by aftermarket suppliers without restriction or limitation (including no royalty, license or restriction on the use of the vehicle) on access to information and technology. To this end, any OEM repair and service device associated with a vehicle must allow for the decryption of vehicle-generated data, as this allows the consumer or his or her designee to access the necessary vehicle-generated data;
- **The right to standardized data access:** In the event that a motor vehicle uses wireless and cloud-based or telematics storage technology to generate data, the original manufacturer must make that data available to the consumer or his or her designee. This data must be transmitted in a standardized form that is directly usable by the consumer or their designee;
- **The right to non-discriminatory access to data:** An OEM must provide all essential repair information and tools related to the motor vehicles it manufactures at a cost that is fair, reasonable and non-discriminatory to aftermarket dealers;
- **Prohibition of misleading statements or omissions:** Outside of the vehicle recalls and warranty repairs, an original manufacturer shall not, in its repair or maintenance procedures, recommendations, information bulletins, manuals or other service guides that are distributed to consumers or professional repairers, suggest that a particular brand or manufacturer of parts, tools or equipment is recommended. Instead, OEMs should include a statement in the above materials that consumers or their designees may use the parts,

tools, and equipment of their choice in these repairs and should carefully consider their options in these regards;

- **Centralized, independent and supervised management of data transmission:** For the purpose of managing the repair and maintenance data that is generated and accumulated by motor vehicles in Canada (whether stored locally or remotely), the government must designate an independent entity to be charged with the mandate of administering a standardized data reporting platform. This entity should be made up of a cross-section of industry stakeholders, including parts manufacturers and distributors, independent telematics and repair service providers, and vehicle manufacturers. This entity will be responsible for managing secure access to vehicle-generated data based on all applicable international and national standards. This entity will be responsible for managing legitimate data transmission requests, data standardization and harmonization, as well as dispute resolution.

The above principles are based on the approach deployed in the American *Repair Act*¹² introduced in the U.S. House of Representatives on February 2, 2022. This initiative has been specifically tailored to address the technological issues in the automotive sector. It calls for the codification of a regime specific to automotive diagnostic, repair and maintenance issues. LKQ believes that this is the preferred approach in an evolving context such as the Canadian context.

In our opinion, with respect to the automotive diagnostic, repair and maintenance sector, an approach inspired by or similar to the American *Repair Act* seems to us to be the best way to respond to the imperatives and commitments of the Government of Canada, as mentioned in the mandate letter of the Minister of Innovation, Science and Industry, since such an approach covers all the angles of the right to repair in our field.

It is also the most effective approach for the Canadian middle class, as it will maximize the containment of runaway inflation in this area of the Canadian economy.

This approach will also reduce the risk of negative impacts on Canada's economic diversity. It is necessary to recall here that thousands of Canadian SMEs that are part of the automotive aftermarket (independent repair shops, parts distributors, etc.) are the first victims of the current legal vacuum that prevails in the automotive diagnostic, repair and maintenance sector. It is clear to us that allowing the situation to deteriorate will eventually lead to fewer accessible service outlets scattered across the country and a damaging bottleneck in the country's OEM dealership networks. This will force an increasing number of Canadians to travel further to have their cars repaired (with the attendant environmental consequences) and will in turn fuel a resurgence of inflationary pressures in the sector, given the reduced supply of services.

Finally, by ensuring that the automotive aftermarket is kept healthy in Canada, and that it is not gradually ejected from the options available to the consumer (which, if left unchecked, will inevitably tend to be limited to the OEMs and their dealer networks), the legislator will at the same time maximize the level of parts recycling within the industry and will deploy key principles of a sustainable and circular economy.

¹² <https://www.congress.gov/bill/117th-congress/house-bill/6570/text>

CONCLUSION

LKQ fully supports Bill C-244, which represents an important first step in guaranteeing the right to repair in the Canadian automotive industry, particularly with regard to digital locks. However, this bill is only the beginning. A broader legislative framework is needed to ensure that consumers retain access to essential repair tools and data, while promoting competition and protecting small businesses in the aftermarket sector.

We urge Senators to support the expansion of Bill C-244 and, importantly, to push for the development of comprehensive, standalone right to repair legislation. This legislation should ensure that all repairers, including independent garages, have non-discriminatory access to essential vehicle-generated data, while upholding cybersecurity and privacy standards. By establishing clear rules for data access, Canada can promote competition, innovation, and affordability for consumers.