

March 15, 2024

Ms. Nicole Taylor
Manager – Environment, Social & Governance (ESG)
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Bay Adelaide Centre
Suite 4600, 333 Bay Street
Toronto, Ontario, Canada M5H 2S5

Via email: nicoletaylor1@kpmg.ca

RE: KPMG pre-consultation for the Government of Canada on right to repair

Dear Ms. Taylor,

On behalf of the Grain Growers of Canada (GGC), Canadian Canola Growers Association (CCGA) and the Canadian Federation of Agriculture (CFA), who represent over 190,000 farm families across Canada, we are writing as a follow-up to your pre-consultation on the right to repair farm equipment held on February 23, 2024.

Right to repair in an agricultural context

In the digital era of farming, the current monopolistic environment for repair services is resulting in farmers being unable to promptly address repair issues with their machinery. This results in inefficiencies, a loss of competitiveness, stifles innovation, and increases cost and risk to farm revenues during the short Canadian growing season. This is especially true when farmers need to repair their equipment during harvest, as each hour of delay can cost them thousands of dollars.

It is generally well understood that modern farms are increasingly dependent on specialized machinery for their operations, such as tractors and combines, that often involve GPS connections, sensors, and digital software to operate. However, this reliance on technology extends beyond traditional farm equipment. It now extends to robotics, drones, sensors etc., in poultry and dairy/cattle barns (i.e., feeding, watering, ventilation, etc.), greenhouses, mushroom facilities and horticulture farms (i.e., with planting and harvesting equipment), tree fruit operations, viticulture, and crop protection equipment.

Failure of machinery during the growing season is a major threat to both the yield and quality of every crop, which are the factors that determine the annual revenues of a family farm business. Compounding all of this is the fact that Canada's growing season is short, which makes time precious. Farmers invest in purchasing extra parts to address mechanical failures in a timely manner when they inevitably occur. However, limited options to address digital warnings or errors that happen in equipment's integrated software mean that farm operations can be stopped for hours, days or even weeks.

In addition to supporting farmers' livelihoods, modern machinery and implements play a critical role in the efficient use of inputs such as diesel, fertilizer, seed, and crop protection products that support production and sustainability. This equipment is critical for Canada's farmers to continue to feed and fuel Canada and the world, while contributing to emissions reduction and Canada's sustainability objectives.

Limitations on repairs and the Federal *Copyright Act*

The challenge farmers face is that the *Copyright Act* prohibits anyone from bypassing Technological Protection Measures (TPMs) that must be accessed to conduct repair. Only those with access to software provided by the Original Equipment Manufacturers (OEMs) have the tools to legally repair equipment. As a result, current legislation is being used to limit the ability of farmers and certified third parties to repair technical issues that occur with modern farming equipment.

This has led to concerns from farmers who have had to face operational downtime while they wait for repair services that are solely available from the equipment manufacturer's dealerships. This challenge only gets worse as equipment ages, having a significant knock-on effect on the used agricultural equipment market in Canada.

Furthermore, while OEMs advertise that their diagnostic software is available to customers, this unfortunately is only available through an annual subscription of thousands of dollars. This undermines the entire right to repair regime, especially since farmers have had the ability for decades to repair their own mechanical equipment through the use of a repair manual provided with the purchase of their equipment. Simply put, the majority of small business, family-run farms do not have the resources for an annual subscription in the thousands of dollars.

Challenges to accessing repair parts

In addition, access to parts to repair agricultural equipment is not always easy. While a producer's closest dealer may be only a short distance away, for many farmers, their closest dealer may not be the one they use or need. Ultimately, farmers have much more limited access to parts and service when repairing a tractor or combine, than compared to repairing a highway semi tractor unit or automobile. This problem has also only become worse as third-party repair shops and individuals retire across the country.

The high cost of repairing agricultural equipment

Third-party or self-repair of equipment is an important means of cost control for the farm business. Farmers are "price takers", so they cannot exert influence over the prices they pay or the prices they receive for their production. The success of a farm business exists solely in its ability to manage costs. For this reason, most farmers have invested in themselves to learn how

to repair machinery to limit repair costs. TPMs are one of the methods being used to force farmers who can perform repairs to purchase repair services from a dealer.

Forcing the purchase of repair services from a dealer leaves no room for price competition, leading farmers no choice by to pay the price the OEM is offering for their repair services. It is also impacting the greater rural economy as a whole. Rural agricultural mechanics are no longer able to perform their trade as they do not have access to the tools needed to maintain or repair the equipment software. They are legally prevented from developing their tools due to the legislation preventing the TPMs from being bypassed. The only option for a rural mechanic to operate legally is to work for a dealership. As dealerships have limited positions available, this reduces the value of heavy mechanics knowledge for agricultural machinery.

In November 2020, the CBC's Cost of Living series ran a story about Hannah Konschuh, who provided an example of the most typical frustration faced by farmers. Her equipment's computer system provided three error codes as a warning of a potential issue. Hannah used the manual provided with the equipment to attempt to address the issue herself, but the manual was not sufficient to determine the exact issue. She was forced to stop operations and call a technician from the dealership. As technicians charge for both travel time and the cost of their labour, the bill for addressing this computer warning ended up at \$1,300.00 and resulted in four hours of lost operating time.¹

Farmers need an effective and affordable means to diagnose and repair their equipment and not be completely reliant on original equipment manufacturers (OEM) dealerships, which can sometimes be located hours away from farms located in rural and remote communities.

Furthermore, OEMs, equipment dealers, and the government have noted for years the labour shortages in heavy equipment mechanics that exist across Canada. These shortages have only made the situation worse, as farmers are forced to seek the assistance of their local dealer for software issues, only to be told they need to wait due to backlogs. Allowing the right to repair in Canada would ease the demand on over-run dealerships as it would again allow farmers to repair their own equipment in its entirety.

From a jurisdictional standpoint, provinces are looking to the federal government to establish an overarching legislative framework, which would then provide some parameters to introduce provincial legislation in this area.

However, some provinces aren't waiting. Prince Edward Island, for example, introduced an amendment to the *Farm Machinery Dealers and Vendors Act* this past Fall which would require manufacturers to supply farmers with repair manuals free of charge, and supply parts, software, and tools at a fair price.

¹ <https://www.cbc.ca/radio/costofliving/has-the-fat-lady-sung-for-movie-theatres-plus-the-u-s-election-canada-and-a-green-recovery-1.5794461/the-right-to-repair-the-stuff-you-buy-and-why-some-companies-prefer-don-t-it-yourself-to-diy-1.5794968>

The impact of limitations on right to repair

Unfortunately, farmers' opportunity to capitalize on potential cost savings, invest in better and more efficient machinery and implements, or leverage competitiveness opportunities is lost if Canada's laws continue to exclude or limit a machinery owner from being able to diagnose and repair their equipment. Research from the U.S has shown that 77 percent of farmers say they have bought, or considered buying, older pieces of equipment to avoid dealing with the software on more modern machinery, despite the potential upsides.²

It is our view that the federal government has a clear role in establishing a legislative structure that strikes a measured and appropriate balance with the intent to create a competitive market for equipment repair that will allow farmers the choice to safely conduct all repairs themselves, through a qualified third party, or through OEM dealerships. Changes could also encourage new business opportunities for Canadians by creating more repair shops in rural communities. Supporting a legislative framework that supports the interoperability of farm equipment will also help competitiveness and cost-effective options for farmers.

Sincerely,

Roger Chevaux
Chair
Canadian Canola Growers
Association



Keith Currie
President
Canadian Federation of
Agriculture



Andre Harpe
Chair
Grain Growers of Canada



Canadian Canola Growers Association (CCGA) represents 43,000 canola farmers on issues that impact farm success and is the largest administrator of Agriculture and Agri-Food Canada's Advance Payments Program. www.ccga.ca

The Canadian Federation of Agriculture (CFA) is the country's largest national general farmers' organization, proudly working for more than 200,000 farm families. www.cfa-fca.ca

Grain Growers of Canada (GGC) is the National Voice of 65,000 Grain Farmers that advocates for the federal government to take decisions that support the competitiveness and profitability of grain growers across Canada. www.ggc-pgc.ca

² <https://pirg.org/edfund/resources/why-farmers-need-right-to-repair-2/>