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The Right to Repair in the Digital Era: An Analysis of the Issue from the Perspective of the
Vulnerable Subject and the Responsive State

Michael Francisco Young

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Introduction

The right to repair at the most basic level is the ability of a consumer or user of a product to have access to a fair, free, and competitive market for maintenance as well as buying and selling of that product. This core part of the right to repair movement is what has been consistently restricted by businesses in the consumer technology space, the automotive industry, the software space, and the agricultural industry among others. The producers of these goods and services have been actively restricting the repairability, accessibility to resources, and competition in order to maximize profits at the expense of the individual consumer (Wiens). Monetary motivations and profit-driven decisions are not inherently negative; in fact, they are needed to run a successful business. However, there are a number of ethical and non-exploitative methods that companies could be employing to improve consumer trust, repair access, and sustainable technological development, all while still maximizing profits.

To understand the full scope of how the world's largest companies such as Apple, John Deere, Tesla, and other industry leaders are limiting our freedom to choose and determine what must be done, an understanding of both technology and the legal framework of the US is needed. There is a multitude of legal questions and much litigation that is ongoing in the fight for a federal right to repair bill (Rossman). This thesis looks to tie together the technological understanding with the aid of a legal analysis as well as to explain the origins of the right to repair, its motivations, and its goals. Importantly, this paper includes an assessment of this social movement from the lens of legal academics which will be used to provide insight as to what can be done by individuals, institutions, and the state moving forward. In doing this, the significance of the right to repair can be understood as more than just idealistic thoughts, but something with legitimate and concrete goals through a responsive state and compliance enforcement.

In considering this goal, picking the correct legal theory to represent the right to repair is very important. After considering several possibilities, Vulnerability Theory, which is authored by Martha Fineman at Emory University School of Law, does the job best as it frames the right to repair using vulnerability analysis, tools of resilience from harm, and state responsibility to act. Traditionally Vulnerability Theory has been used for matters in social justice, women's rights, and other such matters. The present work is one of the first applications of applying VT to the digital domain. When this theory is applied to the right to repair, it considers that institutions, being businesses in this instance, are also subject to harm if state action goes too far. These multiple viewpoints make Vulnerability Theory particularly interesting because it offers different perspectives depending on the current state of affairs and prevents the application of the theory from being an all-out attack on businesses.

Through the explanation of the right to repair and the presentation of it through the lens of this theory, this paper will assert that the current landscape of institutional-individual-state interactions are detrimental to individuals and that a responsive state can solve this abuse. There is a great degree of conflict of interest between the ideal world of a consumer versus the ideal world of a profit driven business. It is currently the case that the status quo has shifted greatly in favor of profit-driven businesses that have used this to take advantage of disadvantaged consumers (Wiens). It is worth noting that the status quo can also shift too far in the direction of the individual and lead to abuse of businesses, but that is not the current situation. As such, this paper will mainly focus on the first issue and only briefly discuss potential harm to business as a result of over regulation. This thesis will break down what the right to repair is, what Vulnerability Theory is, how VT can be applied to the right to repair, showing how a responsive

state can fix the right to repair, and ultimately showing why we should continue to care about this topic.

The Right to Repair

What is the Right to Repair?

The right to repair is a social and political movement that is focused on increasing consumer choice, individual freedom, and encouraging ethical business practices as they relate to both the environment and the consumer. Currently, the most mainstream focus of this movement has been on the consumer electronics space, specifically smartphones and laptops. This area of technology has been at the forefront of the movement because it most directly impacts the most people and changes in this area would immediately and directly benefit millions of people. An example to illustrate the experience of an average person can best explain what a “anti-repair” space looks like today.

Despite how carefully we treat our smartphones and laptops, it is inevitable that through the rush of daily life or even just normal wear and tear, these devices will need something about them replaced. Perhaps the battery is failing, you drop your phone and the screen breaks, or you have a power surge and fry some internal component of your device. Seeing how dependent we are on email, texting, and even zoom today, repairing these things as fast and easily as possible is essential for basic day-to-day activities. If you find yourself rather tech savvy, you might consider buying a new battery or display yourself and saving yourself some time and money, but that isn't as easy as it sounds. The iPhone only has 2 screws on the bottom of it and the rest is held together by glue, only to be disassembled with specialty tools. Samsung phones are also

tightly compacted and held together with glue in specific places. The MacBook even uses proprietary screws known as “pentalobe”, a five-sided star with rounded points, that exist nowhere else (See Figure 1). AirPods don’t even have any way to repair any part of the device, so if something breaks, one must buy a new pair.

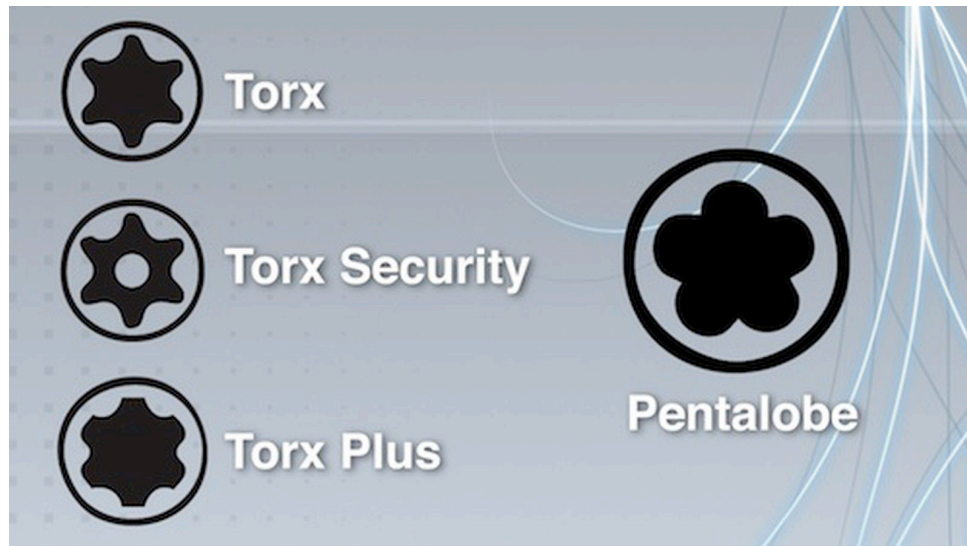


Figure 1. Four types of specialty security screws that are used by companies to prevent repair.

The pentalobe is used by Apple and the Torx Security is used by Microsoft. (Alter)

This leaves you with the option to go into the manufacturer’s store where the manufacturer dictates the pricing, the timeline of the repair, and if they even want to allow the repair to move forward or if they would rather you buy a whole new device. Attempting to go a third-party repair shop will likely not give you any better solutions as many of these shops have to agree to universal pricing, otherwise they may lose their right to buy parts and be “authorized” repair shops. Ultimately, there is never really a choice as to what you can do. In making the repair inaccessible due to specialty tools, limiting parts availability, standardizing pricing, and producing some devices that are outright not repairable the consumer is the one who loses out when these devices succumb to average wear and tear.

This is the current reality, and likely one that many of us have faced. However, the right to repair is attempting to set up a better reality for the people. If we contrast this example to taking your car to a mechanic, there are some stark differences. Notably, we can take the car to the dealership, we can take it to a local mechanic, our buddy can fix it up, or we can do it ourselves. Each of these levels have different prices, accessibility, and timelines; but we are free to choose whichever we want to. Every option is going to use the same parts and they all have access to the same schematics and repair manuals. So, what is different between the automotive space and the consumer technology space?

The answer is legislation. In 2011, a bill known as the “Motor Vehicle Owners Right to Repair Act of 2011” was introduced into the House. This bill requires that the manufacturer of a vehicle that was introduced into the US commerce, “(1) provide to the vehicle owner and service providers all information necessary to diagnose, service, maintain, or repair the vehicle; (2) offer for sale to the vehicle owner and service providers any related tool or equipment; and (3) provide the information that enables aftermarket tool companies to manufacture tools with the same functional characteristics” (H.R. 1449). Through these 3 rules that are currently law, the right to repair exists for all vehicles that exist in the US Commerce, and the people who benefit from this are consumers. Motor vehicles are an essential part of our daily lives and as such, they were the perfect tool to draw as much money out of consumers as possible. This is why the automotive industry is different from the technology industry. There is currently no legislation that is this comprehensive in the technology space, despite it also being an essential part of our daily lives.

Ultimately, this is the goal of the movement. The right to repair does not mean that everyone must repair their own devices or that the ability to go straight to the manufacturer for repairs is no longer an option. It is quite literally just enforcing the freedom of choice, granting

people the *right* to choose what they want to do. If the cheapest option is the worst, consumers should be able to pick it and take the risk. Allow the market to dictate which providers are reputable and responsible enough to continue operating in this space and which businesses should fail because they don't know what they are doing.

Moving Beyond the Smartphone

Much of our mainstream focus lies in the consumer electronics space for the reasons listed above. These issues of repairability are primarily associated with the direct reach that businesses have with their customers as well as how easily consumers understand the struggles of expensive smartphone and laptop repairs. However, I would like to go beyond this space and show the battles that farmers and Tesla owners are fighting as they face similar struggles in the software space. For years farmers have been struggling with John Deere's proprietary software that they are not allowed to have access to. When a tractor breaks down, they are forced to front the cost of towing a 7-ton tractor to and from the nearest dealership all so the dealer can plug in a computer and reset a component digitally (Koebler). The lobbying group that supports John Deere in Congress seems to indicate this is not a problem as they state that, "Equipment manufacturers support farmers right to repair their equipment. Comprehensive repair and diagnostic information is now available for the vast majority of the tractor and combine market through authorized dealers" (Koebler). This claim was requested to be backed up by *Vice News*, but no response was received.

Believe it or not, Tesla owners also face a similar struggle with software. A major way that Tesla vehicles operate within the network of superchargers, a fast charging station associated with Tesla, and stay up to date with self-driving features is by staying connected to the Tesla

service and to receive automatic updates. Any tampering with the car in a way that Tesla does not approve of can result in automatic removal of self-driving features or worse, removal from the national network of superchargers. Removal from this network makes long distance travel impractical as charging a Tesla takes many hours longer if a standard wall outlet is used. This occurred to one such individual on YouTube by the name of “Rich Rebuilds” who made a name for himself by repairing crashed Teslas and giving them a second life. He initially bought parts from Tesla directly, but later they refused to sell parts to him anymore, leading him to salvage parts from other crashed cars, only to have certain privileges revoked after the fact.

Both communities are being indirectly targeted by a lack of comprehensive right to repair legislation. The Motor Vehicle Owners Right to Repair Act covers vehicles in the US Commerce, but it does not explicitly include software and makes an exclusion for “trade secrets”, which these companies are hiding behind (H.R. 1449). There is no turning back from the widespread level of incorporation of technology and software into our daily lives.

Vulnerability Theory

Development of Vulnerability Theory

Vulnerability Theory is a legal theory that was developed by Professor Martha Fineman at Emory University School of Law. The theory asserts that we should view societal structure and interactions between individuals, groups, and the government from the perspective of the vulnerable subject and the responsive state. These vulnerable subjects are both individuals and institutions, and both have levels of resilience to trauma that can be inflicted upon them. This

theory asserts that the current system of laws in the United States focuses on autonomy and independent choices above all else, but that this focus pushes all the pressure of failing onto individual choices and does not consider the circumstances surrounding their choices. In this current societal structure, the state, being the government, facilitates private competitiveness in an asserted meritocracy that rewards individual initiative and talent (Fineman 16). Instead of our network of schools, banks, public support systems, and businesses holding up individuals and ensuring equality of opportunity, this societal structure does too little.

Using Vulnerability Theory as an alternative to the current system is necessary because of the cracks that this network of institutions has. Under the current role of the state, any failure is solely the result of individual failures and not a failure to be supported or a failure to have opportunities presented to oneself (Fineman 17). A focus on autonomy in society is not inherently bad, but it does result to solve inequity by only addressing present issues and looking at the current state of affairs, not the system that created that state of affairs (Fineman 17). Vulnerability Theory proposes that the state take a more active role in ensuring that the institutions that the state authorizes, and that society creates ensure equal opportunity and access to resources that develop resilience in individuals.

Social Structure of Society*

*We note that, while vulnerability is a universal condition, our primary focus here and the examples provided are based on the United States

The social setup in which the state takes an inactive role to prioritize individual and institutional autonomy is not alone problematic. According to Vulnerability Theory, the source of the problem is that failures to support equality and societal health are found in the foundation

of our social structures. We base our expectations of interactions between people and between businesses on the idea of a social contract. This idea is one that stemmed from Enlightenment philosophers such as John Locke, who proclaimed that people are competent and can form agreements between each other based on negotiation, bargaining, and consent. A key element to the social contract is the idea of assumed competence. Although this may have been true at the conception of this concept, when not all groups enjoyed full citizenship, our current, more democratic, society has a multitude of power dynamics, varying education levels, and limited opportunity that we as autonomous beings face and that affect our competency level (Fineman 22). Despite this, these differences are ignored, and we consider the autonomous individual to be competent to form social contracts, thus permitting the state to be inactive.

Because of this assumed competence, the obligation to equalize these disparities is not placed upon the state and instead is accepted by the family structure in society. The material needs of a person, health risks that may develop as a result of bodily fragility, and overall dependency for growth such as food and shelter are left for the family to absorb entirely (Fineman 22). Over time, the state has continued to shift more and more responsibility onto the family structure to take control and independently create equity of opportunity themselves.

There are exceptions when we are born and through early development prior to age 18, the state provides support for our inability to support ourselves. The same occurs when we get older as we need Social Security or end-of-life care. In addition to age dependent support systems, the state provides several government assistance programs such as Medicaid and Welfare that support individuals depending on their financial situation. The state takes on a role to aid here because, as we did not choose to place ourselves in these positions, the dependencies that arise are inevitable.

However, the people who care for these children, who care for the elderly, or who treat the sick, choose to play this role. Societal expectations dictate who takes on roles of motherhood, nursing care, or terminal life care. The state has much less sympathy and support for individuals who allegedly choose to put themselves in these positions and are forced to carry the burden that their roles create. These people are in a form of derivative dependency. It is often their families that again have to absorb the extra monetary, time, and educational cost that derivative dependency and societal expectations force upon them.

Response of the State to Inevitable and Derivative Dependency

Due to the nature of derivative dependency appearing to be the choice of the individual engaging in aid, the state tends to take an inactive role in addressing concerns here. Putting oneself in this position is claimed to be the source of autonomous choices and independent actions, not societal expectations, and unfair power dynamics. According to the view of a government that prioritizes the social contract and autonomy, we should not complain that we created the circumstances that put us in a position of derivative dependency and then expect the state to subsidize our bad decisions (Fineman 25). In addition to this, the expectation of privacy that is present in society further absolves state and institutions from having to act. While there is a right to privacy, and there should continue to be, this right can be misconstrued to imply that anything relating to family life is private and since these dependencies relate to the family, the state has no right to intervene; the concerns are considered to be handled and dealt with (Fineman 25).

What is Vulnerability

In understanding the current role of the state, dependency, and social contracts that we base our social structures on, Vulnerability Theory proposes the concepts of vulnerability and resilience as alternative ways of thought. These two tools work better to address issues of dependency in society by creating a unifying experience and understanding among all humans. Using these concepts, Vulnerability Theory creates a relationship of responsibility between people, institutions, and the state (Fineman 10). People are vulnerable to all kinds of predictable and unpredictable harms that are completely beyond their control. Some of these harms include natural disasters and aging, and individuals should not be held to any degree of responsibility for harms that lie outside their realm of control (Fineman 30). However, these predictable or inevitable harms often lead to secondary harms in our lives. Natural disaster may predicate job loss, economic hardship, or food instability; and aging leads to medical bills and nursing care. These are secondary vulnerabilities that are unpredictable, but we are nonetheless all equally susceptible to them.

Vulnerability Theory asserts that these harms, whether direct or a consequence of other harms, do not go away upon one's individual death. These harms can be and are compounded within one's family and within societal groups throughout generations because of lack of support from the institutions that hold up society. The most obvious form of this compounding harm is debt or familial obligations that are passed down. There are many who live with this compounded harm through no fault of their own. These individuals then cluster together to form groups of similar experiences – groups that are often racial, gender, or religious (Fineman 31). Vulnerability Theory states that we remain in this condition of being harmed and being susceptible to harm throughout our lives and within our groups. The only thing that differentiates us from one another is our resilience: our unique position within society based on the access to a

network of societal institutions that the state established or allow to operate (Fineman 32). If we desire a reduction of harm, we must demand that these institutions, and the state, aid and promote resilience (See Figure 2).

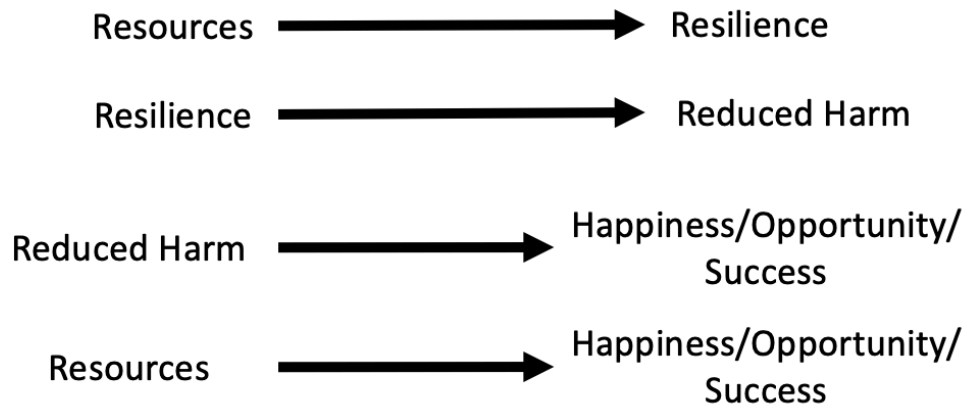


Figure 2. A diagram showing how resources permit happiness/opportunity/success if they are accessible.

What is Resilience

This leads into the explanation of the concept of resilience. Resilience can be explained as the main tool we have to defend against and manage our vulnerabilities. We are all equally vulnerable, but resilience affects how much we are harmed when inevitable damage comes upon us. We gain resilience by accessing the numerous institutions that are tolerated, encouraged, moderated, created, and at times controlled by the state. All these institutions are in partial if not complete control of how resources are handed out to the individual (See Figure 3). These resources may be Physical, Human, Social, Ecological, or Existential. Specific examples of these are education, food, housing, political beliefs, religion, and natural disasters. Social institutions such as churches, schools, state governments, and restaurants are the groups that provide these

resources. Given different accessibility to these, the individual will have different levels of resilience to being harmed. However, some individuals have unequal access to resources because of their position in society and because of institutional failures (Fineman 34).

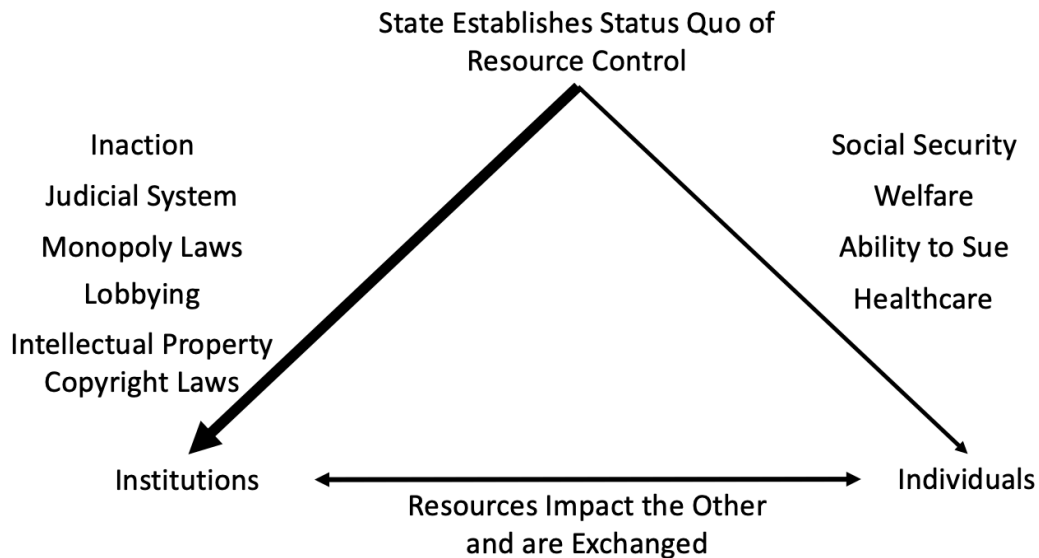


Figure 3. A diagram showing the role of the state in authorizing resource control.

Legally, the state has legitimized social institutions and conferred upon them the authority to dispense resources to the public. So, it is also the state that should ensure that these institutions remain equal and fair to all individuals. However, people are harmed or flourish as a result of the methods these institutions use to dispense society's resources, and this is allowed by the state to occur (Fineman 38). This goes back to the belief in the United States that it is up to the individual to autonomously make the correct choices to overcome inequality, not the duty of the state to ensure that the institutions it endorsed and created ensure equality of opportunity. The burden is thrust upon the individual to fix the problems of a system.

A Solution Through Vulnerability Theory

Vulnerability Theory wishes to acknowledge that the state has legitimized our social institutions, that people are vulnerable to physical, social, and economic harm, that access to resources can provide resistance to these harms, and that things can be improved with the help of an *active state*. By looking at unequal access to opportunity through Vulnerability Theory and accepting that institutions have some role in the lack of equity in our society, we can look to the need to monitor, reform, and evaluate our social institutions (Fineman 39). Instead of connecting every harm that individuals incur as the result of individual action, VT insists that we consider the harm to be caused by institutional action. We can observe how inequality has compounded over generations and how a lack of moderation of our institutions has led to the issues that we face today (Fineman 39).

If the belief is that the state should be inactive and autonomy be paramount, then why is the state so active in establishing social institutions and so active in many parts of government. The state has a well-defined responsibility to implement a support system that ensures equality and equal access to opportunity for individuals who can then make their autonomous and free choices. If we allow the analysis and attendant changing of actions in accordance with VT to influence the operation, organization, and outcomes of social resources dispersed by institutions, then we may develop an active but non-authoritarian state which has robust societal involvement, political strength, and above all else, equal opportunity (Fineman 41).

Application of Vulnerability Theory to the Digital Era of The Right to Repair

Individuals and Institutions in the Right to Repair

The individual in this case is the consumer (children, adults, and anyone who uses or buys technology for any purpose). These may be children using YouTube or TikTok, teens who buy iPhones, adults who drive a Tesla, or farmers operating tractors. These groups of individuals use some form of physical technology or software as a daily part of their lives to work, socialize, and go through their day. They are the ones who benefit from good technology and education, but also the same ones who are affected by the environmental waste, digital locking of software, restriction of repair guides, and limiting of resources. Businesses in this movement are primarily the big tech companies such as Apple, automotive manufactures such as Tesla, and farm equipment companies such as John Deere. These companies serve as industry leaders in software, software integration, technology development, and best business practices for profits. So, what these institutions choose to do and how they elect to divide physical, human, social, and ecological resources trickles down to every other member in their industries.

Types of Resources Institutions Control

As mentioned in the presentation of Vulnerability Theory, there are several types of resources that these corporations control. Most notable are physical resources such as telephones, computers, motherboards, CPUs, GPUs, tools, and equipment. In addition to this, they are also in control of a great number of human resources which would be considered their intellectual property. Their human resources are proprietary methods, training materials, experience, human capital, and education. These corporations control who gets these resources, how much they can get, what they can do with them, and how much they cost to receive. The flow of resources to the individual is regulated by the entity that benefits most from the control of said resources.

Companies such as Tesla control their self-driving software which can be disabled or enabled remotely. They also control access to their network of superchargers, which also can be remotely revoked. Apple could disable software remotely, has throttled phone speeds remotely, and has notoriously limited parts availability. John Deere has also restricted access to software for farmers to run diagnostics and requires shipping their several-ton tractors to a dealership.

Methods of Resource Control

1. Refusal to Sell Tools, Parts, Diagnostic Tools, Manuals, and Software

A common practice to maintain control of these resources is to simply make them unavailable. Necessary parts, service manuals, and proprietary tooling can all be gatekept by the manufacturer of a certain product. Apple is notorious for engaging in these practices and for a long time made parts and repairs only accessible through an Apple Store or an authorized Apple service provider. Only these two avenues provide access to official parts, but since they are both moderated by Apple, the prices are standardized and non-competitive. Even if a third-party store wanted to sell a part directly from their inventory, they would not be allowed without risking losing their certification and access to parts.

However, there are other examples to show how businesses retain control of this element of repairability. Nikon stopped selling parts to unauthorized repair shops by claiming that special tools were now needed to repair their cameras (Hanley 10). The specialty tools were created by Nikon and their implementation in the repair process was also the creation of Nikon, so the issue seems to be perpetuated by Nikon themselves (Hanley 10). Nintendo also engaged in a similar practice by not selling replacement

joysticks for their controllers to anyone, not even to service providers,, meaning that no one could repair their controllers (Hanley 10). Even though a repair would likely be cheaper, this forces the consumer to simply buy a new controller if any wear or damage occurs.

2. **Aftermarket Software Control**

Other methods of resource control by institutions can be software based. Apple is brought up again here as they were caught artificially slowing down older iPhones through software, simply because of their age (Allyn). Many owners of these old devices felt that the slowdown was so severe, they had to “upgrade” their phones. This artificial slowdown was said to be the result of older batteries that held a poor charge, an issue which may have been alleviated by easy and accessible battery replacement and repair. This upgrade further supported Apple as upgrading meant buying a newer, faster, and more expensive iPhone from Apple. This retained users within the ecosystem and further controlled how they may use and treat their phones (Allyn).

Tesla has also engaged in this kind of resource control and determined without the authority of the consumers, how they will use their products. One such instance was detailed by YouTube creator Rich Rebuilds in his video “How Tesla rewarded me for telling the truth.” In this video, he describes how Tesla would disable access to the supercharging network on vehicles that had a salvage title, meaning the car had been considered totaled by insurance and would be sent to a junkyard. After revoking access to the supercharging network, Tesla indicated that these permissions could be reactivated by paying anywhere from a few hundred to a few thousand dollars. Tesla then later decided that this was no longer the policy and re-disabled, without notice, supercharger access for

many people. This video also details an instance in which after repairing a salvage Tesla, Rich Rebuilds had the vehicle's autopilot feature remotely disabled. These features, which are advertised to come with the car-and to many are selling features of the car!- were deactivated. In addition to this degree of after-market software moderation, Tesla also refused to sell this user parts as small as plastic lug nut covers and as large as front bumpers, forcing repairs to be done by exchanging parts between other "totaled" cars.

3. **Predatory Copyright and End-User License Agreements**

Moving beyond the consumer level, John Deere is notorious for its anti-repair practices. They impose software based locks on their systems that force farmers to transport several-ton tractors to "authorized" John Deere dealers so they can diagnose the problem. The cost of transporting these tractors can be insanely expensive and as a result, farmers have resorted to using spoofed software to repair their tractors themselves (Koebler). In defense of the policy to lock out farmers, John Deere claimed copyright protection. As a result of the Digital Millennium Copyright Act, consumers are not allowed to develop any method that may circumvent any technological measures of a product without approval from the copyright owner (Hanley 12).

The application of this law to the John Deere software, that is on every tractor and combine they sell, was used to claim outrageously that "farmers never actually own John Deere tractors, because farmers cannot own the software that makes their equipment run" (Hanley 13). Many manufacturers have also avoided publishing their repair manuals through similar means by asserting that the use of imagery, flow charts, and text can satisfy a creativity requirement for copyright law so that these documents are not,

“procedural elements and factual listings” which are not protected under copyright (Hanley 13).

The use of contracts and the law to control resources to repairability also affects everyone through End-User License Agreements (EULA). Although we may not recognize them initially, these documents are ubiquitous. When you download an app, buy a new phone, sign up for a new social media account, or even buy software, you are greeted with a EULA which you must “sign” to use what you have just purchased. These contracts that we sign have been upheld in courts as enforceable and often include, “post-sale usage, repair, and modification restrictions on consumers” (Hanley 14). Many of these contracts go so far as to state that the company can revoke your right to use the product all together. As part of Apple’s EULA, they can, “change, suspend, remove, disable, or impose access restrictions or limits on any External Services at any time without notice” which was noted earlier with the artificial slowing of phones (Hanley 14). These EULA’s are thousands of words long and we usually skip past them because the only alternative is not to use the product, which for all intents and purposes is not really a choice. Some examples include the Hulu EULA that indicates terms can change at any point and limits an individual’s right to engage in arbitration (See Appendix D). These terms indicate that simply continuing to use the service after the terms have been altered constitutes agreement.

Secondary Environmental Harms

The decisions to make repairability and recycling harder through the above methods not only limits the freedoms of consumers, but it also generates harm in the form of environmental

damage. One of the biggest direct impacts of a lack of repair consideration in design and intentionally treating products as replaceable is increased waste and disposal of potentially fixable goods. Disposability of technology is great for companies as it can boost sales by the millions, but decaying devices in landfills may leak out toxins into our water, soil, and air (Shukla). An article authored by Nikita Shukla focuses on the environmental affects and highlights that the high demand and usefulness of lithium-ion batteries in our technology today has led to increased mining, in the salt flats of Argentina and Chile, that uses a large excess of energy and water (Shukla).

This kind of disposable economy is far more than just a moral wrong, there are serious health risks that humans and animals face if we continue down the path of disposability. Part of the report by Daniel Hanley focuses on the health impacts of decaying e-waste and they found that in 2018, the world produced approximately 15 lbs./person in e-waste (17). As this waste continues to enter the soil our food grows in, the water we drink, and the air we breathe, humans can develop low birth weight issues, thyroid problems, and irreversible neurological damage (Hanley 17) (See Figure 4). Complete disposal of technology should not be the first choice that these industries take. If they want to focus on lessening the harm that consumers are subject to and protecting them, they should focus on reducing waste and/or reusing products.

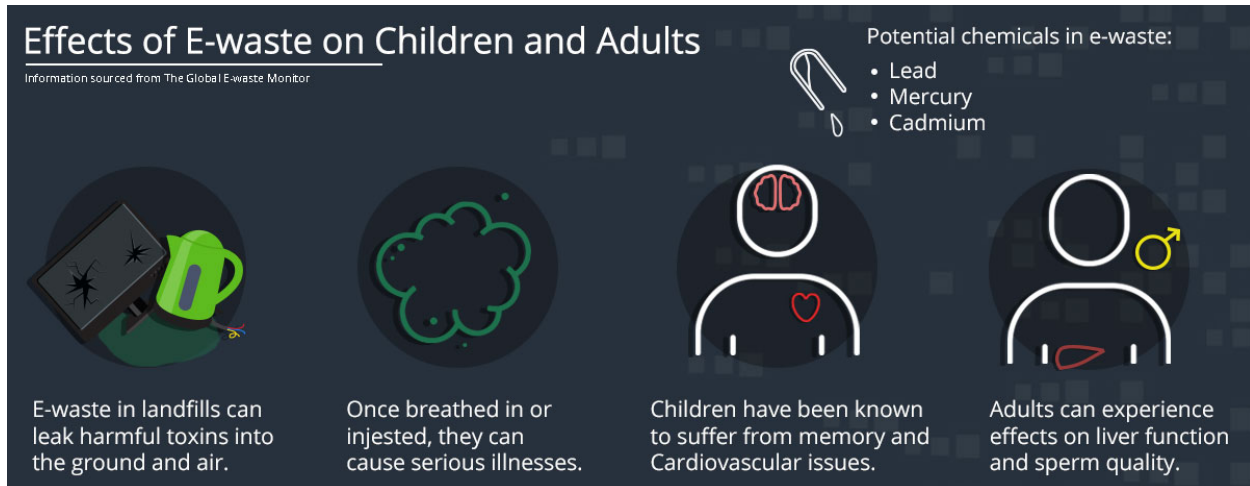


Figure 4. Infographic showing some of the health issues incurred when electronic waste decays.

(Graham)

A video created by the LinusTechTips YouTube channel highlights this by addressing the many issues with Apple. Linus Sebastian notes that studies have found that Apple has previously shredded their old devices instead of repairing them and that although they preach an environmental focus and sustainable recycling, they would rather shred devices than allow them to re-enter the market (Sebastian). This mindset is validated when you look at a pair of AirPods, which have no screws, no replaceable parts, and no repairability. When the battery inside this device inevitably dies, which occurs about 18 months after purchase, Apple simply sells you a new charging case or airpod instead of making any attempt to repair it because it was designed to be disposable (Hanley 11). The words “Reduce-Reuse-Recycle” are in the order they are for a reason; this is the order we should take. Recycling and shredding may be sustainable, but you don’t need to recycle anything if you reuse it from the start.

The Impact of a Responsive State

1. Improvement in the Industry

As of November 17, 2021, the overall situation appears to be improving through some degree of internal regulation by the industry. Apple announced that it would now have a global repair program in place for individuals (Apple). This repair program provides parts, tools, and manuals for individuals to repair their own devices (Gault). Specifically, this program is focused on common items of repair such as screens, cameras, and batteries for their most recent line-up of phones, the iPhone 12/13, and will include the M1 Macbook in the future. This is a huge step forward for the right to repair movement and should not be understated. Apple is an industry leader and what they choose to do is often copied time and time again by competitors. But this self-regulation by institutions does not fully replace the need for the active state to take legislative action.

Programs such as these are undoubtedly steps in the right direction, but even in this repair program there remain serious concerns. How will parts be priced, will the prices be locked to a standard that Apple sets, will parts be available in enough volume to have this program be meaningful, and will they even follow through to the end (Gault). This last point is the greatest fear. Since many of these emerging programs are coming in response to fear of governmental regulation, making a public press release could alleviate pressure for long enough to have lawmakers forget about the problem. This can then be followed by a retraction by the company and halting of any progress. Such an event happened with John Deere who previously used this tactic to dissuade legislators (Koebler). In 2018, John Deere promised to make diagnostic tools available to farmers along with many other institutions in the industry (See Appendix B). However, a 2021 investigation following up on that agreement found that John Deere had failed to follow

through on their promises and was keeping key repair tools away from farmers (O'Reilly).

Actions like these from John Deere generate distrust in the industry and are why a responsive state is necessary. These are simply more ways that corporations in our environment pool together their power and manipulate the public narrative. These actions take advantage of the individual's trust and digital literacy. So, while a program like Apple's is great, legislation is needed to ensure that it follows through. This is why having state action is so necessary. State action ensures that businesses can be held accountable and cannot back out of their promises. State action takes some of those methods of resource control out of the hands of businesses and puts them back into the hands of consumers and individuals.

The current "free market" grants all the power to businesses and corporations to decide when and how resources are distributed to individuals. Once enough consumers show enough dissatisfaction with a business and profits are harmed, a business can then elect to enact a policy that favors individuals. However, the decision to give up power and control to individuals is a strategic one, not a benevolent choice. Since control of repair is part of what allows businesses to be so profitable, they have little to no incentive to give up control. Instead, when individuals begin to be dissatisfied with the actions of a business, the business elects to give the minimum required effort to maintain a positive public perception and brand loyalty.

This dynamic is why the active state is so important. It is not logical to allow the party that benefits from the individual's inability to have resources decide which resources the individual has. The active state should take on this role and mediate

resource division in a manner that is fair and equitable to both parties. This kind of state action creates a freer market than we currently have. The state is able to mandate what resources individuals should have access to, and it is up to the individual to decide which business they get those resources from.

2. **Future Legislation by a Responsive State**

This leads to the main question that arises after applying Vulnerability Theory to the right to repair: What does a responsive state look like in the fight for national right to repair legislation? Some of this has been hinted at throughout this paper such as with the Massachusetts “Motor Vehicle Owner’s Right to Repair Act of 2011” that secured the right to repair in the consumer automotive industry. But there are many other options that have been enacted overseas that American legislators can draw from. The EU has enacted legislation that relates to design and copyright of specific parts and tools for consumer goods. This design directive that was issued by the EU states that, parts that are used for repair services or restoration of a good to its original appearance are not protected under design and trademark laws (Svensson 9). The caveat with this law is that it alone is not absolute and member states have two options. The first option is that member states simply keep in force their current laws that relate to the issue. The alternative is that if they decide to make any changes to their policies, these policy changes must be pursuant to liberalizing the market of spare parts, not limiting it (Svensson 9). This kind of state response respects the individual member state’s government, but also ensure that repair policy does not regress. This sort of policy in the United States would set all current policy, laws, claims, and support by businesses as the ground floor and build up from there.

An alternative to the national response of the state is the local state response. It could very well be the case that if one state in the United States were to implement right to repair legislation in full force, then either subsequent states would follow and mandate original equipment manufacturers to provide the same services they offer internally to third-party individuals. Such action by a locally responsive state could then push a national response (Svensson 12). This is how the right to repair became national for the automotive industry as, following the Massachusetts bill, the industry leaders simply adopted the same guidelines nationally. Similarly, it could cost a business in the technology industry more to modify its operations to comply with fifty separate state laws than it would cost to adopt a uniform repair policy across the nation.

Continuing to draw from the success of the Motor Vehicle Repair Bill, that exists because automobiles are necessary for day-to-day life requiring that repairs should be accessible and capitalistically competitive, then why can the same not be said for consumer technology? If we have this protection in one consumer industry, what separates that from another consumer industry? A major argument that is used to assert a difference is complex of copyright infringement, patent laws, and intellectual property theft. These concerns are not unfounded, but the right to repair movement does not want these laws eliminated. The United States government can serve its role as a responsive state and alleviate these concerns for businesses by changing the interpretation of these laws. The United States is a common law country, meaning that the laws that we implement and enforce in our nation are based on precedent. There have been many instances throughout history in which precedent has changed and when cases are decided based almost entirely on precedent. If a court in the United States hears a case that

pertains to repairability and intellectual property and rules in favor of parts availability, then any subsequent legal case could reference that case as precedent and establish the right to repair as not violating intellectual property rights, at least in a specific set of circumstances. There already exists certain copyright exceptions such as through fair use in the DMCA. Under this act, it is permissible for the Library of Congress to create additional exceptions to copyrighted works if these works are being used in the context of repairs (Hanley 23).

One interesting loophole that companies take advantage of under copyright law is the trademarking of their parts and tools. This sometimes involves literally stamping their logo onto a screw, panel, or repair device. Under federal law, this constitutes these items as merchandise and any copies that are made “illegally” can be seized upon import to the US. So, this effectively eliminates the ability to import duplicate parts from overseas (Hanley 24). American courts could change the interpretation of this clause and enforce it less strictly, e.g. by concluding that these logos are not visible during use of the product, or they are too small for the average consumer to associate with the brand. By taking state action in this way, they can “legislate without legislating” and still protect businesses while supporting parts availability.

One other large area that hinders the right to repair behind the scenes is the extensive use of EULA's by companies. These End User License Agreements serve as contracts between the seller and the user that enforce certain restrictions and limitations upon the user after the purchase of a product to limit a seller's legal liability (Lumbard 2). In the case of the right to repair, these contracts are often used to place limitations upon the user, but they can also be used to reduce culpability if a lawsuit ensues between

individuals and the service provider. These tools were discussed previously as a form of resource control by institutions, and they are extremely predatory because within these EULA's, sellers have the right to encrypt their intellectual property and by using DMCA, they can enforce any attempt to decode this property as a copyright violation. This makes repairing a product a criminal offense for everyone involved (Lumbard 2). However, as is widely known, users usually skip to the bottom of these agreements and simply click accept. In fact, these contracts are so infrequently read that they are often called "shrink-wrap contracts".

The state could aid the consumer by enacting some form of legislation that requires a summation of the user's rights and the EULA agreement terms to be provided to the consumer. Alternatively, the courts are another tool of state action as a result of the rule of law in the United States. In *Feldman v. Google*, it was determined that these agreements are legally enforceable as long as the user has time to read through and understand the agreement before pressing continue and accepting. There have also been instances in which the EULA has been found unenforceable such as in *Step-Saver Data Systems, Inc. v. Wyse Technology* since the shrink-wrap license was negotiated over the phone before physical receipt of software. This provides two conflicting rulings that if the state at the highest court, the Supreme Court of the United States, made a definitive ruling could establish precedent in either the enforceability of EULA or establish specific terms for EULA enforcement. These are all just some ways that a more responsive state could step-up and more concretely define what the right to repair is and how much of this right is granted to consumers. The corporate institutions of our society are in control of far too many resources, and they have shown that it is in their best interest to maintain

tight control at the expense of each individual. If we want resolution, then a responsive state must act.

Closing Thoughts

Vulnerability of Businesses

One topic that was not directly covered in this analysis of the right to repair was consideration for vulnerability of businesses instead of the vulnerability of individuals. This is because the current state of things places more power on the side of businesses and corporate institutions. The businesses are the ones that are taking advantage of vulnerable individuals by controlling resources, creating predatory EULA's, lobbying against legislation, and targeting individual right to repair cases. However, if right to repair legislation attacks DMCA, intellectual property rights, and copyright law too much, then businesses themselves can be taken advantage of as well.

1. Reputational Harm

One potential vulnerability is the potential for intellectual property theft. If all schematics, parts, tools, and details of an iPhone were made available to everyone, there would be nothing stopping a foreign company from duplicating it exactly and then distributing the exact same product for cheaper. Not only would this diminish genuine Apple iPhone sales, but it also leaves Apple vulnerable to brand damage. If people believe that these are genuine and problems arise, then the Apple brand could be tarnished and further hurt sales.

This reputational harm is very serious, and it is easy to imagine scenarios under an overly permissive right to repair regime where third-party repairs might be very shoddy and cause harm, in such a scenario, the small third-party would not attract the attention that the huge corporation would. That corporation would then suffer the reputational harm of making low quality and cheap equipment. Further potential harm could be far worse than reputational if these repairs involve the healthcare industry. During the COVID-19 pandemic, ventilators were in high demand and repairs for these life-saving devices were not always available. A wide-open repair market may have led to these devices being repaired quickly, and for the most part safely. However, in the case that a repair was done poorly, someone could lose their life. Certain guarantees are needed when considering human life and certain quality standards must be met. If these standards are not met, a wide-open right to repair environment could have lethal consequences!

It's a balancing act – an optimization. At present, law is weighted in favor of corporations. But too robust a right to repair could have devastating consequences that were never intended.

2. **Reduced Innovation**

Intellectual property theft is a serious concern when it comes to brand reputation but peeling back the protections that businesses have from this theft may also contribute to reduce innovation in technology. This kind of harm to a business may be harmful to individuals as well. If copyright and intellectual property rights are limited to the point that theft is simple and easy, then a company has no incentive to innovate and make new products. It would be much easier to steal someone else's idea and replicate it. This

already happens on a smaller scale with devices such as air pods, but it could occur with 100% replicability. A refusal to spend millions on research and development is foreseeable in this situation and in this case, that would harm individuals and society over time. This is why considering business concerns, financial concerns, and business vulnerability are important. The potential for harm to be incurred by corporations is there and VT considers that we must also acknowledge and be aware of these harms if the status quo were to shift.

Why We Should Continue to Care

The progress that the right to repair movement has made is undeniable. There has been extensive lobbying in favor of repairability, more areas of technology are protected, and businesses themselves are making the necessary changes. However, it is important that we continue to care for this issue and stay informed on the status of the world around us. I mentioned earlier the many issues with repairability that farmers face. The constant problems with software as a service, parts availability, and outright lies from John Deere and other manufacturers. A proposed state response was the Montana Bill to Protect Repair bill that would protect the right to repair (See Appendix A). Despite how amazing it is that this bill was drafted and brought forward, it died in the Montana state government and never made it out into reality (See Appendix C).

The other instance of John Deere saying they would make diagnostic tools available in a press release and then silently backing out before being called out several years later shows another problem. Apple has made leaps and bounds in their repair program through their introduction of a repair service. Just a few weeks ago in April 2022, I myself had to repair my

2016 Macbook Pro due to a faulty key and it was replaced for free and in about 30 minutes by Apple. Nothing is truly stopping Apple from suddenly and silently stopping this program and deciding it is not in their financial interest to support the program just as John Deere did themselves. We have to continue to care because it is a responsive state that takes legislative action that can enforce permanent and enforceable change in the industry. The role that we as individuals can play is by supporting the state in these bills, supporting investigations, supporting open-source projects, and doing the best we can to be resilient as a population against companies that would look to exploit individuals that stand alone.

In the future, there are many other industries that may emerge and will necessitate an active state. The growing implementation of software-as-a-service grants far more control to the corporation. Corporations decide if you can use their product that you purchased. If things move the way that companies such as Facebook want, perhaps we will all exist in the “Metaverse.” Who is to say that Facebook cannot lock you out of this service or limit and control your actions in the virtual world? During the COVID-19 pandemic, access to ventilators could have been remotely disabled if they were tampered with. If everything becomes software-as-a-service and is based on subscription fees, it leads to serious concerns. What if your pacemaker software license expires, or your home security subscription ends and all your doors unlock? These examples sound rather extreme, but so was the idea of autopilot and video doorbells. The Right to Repair movement and the legislation it hopes to achieve is about more than just physical repair, it is about fully owning what we spend our money on and engaging in ethical business practices. Promoting and engaging with an active state moving forward can not only solve the issues of repair we face today, but it can also help prevent harm in the future.

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Appendix A) Montana Bill Proposing the Right to Repair

Unofficial Draft Copy

67th Legislature

LC 1562

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT TO
5 REPAIR; PROVIDING FOR AN AGRICULTURAL RIGHT TO REPAIR; REQUIRING MANUFACTURERS TO
6 MAKE DOCUMENTATION, PARTS, AND TOOLS AVAILABLE FOR REPAIR OF ELECTRONICS-ENABLED
7 IMPLEMENTS OF HUSBANDRY; PROVIDING FOR ENFORCEMENT UNDER THE MONTANA CONSUMER
8 PROTECTION ACT; PROVIDING LIMITATIONS; AND PROVIDING DEFINITIONS."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Agricultural Right
13 to Repair Act".
14

15 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], unless the context clearly
16 indicates otherwise, the following definitions apply:

17 (1) "Authorized repair provider" means an individual or business unaffiliated with an original
18 equipment manufacturer that has an arrangement with an original equipment manufacturer under which the
19 original equipment manufacturer grants to the individual or business a license to use a trade name, service
20 mark, or other proprietary identifier for the purposes of offering diagnostic testing, maintenance, or repair of
21 electronics-enabled implements of husbandry under the name of the original equipment manufacturer, or
22 another arrangement with the original equipment manufacturer to offer the services on behalf of the original
23 equipment manufacturer.

24 (2) "Documentation" means any manual, diagram, reporting output, service code description,
25 schematic, or other guidance or information used in effecting the services of diagnostic testing, maintenance, or
26 repair of electronics-enabled implements of husbandry.

27 (3) "Electronics-enabled implement of husbandry" means an implement of husbandry as defined in
28 61-1-101 that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to



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67th Legislature

LC 1562

1 it.

2 (4) "Embedded software" means any programmable instruction provided on firmware delivered with
3 electronics-enabled implements of husbandry or with a part for an implement of husbandry for purposes of
4 equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or
5 part for these purposes.

6 (5) "Fair and reasonable terms" means costs and terms that are equivalent to the most favorable
7 costs and terms under which an original equipment manufacturer offers the documentation, part, or tool, to an
8 authorized repair provider, less any discounts, rebates, or other incentive programs.

9 (6) "Firmware" means an embedded software program or set of instructions programmed on
10 electronics-enabled implements of husbandry or on a part of an implement of husbandry to allow the
11 electronics-enabled implement of husbandry or part to communicate within itself or with other computer
12 hardware.

13 (7) "Independent repair provider" means an individual or business operating in the state without an
14 arrangement with an original equipment manufacturer that would make the individual or business an authorized
15 repair provider, unaffiliated with an authorized repair provider, and engaged in the services of diagnostic
16 testing, maintenance, or repair of electronics-enabled implements of husbandry.

17 (8) "Original equipment manufacturer" means a business allowing or engaged in the selling, leasing,
18 or otherwise supplying of new electronics-enabled implements of husbandry to any individual or business.

19 (9) "Owner" means an individual or business that owns or leases electronics-enabled implements of
20 husbandry purchased or used in the state.

21 (10) "Part" means any replacement made available by an original equipment manufacturer for
22 purposes of effecting the services of maintenance or repair of electronics-enabled implements of husbandry.

23 (11) "Tool" means any software program, hardware implement, or other apparatus used for diagnostic
24 testing, maintenance, or repair of electronics-enabled implements of husbandry, including software or other
25 mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function
26 required to bring the product back to fully functional condition.

27 (12) "Trade secret" has the meaning provided in 18 U.S.C. 1839.

28

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67th Legislature

LC 1562

1 NEW SECTION. Section 3. Requirements. (1) For electronics-enabled implements of husbandry
 2 and parts for the implements of husbandry sold or used in the state, an original equipment manufacturer shall
 3 make available for purposes of diagnostic testing, maintenance, or repair of the implements of husbandry to
 4 any independent repair provider or to the owner of the implement of husbandry or to the owner's agent, on fair
 5 and reasonable terms, documentation, parts, or tools.

6 (2) For electronics-enabled implements of husbandry that contain an electronic security lock or other
 7 security-related function, **the original equipment manufacturer shall make available** to any independent repair
 8 provider or to the owner of the implement of husbandry or to the owner's agent, **on fair and reasonable terms,**
 9 **any special documentation, parts, or tools needed to disable the lock or function** and to reset the lock or
 10 function when disabled in the course of diagnostic testing, maintenance, or repair. Documentation, parts, or
 11 tools made available pursuant to this subsection may be made available by means of an appropriate secured
 12 system.

13 (3) Documentation provided electronically pursuant to this section must be provided at no cost.
 14 Documentation provided in print pursuant to this part may include a charge for the actual costs of preparing and
 15 sending the documentation.

16
 17 NEW SECTION. Section 4. Enforcement. Violation of [section 3] is an unfair method of competition
 18 and an unfair act or practice. The department of justice may bring actions for violations of [section 3] pursuant
 19 to 30-14-111.

20
 21 NEW SECTION. Section 5. Limitations. A provision of [sections 1 through 5] may not be construed:

22 (1) to require an original equipment manufacturer to divulge a trade secret except as necessary to
 23 provide documentation, parts, or tools on fair and reasonable terms;

24 (2) to alter the terms of an arrangement between an original equipment manufacturer and an
 25 authorized repair provider, except that any provision in the terms that purports to waive, avoid, restrict, or limit
 26 the original equipment manufacturer's obligations under [this act] is void and unenforceable;

27 (3) to require an authorized repair provider to make documentation, parts, or tools available on fair
 28 and reasonable terms; or

Unofficial Draft Copy

67th Legislature

LC 1562

- 1 (4) to allow:
- 2 (a) modifications to electronics-enabled implements of husbandry that deactivate safety notification
- 3 systems;
- 4 (b) evasions of federal emissions laws, copyright laws, or other applicable laws; or
- 5 (c) other illegal modification activities.

6

7 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be
8 codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 5].

9

- END -

Appendix B) Statement of Repair Principles



ASSOCIATION OF
EQUIPMENT MANUFACTURERS



EquipmentDealers
ASSOCIATION

Farm Equipment Manufacturers and Dealers are Committed to Providing Maintenance, Diagnostic, and Repair Tools to End Users

The "Right to Repair" is not the Right to Modify

The Association of Equipment Manufacturers (AEM), the Equipment Dealers Association (EDA), and their members are dedicated to supporting farmers and their equipment needs, reducing downtime and maximizing productivity. Therefore, AEM and EDA reiterate their joint commitment to provide end users with the information and tools needed to maintain, diagnose, and repair their equipment.

To the extent not already available, the maintenance, diagnostic and repair information listed below will be made available to end users through authorized agricultural dealers at fair and reasonable terms, beginning with tractors and combines put into service on or after January 1, 2021. End users will also be able to purchase or lease diagnostic tools through authorized agricultural dealers. Certain information and tools may be available earlier.

Manufacturers, through authorized agricultural dealers, are committed to provide access to:

- Manuals (Operator, Parts, Service)
- Product Guides
- Product Service Demonstrations, Training, Seminars, or Clinics
- Fleet Management Information
- On-Board Diagnostics via diagnostics port or wireless interface
- Electronic Field Diagnostic Service Tools, and training on how to use them
- Other publications with information on service, parts, operation, and safety

Using this information and these tools, which will be available for purchase, lease, or subscription through authorized dealers, end users will be able to identify and repair numerous problems they may encounter with their equipment.

The industry supports equipment users' ability to maintain, diagnose, and repair their machinery. However, the ability to diagnose and repair does not mean the right to modify. For safety, durability, environmental, and liability reasons, diagnostic and repair information and tools will not permit consumers to do the following:

- Reset an immobilizer system or security-related electronic modules,
- Reprogram any electronic processing units or engine control units,
- Change any equipment or engine settings negatively affecting emissions or safety compliance,
- Download or access the source code of any proprietary embedded software or code

This commitment to providing maintenance, diagnostic and repair tools is a reaffirmation of the importance of seeking commonsense solutions to meet users' needs. The industry is eager to continue working with end users to provide the most innovative and high-quality equipment to meet the needs of modern production agriculture.

Learn more at <http://www.R2RSolutions.org>

Appendix C) Montana Website Indicated Death of Bill

Bill Draft Number: LC2406**Bill Type - Number:** SB 273**Short Title:** Generally revise laws related to agricultural equipment repair**Primary Sponsor:** Mark Sweeney (D) SD 39**Bill Actions - Current Bill Progress:** Probably Dead**Bill Action Count:** 41

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
(S) Died in Process	04/29/2021			
(S) Missed Deadline for General Bill Transmittal	03/02/2021			
(S) 2nd Reading Indefinitely Postponed	03/01/2021	34	16	
(S) 2nd Reading Pass as Amended Motion Failed	03/01/2021	20	30	
(S) 2nd Reading Motion to Amend Carried	03/01/2021	26	24	
(C) Amendments Available	03/01/2021			
(S) Motion Failed	03/01/2021	23	27	
(S) Scheduled for 2nd Reading	03/01/2021			
(S) Committee Report--Bill Passed	02/26/2021			(S) Business, Labor, and Economic Affairs
(S) Committee Executive Action--Bill Passed	02/26/2021	10	1	(S) Business, Labor, and Economic Affairs
(S) Hearing	02/25/2021			(S) Business, Labor, and Economic Affairs
(S) Referred to Committee	02/17/2021			(S) Business, Labor, and Economic Affairs
(S) First Reading	02/17/2021			
(C) Introduced Bill Text Available Electronically	02/17/2021			
(S) Introduced	02/17/2021			
(C) Draft Delivered to Requester	02/16/2021			
(C) Draft Ready for Delivery	02/15/2021			
(C) Executive Director Final Review	02/13/2021			
(C) Draft Ready for Delivery	02/13/2021			
(C) Draft in Assembly	02/12/2021			
(C) Executive Director Review	02/12/2021			
(C) Bill Draft Text Available Electronically	02/12/2021			
(C) Draft in Final Drafter Review	02/12/2021			
(C) Draft in Input/Proofing	02/12/2021			
(C) Draft to Drafter - Edit Review [CMD]	02/12/2021			
(C) Draft in Edit	02/10/2021			
(C) Draft in Legal Review	02/10/2021			
(C) Draft Back for Redo	02/10/2021			

(C) Draft Ready for Delivery	02/08/2021
(C) Executive Director Final Review	02/08/2021
(C) Draft Ready for Delivery	02/08/2021
(C) Draft in Assembly	02/06/2021
(C) Executive Director Review	02/05/2021
(C) Bill Draft Text Available Electronically	02/05/2021
(C) Draft in Final Drafter Review	02/05/2021
(C) Draft in Input/Proofing	02/05/2021
(C) Draft to Drafter - Edit Review [CMD]	02/05/2021
(C) Draft in Edit	02/03/2021
(C) Draft in Legal Review	02/03/2021
(C) Draft to Requester for Review	02/03/2021
(C) Draft Request Received	12/12/2020

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name Mi
Requester	Boldman	Ellie
Drafter	Nowakowski	Sonja
Primary Sponsor	Sweeney	Mark

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Agriculture (see also: Livestock; Taxation-- Agriculture/Livestock)		Simple	AGR

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number:
DEADLINE
Category: General Bills
Transmittal Date: 03/02/2021
Return (with 2nd house amendments) Date: 04/20/2021

Section Effective Dates

No Records returned

Appendix D) Hulu's Terms of Service that are subject to change and arbitration rights

4/21/22, 1:11 PM

Terms & Conditions | Hulu



Terms of Use

Effective Date: April 13, 2022

1. [Description of Service and Acceptance of Terms](#)
2. [Changes to these Terms](#)
3. [Access and Use of the Services](#)
4. [Subscriptions and Billing](#)
5. [Accounts and Registration](#)
6. [Collection and Use of Personal Information](#)
7. [User Reviews, Comments, and Other Material](#)
8. [Linked Destinations and Advertising](#)
9. [Trademarks](#)
10. [Unsolicited Submissions](#)
11. [Disclaimer of Warranties, Limitation of Liability and Indemnity](#)
12. [Notice and Procedure for Claims of Copyright Infringement](#)
13. [Arbitration of Claims](#)
14. [Limitation on Time to Bring a Claim](#)
15. [General Information](#)

Welcome to Hulu! It is our pleasure to provide the services described below for your personal enjoyment and entertainment in accordance with these Terms of Use ("Terms"). Please take a moment to carefully read through these Terms.

As a preliminary matter, we wanted to highlight a topic that you will read more about later. At Hulu, we expect that our world-class customer service team, which can be contacted through our Help Center at [hulu.com/help](https://www.hulu.com/help), will be able to resolve any issues you may have as you enjoy our services. In the unlikely event that an issue between us remains unresolved, please note that **THESE TERMS REQUIRE ARBITRATION ON AN INDIVIDUAL BASIS, RATHER THAN JURY TRIALS OR CLASS ACTIONS. ALSO, THESE TERMS SET FORTH SPECIFIC REMEDIES AVAILABLE TO YOU. PLEASE SEE SECTIONS 11 AND 13 TO LEARN MORE.**

1. DESCRIPTION OF SERVICE AND ACCEPTANCE OF TERMS

Hulu, LLC ("Hulu," "we," or "us") provides an online video service which gives users the opportunity to select from various offerings of live and on-demand programming, including

4/21/22, 1:11 PM

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Offered from time to time by Hulu through a variety of Access Points (defined below) are referred to collectively as the "Services." The term "Access Points" refers to, collectively, the [hulu.com](https://www.hulu.com) website (the "Hulu Site"), applications, and other places where any Services are available, including websites and applications of Hulu's third-party distribution partners and other websites where users or website operators are permitted to embed or have otherwise licensed the Video Player.

Use of the Services (including access to the Content) is subject to compliance with these Terms which incorporate by reference our Privacy Policy available at [hulu.com/privacy](https://www.hulu.com/privacy) ("Privacy Policy") and any end user license agreement that might accompany the applicable Service. Therefore, by accessing or using any of the Services through any Access Point (including by visiting the Hulu Site or by downloading or launching the Hulu application), you accept and agree to these Terms. Please note that if you subscribe to a Service that is available through a third-party website or application, your access to and use of that Service will be subject to additional terms and limitations specific to that Service.

Please note that the website addresses (i.e., URLs) included within these Terms may not function as hyperlinks on all the Access Points. To view these Terms with clickable hyperlinks, please visit the Hulu Site on your computer.

[back to top](#)

2. CHANGES TO THESE TERMS

We may need to make changes to these Terms from time to time for many reasons. For example, we may need to reflect updates in how the Services work or changes in the law. You should look at these Terms regularly, which are posted on the Hulu Site at [hulu.com/terms](https://www.hulu.com/terms). If we make a material change to these Terms, we will notify you by posting a notice on the Hulu Site. If you are a registered user, we will also send an email to the email address you most recently provided to us prior to the material change taking effect. Any material change to these Terms will be effective automatically 30 days after the revised Terms are first posted or, for users who register or otherwise provide opt-in consent during this 30-day period, at the time of registration or consent, as applicable.

[back to top](#)

3. ACCESS AND USE OF THE SERVICES

3.1 Age Limitations. The Services are not intended to be used by children without involvement and approval of a parent or guardian. If you are under the age of 13, you are not permitted to

4/21/22, 1:11 PM

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guardian, including consent to these terms on your behalf, and for clarity, you may only modify an account, or associated profiles, with the consent of your parent or guardian. Please note that age requirements for purchase of and access to certain Services may vary.

3.2 Ownership and License. Hulu owns and retains all rights to the Services, and the Content is owned or controlled by Hulu and Hulu's content programmers. The Services and the Content are also protected by copyright, trademark, and other intellectual property laws. That said, Hulu is pleased to grant you a non-exclusive limited license to use the Services, including accessing and viewing the Content on a streaming-only basis through the Video Player, for personal, non-commercial purposes as set forth in these Terms. The periods during which you can view each piece of Content will vary based on the rights availability of such Content and the terms of your subscription. The Services may include different Content offerings, features, and usage rules, which will be explained to you during your sign-up or in other materials made available to you.

3.3 Profiles. Hulu offers the option to personalize use of the Services through the creation of one or more profiles under one account. Only the account holder, and those with permission from the account holder, may create a profile. The account holder may access profile details and delete or otherwise modify profiles associated with the account.

3.4 The Content.

a. Usage Rules and Limitations. You may not either directly or through the use of any device, software, internet site, web-based service, or other means remove, alter, bypass, avoid, interfere with, or circumvent any copyright, trademark, or other proprietary notices marked on the Content or any digital rights management mechanism, device, or other content protection or access control measure associated with the Content including geo-filtering mechanisms. For clarity, you may not use any technology or technique that obscures or disguises your location when you are accessing the Services. You may not either directly or through the use of any device, software, internet site, web-based service, or other means copy, record, download, stream capture, reproduce, duplicate, archive, distribute, upload, publish, modify, translate, broadcast, perform, display, sell, or transmit or retransmit the Content unless expressly permitted by the terms of your subscription or otherwise by Hulu in writing. You may not incorporate the Content into, or stream or retransmit the Content via, any hardware or software application or make it available via frames or in-line links unless expressly permitted by Hulu in writing. Furthermore, you may not create, recreate, distribute or advertise an index of any significant portion of the Content unless authorized by Hulu. You may not build a business utilizing the Content, whether or not for profit. The Content covered by these restrictions includes without limitation any text, graphics, layout, interface, logos, photographs, audio and video materials, and stills. In addition, you are strictly prohibited from creating derivative works or materials that otherwise are derived from or based on in any way the Content, including montages, mash-ups and similar videos, wallpaper, desktop themes,

4/21/22, 1:11 PM

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Content may, from time to time, contain material that may be offensive, indecent, explicit or objectionable. Also, Content types, genres, categories, and descriptions are provided as suggestions to help with navigation, and Hulu does not guarantee that you will agree with them. You acknowledge these risks.

c. Content Quality. Hulu uses various technologies to provide you with an optimal viewing experience. That said, quality of Content, including resolution, may be affected by the format of the Content, your location, the speed and bandwidth of your internet service, and the devices used, among other factors. HD and 4K Ultra HD availability for supported Content depends on your internet service and device capabilities. The time it takes you to begin playing Content will vary based on a number of factors, including your location, internet bandwidth, the number of devices simultaneously connecting to the same network, the Content you have selected, and the configuration of the device you are using. As a result, Hulu is unable to make any warranties about the Content in these respects.

d. Content Presentation. We want you to have the best experience with our Services, including the ability to easily discover and enjoy new Content. To help do that, Content you view across all Services may include promotional videos (e.g., previews or trailers) before and after that Content. Please note that Content you view (e.g., legal and medical shows) should not be relied upon for advice. For those who are susceptible to photosensitive epilepsy or other photosensitivities, it's also important to remember that some Content may contain flashing lights sequences or patterns.

e. Temporary Downloads. We know that you may not always have an internet connection when you want to watch your favorite Content. Depending on the Service to which you subscribe, Hulu may give you the option to temporarily download certain Content on certain Compatible Devices so that you can watch it while you are offline ("Temporary Downloads"). Of course, there are some limitations that may change from time to time, including: (i) the maximum number of devices that can store Temporary Downloads; (ii) the maximum number of Temporary Downloads that can be stored across Compatible Devices at any given time; (iii) how long Temporary Downloads will remain available to you; and (iv) geographic and device restrictions on playback.

f. Location Access. Content may be limited to distribution in certain geographic locations. For that reason, we may use different technologies and methods to verify your geographic location. For example, you may be required to enable location access on your Compatible Device in order to access certain Services or to watch select Content made available through certain Services.

g. Additional Content. From time to time, we may offer you the opportunity to watch Content that is not included in the Service to which you subscribe. For example, subscribers to Hulu's on-demand streaming Services may be able to watch certain live Content. Hulu offers this

4/21/22, 1:11 PM

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advertisements.

3.5 Live TV Service.

Hulu offers multiple Services that provide access to different types of Content. For example, you may subscribe to a Service that provides live TV and other related Content, including on-demand Content ("Live TV Service"). If your subscription includes the Live TV Service, please be aware of following:

- **Home.** When you set your home location as part of registration for and access to the Live TV Service, make sure to designate a residential, non-mobile internet network ("Home"). Your Home will be used to determine which streams are considered "in-home" or "out-of-home," where relevant to the requirements of your Service. In addition, for uninterrupted Live TV service, you should access Hulu on your mobile device from your Home location every 30 days, or such other period described in our Help Center at [hulu.com/help](https://www.hulu.com/help).
- **Regional Sports Networks and Local Affiliates.** Your access to regional sports networks, if any, will be determined by your Home, even if you access the Services from outside your Home. Your access to live Content from local affiliates, if any, will depend on the location of your device at the time you access the Services.
- **Advertisements.** If you subscribe to multiple Services, the terms of one Service will not impact those of another Service. For example, if you subscribe to both the Live TV Service and another Service featuring Content on-demand without advertisements, you will still see advertisements while streaming Content from the Live TV Service.
- **Live Content Restrictions.** Certain live Content, including sporting events, may be unavailable due to your location, blackouts, or device-specific restrictions set by sports leagues and other parties that control Content rights.
- **Cloud DVR.** Hulu may provide the ability to record live TV Content to your cloud DVR. Hulu may also limit storage capacity and the amount of time your recordings can be stored on your cloud DVR and available to you. If your subscription to any Service – or your access to any of the Content or networks/channels included in that Service – is cancelled, suspended, interrupted, or otherwise discontinued, you may lose access to previously-made recordings, even if your subscription or that access resumes or is reinstated. Unfortunately, Hulu is unable to guarantee error-free recording, storage, or playback. Other than your usage of the cloud DVR made available to you by Hulu, you may not record, copy, store, or redistribute any Content. You may only use your cloud DVR to the extent permissible under copyright and other applicable laws. Please visit our Help Center at [hulu.com/help](https://www.hulu.com/help) to learn more about recording live TV Content.

3.6 The Video Player. You may not modify, enhance, remove, interfere with, or otherwise alter in any way any portion of the Video Player, its underlying technology, any digital rights management mechanism, device, or other content protection or access control measure incorporated into the Video Player. This restriction includes, without limitation, disabling, reverse engineering, modifying, interfering with or otherwise circumventing the Video Player

4/21/22, 1:11 PM

Terms & Conditions | Hulu



located; and (ii) having full access to all functionality of the Video Player, including, without limitation, all video quality and display functionality and all interactive, elective, or click-through advertising functionality.

3.7 Embedding a Video Using the Video Player. Where Hulu has incorporated an embed option in connection with Content on the Services, you may embed videos using the Video Player, provided you do not embed the Video Player on any website or other location that (i) contains or hosts content that is unlawful, infringing, pornographic, obscene, defamatory, libelous, threatening, harassing, vulgar, indecent, profane, hateful, racially or ethnically offensive, encourages criminal conduct, gives rise to civil liability, violates any law, rule, or regulation, infringes any right of any third-party including intellectual property rights, or is otherwise inappropriate or objectionable to Hulu (in Hulu's sole discretion), or (ii) links to infringing or unauthorized content (collectively, "Unsuitable Material"). You may not embed the Video Player into any hardware or software application, even for non-commercial purposes. Hulu reserves the right to prevent embedding to any website or other location that Hulu finds inappropriate or objectionable (as determined by Hulu in its sole discretion).

3.8 Compatible Devices. In order to access the Services, you will need to use a computer, mobile device, streaming media player, or other device that meets the system and compatibility requirements that we establish from time to time (each, a "Compatible Device"). Please visit our Help Center at [hulu.com/help](https://www.hulu.com/help) for a current list of Compatible Devices. Please note that Compatible Devices may vary by Service, and may be subject to additional terms. For example, certain devices may not be capable of streaming Content from the Live TV Service but may be capable of streaming other Content. Features and functionalities that we make available through the Services may also differ by Compatible Device and the terms of your subscription. If you access the Services using a Compatible Device, the third-party that offers that Compatible Device shall be a third-party beneficiary to these Terms, but is not a party to these Terms.

3.9 Simultaneous Streams. The number of simultaneous streams of Content that you can access varies by Service and may require device and account verification. Please visit our Help Center at [hulu.com/help](https://www.hulu.com/help) for the most up to date information on the number of simultaneous streams of Content that are allowed based on the terms of your Service. Where relevant to your Service, "in-home" streams are those that you stream through your Home internet service, and "out-of-home" streams are those that you stream through a connection to a cellular or Wi-Fi network outside of your Home.

3.10 Internet Service and Data Usage. In order to access the Services, you must have a high-speed broadband, wireless or similar internet connection from an internet service provider that meets certain technical specifications. Please note that multiple simultaneous streams, as well as HD and 4K Ultra HD Content, may require higher internet bandwidth. You are responsible for any costs associated with your internet service used to access the Services.



to use, we all have to follow the same rules of the road. You agree to observe all restrictions identified in these Terms, including without limitation using the Services in a way that:

- violates the rights of others, including patent, trademark, trade secret, copyright, privacy, publicity, or other proprietary rights;
- uses technology or other means to access, index, frame or link to the Services (including the Content) that is not authorized by Hulu (including by removing, disabling, bypassing, or circumventing any content protection or access control mechanisms intended to prevent the unauthorized download, stream capture, linking, framing, reproduction, access to, or distribution of the Services);
- involves accessing the Services (including the Content) through any automated means, including "robots," "spiders," or "offline readers" (other than by individually performed searches on publicly accessible search engines for the sole purpose of, and solely to the extent necessary for, creating publicly available search indices - but not caches or archives - of the Services and excluding those search engines or indices that host, promote, or link primarily to infringing or unauthorized content);
- introduces viruses or any other computer code, files, or programs that interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- damages, disables, overburdens, impairs, or gains unauthorized access to the Services, including Hulu's servers, computer network, or user accounts;
- removes, modifies, disables, blocks, obscures or otherwise impairs any advertising in connection with the Services (including the Content);
- uses the Services to advertise or promote services that are not expressly approved in advance in writing by Hulu;
- collects information in violation of Hulu's Privacy Policy;
- collects information about users for the purpose of sending, facilitating, or encouraging unsolicited bulk or other communications;
- furthers any means of fraudulent activity, including identity theft;
- encourages conduct that would constitute a criminal offense or give rise to civil liability;
- violates these Terms or any guidelines or policies posted by Hulu;
- interferes with any other party's use and enjoyment of the Services; or
- attempts to do any of the foregoing.

We reserve the right to immediately terminate or restrict your account or your use of the Services at any time, without notice or liability, if Hulu determines or reasonably believes in its sole discretion that you have breached these Terms, violated any law, rule, or regulation, engaged in other inappropriate conduct, or for any other business reason. Of course, we would prefer to avoid such termination; we may use technical measures to block or restrict your prohibited access to or use of the Services, and you agree not to circumvent, avoid, or bypass such restrictions. We also reserve the right to take appropriate legal action against

4/21/22, 1:11 PM

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Content, you may be notified that it is necessary to download software or other materials or agree to additional terms and conditions. Unless otherwise provided by these additional terms and conditions, they are hereby incorporated into these Terms.

3.13 Modification/Suspension/Discontinuation. We regularly make changes to the Services and reserve our right to continue to do so. The availability of the Content, as well as Access Points and Compatible Devices through which the Services are available, will change from time to time. Hulu reserves the right to replace or remove any Content and Access Points available to you through the Services, including specific titles and networks/channels. Additionally, you agree that for various reasons, such as restrictions from content programmers and other limitations or considerations from third-parties, certain Content and functionality that may be available through one Access Point or Compatible Device may not be available through another Access Point or Compatible Device. Hulu also reserves the right to make modifications to features or other elements of the Services, including promotional features, user interfaces, product features and functionality, plans, and advertisements. In our continued assessment of the Services, we may from time to time, with respect to any or all of our users, experiment with or otherwise offer certain features or other elements of the Services, including promotional features, user interfaces, product features and functionality, plans, pricing, and advertisements. You acknowledge that Hulu may do so in Hulu's sole discretion at any time without notice. We hope not to, but we may change, suspend, or discontinue - temporarily or permanently - some or all of the Services (including the Content and the Compatible Devices through which the Services are accessed), with respect to any or all users, at any time, and without notice. You also agree that Hulu will not be liable to you for any modification, suspension, or discontinuance of the Services.

[back to top](#)

4. SUBSCRIPTIONS AND BILLING

4.1. Ongoing Subscription and Fees. While we may offer Content from time to time for free, we charge a fee to access the Services. We will bill you in advance for your subscription. Your subscription will continue and automatically renew on a recurring basis corresponding to the term of your subscription unless and until you cancel your subscription, or your account is otherwise suspended or terminated pursuant to these Terms. Hulu reserves the right to change the terms of your subscription, including price, from time to time, effective as of the beginning of your next Billing Period following the date of the change. We will give you advance notice of these changes, but we will not be able to notify you of changes in any applicable taxes.

4/21/22, 1:11 PM

Terms & Conditions | Hulu



basis corresponding to the term of your subscription, and any applicable taxes. You are solely responsible for any and all fees charged to your Payment Method. When you provide a Payment Method, we will attempt to verify the information you entered by processing an authorization hold. We do not charge you in connection with this authorization hold, but your available balance or credit limit may be reduced. If you want to use a different Payment Method than the one you signed up to use during registration, you may edit your Payment Method information by logging in on the Hulu Site and viewing your account details.

4.3 Billing Holds. In the event of a failed attempt to charge to your Payment Method (e.g. if your Payment Method has expired), we reserve the right to retry billing your Payment Method. In the event that you or we (through our payment service providers) update your Payment Method to remedy a change in validity or expiration date, we will automatically resume billing you for your subscription to the Services. We may suspend or cancel your access to the Services if we remain unable to successfully charge a valid Payment Method. You also remain responsible for any amounts you fail to pay in connection with your subscription, including collection costs, bank overdraft fees, collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

We may offer you the ability to pause your subscription for a specified period of time. If you do not cancel before the end of the pause period, billing will resume automatically.

4.4 Billing Period. As used in these Terms, "billing" shall indicate either a charge or debit, as applicable, against your Payment Method. We will automatically bill your Payment Method on the later of the day you start your subscription or the day your free trial ends, and on each recurring billing date thereafter. Your "Billing Period" is the interval of time between each recurring billing date and corresponds to the term of your subscription. Where applicable, charges for one or more Services may be prorated for any partial month of service. To see your next recurring billing date, log in on the Hulu Site and view your account details. You acknowledge that the timing of when you are billed and the amount billed each Billing Period may vary, including if your subscription began on a day not contained in a given month (e.g. if you have a monthly subscription and became a paying subscriber on January 31, your Payment Method would next be billed on February 28), due to free trials and other promotional offers, gift card redemptions, credits applied, or changes in your subscription or Payment Method.

4.5 Cancellation and Refunds. You can cancel your subscription by logging into your Hulu account and following the instructions on your account page on the Hulu Site. See Section 4.9 for cancellation information if you pay for the Services through a third-party. You must cancel your subscription prior to 11:59 p.m. Eastern time on the day before your next recurring billing date in order to avoid being charged. Unless otherwise communicated, if you cancel your subscription, you will continue to have access to the Service through the end of your current Billing Period. However, if you modify your subscription to switch from one Service to another Service during your Billing Period, you may not have continued access to your original

4/21/22, 1:11 PM

Terms & Conditions | Hulu



otherwise terminated under these Terms, you will not receive a credit, including for partially used periods of Service. There are circumstances where Hulu may provide credits on a case by case basis. The amount and form of such credits, and the decision to provide them, are at Hulu's sole and absolute discretion.

4.6 Free Trials. On occasion, we may offer free trials to a particular Service, subject to specific terms explained during your sign-up. You can view details of your free trial on your Hulu account page. Hulu reserves the right to determine eligibility for free trials, which may vary based on factors including the Service selected, how recently you redeemed a free trial, and whether the Service is part of a combined offering. Certain limitations may also exist with respect to combining free trials with any other offers.

It is very important to understand that you will not receive a notice from Hulu that your free trial has ended and that payment for your subscription is due. If you wish to avoid charges to your Payment Method, you must cancel your subscription prior to midnight Eastern Time on the last day of your free trial period. Because the Services are offered in multiple time zones, for consistency, a "day" for purposes of these Terms begins at 12:00 a.m. Eastern Time and ends at 11:59 p.m. Eastern time of that same calendar day. You may cancel your subscription at any time as described in the "Cancellation and Refunds" section of these Terms. If you cancel your subscription during a free trial or while using a promotional code or other credits, cancellation may be effective immediately.

4.7 Promotions. If we offer you a promotion (e.g., a promotional price, bundled subscription, or device-specific offer), the specific terms of the promotion will be disclosed during your sign-up or in other materials provided to you. We will begin billing your Payment Method for your subscription at the then-current, non-promotional price after your promotion ends unless you cancel prior to the end of your promotion or unless otherwise disclosed.

4.8 Pay Per View and Other One-Time Purchase Events. We may offer one-time events for purchase in connection with the Services. Some of these events may be offered through a third-party, in which case you may be required to complete your purchase through and view the event using a third-party Service. You will be charged for such events at the time of purchase. For clarity, such events may be subject to additional limitations provided to you during your purchase or in other materials made available to you.

4.9 Third-Party Billing. You may choose to be billed for, or receive access to, the Services through a third-party, in which case, your billing relationship will be directly with that third-party, additional terms may apply, and Service offerings may be limited. If you want to cancel or modify your subscription or manage your billing, you may need to do so through your account with such third-party. Hulu will not be liable to you for any claims arising out of or related to your purchase or use of third-party products or services.

4/21/22, 1:11 PM

Terms & Conditions | Hulu



Hulu gift cards are subject to the Hulu Gift Card Terms and Conditions, which you can review at http://hulu.com/start/gifting_terms.

[back to top](#)

5. ACCOUNTS AND REGISTRATION

You are responsible for all use of your account, including use of your account by other members of your household. By allowing others to access your account or to create profiles within your account, you agree to be responsible for ensuring that they comply with these Terms and you agree to be responsible for their activity using the Services.

All registration information you submit must be accurate and updated. Because you are responsible for all use of your account, including unauthorized use by any third-party, please be very careful to guard the security and confidentiality of your password. You will not have to reveal it to any Hulu representative. Please notify us using the customer support form from our Help Center at hulu.com/help if you suspect any unauthorized use of your account.

Hulu may offer the account holder certain rights, including the right to access information about and delete the account and all associated profiles. You may find information on how to exercise these rights by logging in on the Hulu Site and viewing your account details. Please note, you must first cancel your subscription before you will be able to delete your account. Please see the section "Cancellation and Refunds" above for instructions on how to cancel your subscription.

[back to top](#)

6. COLLECTION AND USE OF PERSONAL INFORMATION

For information about Hulu's policies and practices regarding the collection and use of your information, please read Hulu's Privacy Policy available at hulu.com/privacy. The Privacy Policy is incorporated by reference and made part of these Terms. Thus, by agreeing to these Terms, you agree that your presence on the Hulu Site and use of the Services through any other Access Point or Compatible Device are governed by the Hulu Privacy Policy in effect at the time of your use.

[back to top](#)

4/21/22, 1:11 PM

Terms & Conditions | Hulu



7.1 Your Posts. As part of the Services, users may have an opportunity to publish, transmit, submit, or otherwise post (collectively, "Post") reviews, comments, or other materials (collectively, "User Material"). In order to keep the Services enjoyable for all of our users, you must adhere to the rules below, as well as additional rules applicable to any Hulu-hosted site.

Please choose carefully the User Material that you Post. Please limit yourself to User Material directly relevant to the Services. Moreover, you must not Post User Material that: (i) contains Unsuitable Material (as defined above in Section 3); or (ii) improperly claims the identity of another person. Please note that if you Post User Material on Hulu using a third-party service, such as a social network or email provider, your first and last name or other user ID may appear to the public each time you Post. We advise that you do not, and you should also be careful if you decide to, Post additional personal information, such as your email address, telephone number, or street address.

You must be, or have first obtained permission from, the rightful owner of any User Material you Post. By submitting User Material, you represent and warrant that you own the User Material or otherwise have the right to grant Hulu the license provided below. You also represent and warrant that the Posting of your User Material does not violate any right of any party, including privacy rights, publicity rights, and intellectual property rights. In addition, you agree to pay for all royalties, fees, and other payments owed to any party by reason of your Posting User Material. Hulu will remove all User Material if we are properly notified that such User Material infringes on another person's rights. You acknowledge that Hulu does not guarantee any confidentiality with respect to any User Material.

By Posting User Material, you are not forfeiting any ownership rights in such material to Hulu. After Posting your User Material, you continue to retain all of the same ownership rights you had prior to Posting. By Posting your User Material, you grant Hulu a limited license to use, display, reproduce, distribute, modify, delete from, add to, prepare derivative works of, publicly perform, and publish such User Material through the Services and on other platforms and services worldwide, including on or through any Access Point, in perpetuity, in any media formats and any media channels now known or hereinafter created. The license you grant to Hulu is non-exclusive (meaning you are not prohibited by us from licensing your User Material to anyone else in addition to Hulu), fully-paid, royalty-free (meaning that Hulu is not required to pay you for the use of your User Material), and sublicensable (so that Hulu is able to use its affiliates, subcontractors, and other partners, such as internet content delivery networks, to provide the Services). By Posting your User Material, you also hereby grant each user of the Services a non-exclusive, limited license to access your User Material, and to use, display, reproduce, distribute, and perform such User Material as permitted through the functionality of the Services and under these Terms.

4/21/22, 1:11 PM

Terms & Conditions | Hulu



Hulu. We reserve the right, but have no obligation, to monitor User Material and to restrict or remove User Material that we determine, in our sole discretion, is inappropriate or for any other business reason, as permitted by law. In no event does Hulu assume any responsibility or liability whatsoever for any User Material, and you agree to waive any legal or equitable rights or remedies you may have against Hulu with respect to such User Material. You can help us tremendously by notifying us of any inappropriate User Material you find by emailing feedback@hulu.com (subject line: "Inappropriate User Material").

[back to top](#)

8. LINKED DESTINATIONS AND ADVERTISING

8.1 Third-Party Destinations. If we provide links or pointers to other websites or destinations, you should not infer or assume that Hulu operates, controls, or is otherwise connected with these other websites or destinations. When you click on a link within the Services, we will not warn you that you have left the Services and are subject to the terms and conditions (including privacy policies) of another website or destination. These Terms do not govern your use of another website or destination.

Hulu is not responsible for the content or practices of any website or destination other than the Hulu Site, even if it links to the Hulu Site and even if the website or destination is operated by a company affiliated or otherwise connected with Hulu. By using the Services, you acknowledge and agree that Hulu is not responsible or liable to you for any content or other materials hosted and served from any website or destination other than the Hulu Site.

8.2 Third-Party Advertisements and Services. Hulu takes no responsibility for and does not endorse any third-party advertisements or any third-party material Posted on any Access Point where the Services are available, nor do we take any responsibility for the products or services provided by advertisers. Any dealings you have with advertisers while using the Services, including through engaging with interactive advertisements, are between you and the advertiser, and you agree that Hulu is not liable for any loss or claim that you may have against an advertiser. If you provide any confidential or personal information or engage in any transaction through an advertisement, Hulu is not responsible for such information or transaction and we encourage you to read the terms of use and privacy policy of the advertiser or other party collecting such information or engaging in such transaction.

[back to top](#)

9. TRADEMARKS

4/21/22, 1:11 PM

Terms & Conditions | Hulu

[back to top](#)

10. UNSOLICITED SUBMISSIONS

It is Hulu's policy not to accept unsolicited submissions, including scripts, story lines, articles, fan fiction, characters, drawings, information, suggestions, ideas, or concepts. Hulu's policy is to delete any such submission without reading it. Therefore, any similarity between an unsolicited submission and any elements in any Hulu creative work, including a film, series, story, title, or concept, would be purely coincidental.

[back to top](#)

11. DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNITY

WHILE WE DO OUR BEST TO PROVIDE THE OPTIMAL PERFORMANCE OF THE SERVICES, YOU AGREE THAT USE OF THE SERVICES IS AT YOUR OWN RISK. THE SERVICES, INCLUDING THE HULU SITE, THE CONTENT, THE VIDEO PLAYER, THE FEATURES, USER MATERIAL, AND ANY OTHER MATERIALS CONTAINED ON OR PROVIDED THROUGH ANY ACCESS POINT OR COMPATIBLE DEVICE, ARE PROVIDED "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, HULU DOES NOT MAKE ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, COMPLETENESS, AVAILABILITY, SECURITY, COMPATIBILITY OR NONINFRINGEMENT; OR THAT THE SERVICES WILL BE UNINTERRUPTED, FREE OF VIRUSES AND OTHER HARMFUL COMPONENTS, ACCURATE, ERROR FREE, OR RELIABLE.

IN NO EVENT SHALL HULU OR ITS AFFILIATES, SUCCESSORS, AND ASSIGNS, AND EACH OF THEIR RESPECTIVE INVESTORS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND SUPPLIERS (INCLUDING DISTRIBUTORS AND CONTENT PROGRAMMERS) (COLLECTIVELY, THE "HULU PARTIES"), BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF THE SERVICES (INCLUDING ANY INFORMATION, PRODUCTS, OR SERVICES ADVERTISED IN, OBTAINED ON, OR PROVIDED THROUGH ANY ACCESS POINT OR COMPATIBLE DEVICE), WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY, EVEN IF THE HULU PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS

4/21/22, 1:11 PM

Terms & Conditions | Hulu



FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE AMOUNT PAID BY YOU TO HULU FOR ACCESS TO YOUR SUBSCRIPTION IN THE 6 MONTHS PRECEDING THE CLAIM OR \$50, WHICHEVER IS GREATER.

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE HULU PARTIES FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS), AND OTHER LOSSES ARISING OUT OF OR IN ANY WAY RELATED TO YOUR BREACH OR ALLEGED BREACH OF THESE TERMS OR YOUR USE OF THE SERVICES (INCLUDING YOUR USE OF THE CONTENT). HULU RESERVES THE RIGHT, AT OUR OWN EXPENSE, TO EMPLOY SEPARATE COUNSEL AND ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU.

[back to top](#)

12. NOTICE AND PROCEDURE FOR CLAIMS OF COPYRIGHT INFRINGEMENT

If you believe that any Content, User Material, or other material provided through the Services, including through a link, infringes your copyright, you should notify Hulu of your infringement claim in accordance with the procedure set forth below.

We will process each notice of alleged infringement that Hulu receives and take appropriate action in accordance with applicable intellectual property laws. A notification of claimed copyright infringement should be emailed to Hulu's copyright agent at designated.agent@dig.twdc.com (subject line: "DMCA Takedown Request"). You may also contact us by mail or phone at:

Attention: TWDC Designated Agent
The Walt Disney Company
500 S. Buena Vista Street
Burbank, CA 91521
Phone: 818-560-1000

To be effective, the notification must be in writing and contain the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of an exclusive copyright interest; (ii) a description of the copyrighted work that you claim has been infringed; (iii) a description of where the material that you claim is infringing is located on the Services that is reasonably sufficient to enable Hulu to identify and locate the material; (iv) how Hulu can contact you, such as your address, telephone number, and email address; (v) a statement by you that you have a good faith belief that the disputed use is not authorized by

4/21/22, 1:11 PM

Terms & Conditions | Hulu



sent to designated.agent@trinity.edu for purposes other than communication about copyright infringement may not be answered.

Hulu has a policy of terminating repeat infringers in appropriate circumstances.

[back to top](#)

13. ARBITRATION OF CLAIMS

PLEASE READ THIS CAREFULLY. WE WANT YOU TO KNOW HOW IT AFFECTS YOUR RIGHTS. If you have an issue with the Services, we encourage you to review our frequently asked questions or contact our customer service team through our Help Center at hulu.com/help. In the event there is an issue that still requires attention, we want to make the resolution process as quick and efficient as possible. We also want to specify now what each of us should expect in order to avoid any confusion later. To that end, you and Hulu agree to first discuss any issue informally for at least 60 days before commencing an arbitration proceeding. To do that, please send your full name and contact information, your concern and your proposed solution by mail to us at: Hulu, LLC, 2500 Broadway, 2nd Floor, Santa Monica, CA 90404- Attn: Legal Department. If we would like to discuss an issue with you, we will contact you using the email address you provided when you registered for Hulu.

If we do not reach an agreed upon solution after our discussions for at least 60 days, you and Hulu agree that any and all claims, except disputes relating to the ownership or enforcement of intellectual property rights, that either of us may have, whether based on past, present, or future events, arising out of or relating to: (i) these Terms (including formation, performance, or breach of them, and including the scope and enforceability of this arbitration provision); (ii) the Privacy Policy, which is incorporated in these Terms; (iii) any aspect of our relationship with each other; and (iv) use of the Services, must be resolved through binding arbitration. Arbitration will be administered by JAMS Mediation, Arbitration, and ADR Services ("JAMS") in accordance with the JAMS Streamlined Arbitration Rules and Procedures ("JAMS Rules"). The JAMS Rules and instructions about how to initiate an arbitration are available at www.jamsadr.com or 1-800-352-5267. Please note that **YOU ARE GIVING UP THE RIGHT TO LITIGATE A DISPUTE IN COURT BEFORE A JUDGE OR JURY.** As an exception to this arbitration agreement, Hulu is happy to give you the right to pursue in small claims court any claim that is within that court's jurisdiction, whether or not you discussed with us informally first, as long as you proceed only on an individual basis.

YOU AND HULU AGREE TO ARBITRATE IN EACH OF OUR INDIVIDUAL CAPACITIES ONLY, NOT AS A REPRESENTATIVE OR MEMBER OF A CLASS, AND EACH OF US EXPRESSLY WAIVES ANY RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS BASIS. No

4/21/22, 1:11 PM

Terms & Conditions | Hulu



... your comments, information, or comments in person, through the submission of documents, by phone, or online. Proceedings that cannot be conducted through the submission of documents, by phone, or online, will take place in Los Angeles County, California. Rather than force everyone to visit us in California, if you can demonstrate that arbitration in California would create an undue burden to you, you are free to initiate the arbitration in your home state. It is important that you understand that the arbitrator's decision will be binding and final (except for a limited right of appeal under the U.S. Federal Arbitration Act) and may be entered as a judgment in any court of competent jurisdiction. Please note that nothing in this Section shall be construed as consent by Hulu to the jurisdiction of any other court with regard to disputes not covered by these Terms.

In accordance with the JAMS Rules, the party initiating the arbitration (either you or Hulu) is responsible for paying the filing fee. However, if the arbitrator issues you an award of damages and: (i) that award is greater than the amount of our last written settlement offer; or (ii) if we did not make a settlement offer, then in addition to paying for any JAMS Case Management Fees and all professional fees for the arbitrator's services, we will reimburse you for the filing fees you incurred.

If you're not sure what all of this means, of course please feel free to ask an attorney. Specifying what happens if an issue arises with one of our users is never a fun topic. But we pride ourselves on transparency and we thank you in advance for understanding why it's important that you and Hulu agree on the process described in this Section.

[back to top](#)

14. LIMITATION ON TIME TO BRING A CLAIM

To help resolve any issues between us promptly, you and Hulu agree to bring any claim arising out of or relating to these Terms (including Hulu's Privacy Policy), our relationship, or the use of the Services within one year after a claim arises; otherwise, the claim is waived. This limitation applies regardless of the venue in which such claim is or could otherwise be asserted.

[back to top](#)

15. GENERAL INFORMATION

15.1 International Use. We are a company based in the United States and offer our Services to users in the United States. Hulu's goal is to bring you as much Content as is legally available. That said, we are limited by the rights that our content programmers grant to us. Access to

4/21/22, 1:11 PM

Terms & Conditions | Hulu



Some of our Services, Content, and the transmission of applicable technical data, in any connection with the Services are subject to export controls. You agree to comply with all applicable laws regarding software and the transmission of technical data exported from the United States or the country in which you reside.

15.3 Choice of Law and Forum. These Terms are governed by, and construed in accordance with, the laws of the State of California without giving effect to principles of conflicts of law. To the extent that the arbitration provision outlined in Section 13 is not applicable (e.g., when confirming an arbitration award), you and Hulu agree to submit to the exclusive jurisdiction of the courts located in the Los Angeles County of the State of California.

15.4 No Waiver/Reliance. If you see other parties violating these Terms, let us know at feedback@hulu.com (subject line: "TOU Violation"). Hulu will determine if and how to respond. Hulu's decision to delay exercising or enforcing any right or remedy under these Terms shall not constitute a waiver of such right or remedy with respect to any party. Even if Hulu acts in a way that appears to you to be inconsistent with these Terms, Hulu's action shall not be deemed a waiver or constructive amendment of these Terms.

15.5 Integration, Amendment, Severability, and Electronic Communications. Please note that these Terms, including Hulu's Privacy Policy which is incorporated in these Terms and any end user license agreement that might accompany the applicable Service, constitute the entire legal agreement between you and Hulu and govern your use of the Services (including your use of the Content) (but excludes any services, if any, that Hulu may provide to you under a separate signed written agreement), and completely replaces any prior agreements between you and Hulu in relation to the Services. In the unlikely event that a customer service representative or material posted to our Help Center provides information that is inconsistent with these Terms, please be aware that these Terms will control. These Terms operate to the fullest extent permissible by law. If any provision of these Terms is held to be unlawful, void, or unenforceable, you and we agree that the provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provisions.

From time to time, we may communicate with you about the Services and these Terms electronically (e.g., emails to your registered email address, notices on the Hulu Site and other Access Points). You consent to receive electronic communications from Hulu and further agree that any notices, agreements, disclosures, and other communications that we send to you electronically will satisfy any applicable legal notification requirements. We recommend that you keep a copy of any electronic communications we send to you for your records.

15.6 Survival. The provisions of these Terms which by their nature should survive cancellation or deletion of your Account shall survive such cancellation or deletion.

Thank you for taking the time to read these Terms. By understanding and agreeing to follow these Terms, the experience will be better for all users. It is our goal to provide you with a first