



June 10, 2020

VIA Email and U.S. Mail

Russell S. Wheatley
STERIS Corporation
5960 Heisley Road
Mentor, OH 44060-1834

Re: iFixit Medical Device Repair Database

Dear Russell Wheatley,

We represent iFixit in connection with the Medical Device Repair Database. The Database has been widely lauded as a critical resource being used to save lives during the pandemic, praised by media outlets around the nation. NPR's Marketplace (<https://www.marketplace.org/shows/marketplace-tech/covid-19-ventilators-medical-equipment-repair-ifixit/>) reported that "there's no doubt that hospitals, and even governments, are struggling with this issue." The Toledo Blade's Editorial Board wrote that "Medical equipment companies that refuse to make repair manuals and tools readily available during the coronavirus crisis are actually threatening the health and safety of people in need of treatment... iFixit has offered biomedical technicians a much needed resource for making quick repairs to essential equipment." (<https://www.toledoblade.com/opinion/editorials/2020/06/06/right-to-repair-medical-equipment/stories/20200606008>) This database is an important public service project that does not infringe any Steris copyright.

First of all, iFixit is protected by Section 512 of the Digital Millennium Copyright Act, which allows online platforms to host content contributed by users provided they comply with the Act's requirements, which iFixit does. *See* 17 U.S.C. § 512. iFixit's DMCA policy is available at [this link](https://www.ifixit.com/Info/Terms_of_Use#Section_Digital_Millennium_Copyright_Act_Notice) (https://www.ifixit.com/Info/Terms_of_Use#Section_Digital_Millennium_Copyright_Act_Notice).

Second, the fair use doctrine authorizes iFixit and contributors to the Database to share the repair information they are providing. The Database provides a novel, user-friendly archive of repair information for mission-critical medical equipment. Thanks to this project, biomedical technicians can quickly and easily access the information they need to keep medical equipment up and running, saving time, money, and lives.

Fair use depends on four factors, weighed together in light of the purposes of copyright. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 578 (1994).

First, courts look to the purpose of the use. Is it transformative, i.e., is it new and different from that of the original creator? Is it commercial? Here, iFixit hosts a collection of manuals in one database, making them more findable, accessible, and useful, at no cost to the user. The database and user guides present non-copyrightable information from the manuals to aid in searching and more quickly comprehending that information, with the original manuals available so that technicians can verify and correct the summary information in a crowdsourced way. Documents, including the Steris files, have been analyzed and annotated with metadata to assist providers in locating the resources they need. Whatever copyrightable elements exist in these manuals, they are irrelevant to the project's purpose of disseminating and explaining factual repair information in order to save lives. A use with a new "intrinsic purpose," serving an "entirely different function," is transformative. *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 606 F. Supp. 1526, 1535 (C.D. Cal. 1985); see *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1165 (9th Cir. 2007); *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 608–10 (2d Cir. 2006); *Warren Publ'g Co. v. Spurlock*, 645 F. Supp. 2d 402, 418 (ED Pa. 2009). Factor one favors fair use.

Second, courts look to the nature of the work. Is it more factual or more expressive? Is it already published? Here, the works in question are highly factual and already published. See *Campbell*, 510 U.S. at 586. Factor two favors fair use.

Third, courts consider whether the second user copied an amount that is "reasonable in relation to the purpose of the copying." *Authors Guild v. Google, Inc.*, 804 F.3d 202, 21 (2d Cir. 2015). Reproduction of entire works is fair use when it reasonably fulfills the user's purpose. See, e.g., *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 449–50 (1984); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522, 544 (6th Cir. 2004); *Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 90 (2d Cir. 2014). Here, the project must copy entire manuals, or risk leaving out crucial details or context the technician will need to make the repair. See *Righthaven, LLC v. Jama*, No. 2:10–CV–1322 JCM (LRL), 2011 WL 1541613, at *3 (D. Nev. April 22, 2011) (fair use where impracticable to use less of original); see also *Spurlock*, 645 F. Supp. 2d at 418 (reproduction "virtually the same size as the original" was fair use). This is an essential step towards generating crowdsourced summaries and easy-to-use guides, as well. Factor three favors fair use.

The fourth factor, the effect of the use on the potential market for or value of the copyrighted work, concerns only "harm cognizable under the Copyright Act." *Campbell*, 510 U.S. at 592. Courts look to whether a person seeks to "profit from exploitation of the copyrighted material without paying the customary price." *Harper & Row v. Nation*

Russell S. Wheatley
June 10, 2020
Page 3 of 3

Enterprises, 471 U.S. 539, 562 (1985). The documents at issue are incidental to the sale of a corresponding medical device. Besides that, allowing manufacturers a copyright monopoly over repair information risks creating a corollary monopoly on the maintenance of those devices. Far from a legitimate licensing market, that would be a misuse of copyright to inhibit competition in an adjacent market for non-copyrightable goods and services. *See, e.g., Alcatel USA Inc. v. DGI Technologies Inc.*, 166 F.3d 772, 793-95 (5th Cir. 1999). Factor four favors fair use.

Finally, does a fair use finding further or hinder the purposes of copyright? The Medical Device Repair Database promotes the public interest by improving access to information to help technicians, and the strapped hospitals they work for, do their jobs more effectively. Meanwhile, the copyright incentive is intended to stimulate creative expression lest it not be authored otherwise. Given that the market for medical devices is about medical devices, it would be difficult for Steris to plausibly argue that it lacks adequate other incentives to document how to maintain the devices that are its bread and butter. The benefit to the public far outweighs any speculative harm to any legitimate interest in restricting their availability via the Database. *See Bill Graham Archives*, 448 F.3d at 613.

Copyright law is all about balance, and it protects secondary uses as well as original ones, especially when the usual copyright incentives were neither relevant nor needed to create the original work. That balance is working here to protect iFixit and the contributors to the Database. iFixit is protected by established copyright law doctrines and does not waive any of its rights or defenses.

Accordingly, iFixit does not intend to remove any content on the basis of your previous letter. We hope that you will consider this matter closed.

Sincerely,



Kit Walsh
kit@eff.org
Senior Staff Attorney
Electronic Frontier Foundation


Cynthia Replogle
cynthia@ifixit.com
General Counsel
iFixit