

The Battle for Repairability: Navigating Intellectual Property Rights

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Abstract

The “right to repair” movement allows consumers freedom to choose how they repair their product, either by themselves or choosing any third party repair service provider, instead of being obligated to return to the original manufacturer for repairs. When a product becomes non-functional or obsolete, consumers may decide whether to repair or replace it. But this choice is influenced by different factors taking into account cost, quality of repair services, convenience of repair services, as well as consumer preferences for newer and better products. The movement aims to pressure manufacturers to make spare parts, tools, and repair guides available for their products, extending their lifespan with the goal of reducing electronic waste. Replacement with a new product and throwing away the old ones is the growing concern as it leads to generation of electronic-waste. Manufacturer’s opposition to the movement stems from concerns about intellectual property and proprietary information theft. This has sparked debates around protecting intellectual property while ensuring consumer rights and safety, promoting sustainability, and competition. The paper aims to explore the relationship between “Right to Repair” movement and intellectual property rights, and to find a harmonious construct between these competing interests. It posits that a collaborative effort is necessary to find a solution that strikes the right balance, and enables a sustainable future for generations to come.

Keywords: right to repair, intellectual property, electronic-waste, sustainability.

I. INTRODUCTION

The “right to repair” is a legal and ethical principle that advocates for consumers to have the freedom to repair, modify, or tinker with the products they own. In today’s world, many products are designed with proprietary components or software that make it difficult or impossible for consumers to repair them, which is where the “right to repair” principle comes in. For example, if the screen of your phone gets damaged, the “right to repair” principle ensures that you have the legal freedom to fix it by yourself or approach a third-party repair shop without voiding your warranty or facing any penalties. This movement is based on the impression that consumers should have full ownership and control over the products after they purchase, including the ability to repair and modify them. The supporters argue that it promotes innovation, encourages competition, and protects consumers from unfair or monopolistic business practices. One of the main drivers of the “Right to Repair” movement is the concern over the environmental impact of electronic waste which is comprised of discarded electronic devices and appliances containing toxic components, poses potential hazards to the environment. This movement aims to bring in circular economy in which products are designed to be durable, repairable to reduce e-waste generation at the very inception of it. The inability to repair and modify electronic devices and appliances can lead to an increase in e-waste, as consumers may discard products that are otherwise functional. In 2019, India produced 3.2 million metric tonnes (mMT) of e-waste, as reported by the Global E-waste Monitor, 2020 and it is estimated that by 2025, the annual e-waste generation in India will rise to 7 mMT, and this figure is predicted to exceed 160 mMT by the year 2050.¹ By promoting the “Right to Repair” movement the objective is to address the overall environmental impact of electronic waste by advocating for the repair and reuse of products as a means to promote sustainability and minimize e-waste. This can be achieved by giving consumers and third party repair shops access to repair information, parts, and tools to facilitate them to repair their products.

Also, another important part of the “Right to Repair” movement is promoting consumer rights, ownership over the product. Consumers face increasing difficulties in repairing and modifying their products due to restrictions imposed by manufacturers, such as making it difficult to access repair information or by making products that are difficult to repair. The promotion of the “Right to Repair” movement can lead to consumers regaining ownership and control of their products, thereby enhancing

¹ ‘India’ (The Global E-Waste Statistics Partnership, 2019) <<https://globalewaste.org/statistics/country/india/2019/>> accessed 21 April 2023.

consumer rights and enabling them to make informed decisions about their purchases. However, producers often rely on intellectual property rights, such as patents and copyrights, to defend their restrictive practices that impede consumer access to repair information and components. For instance, John Deere, a major manufacturer of agricultural machinery, has argued that farmers do not have the right to repair their own tractors because of intellectual property laws. This has sparked a heated debate between the company and farmers, with the latter arguing that they should have the autonomy to conduct repair of their own equipment without having to rely on expensive authorized dealers. And recently in January 2023 the American Farm Bureau Federation and Deere & Co, the parent company of John Deere, signed a memorandum of understanding (MOU) that addresses the right to repair.² The MOU guarantees farmers the right to repair their own farm equipment or seek assistance from independent technicians without facing any restrictions from the manufacturer.³ This agreement is a significant victory for the right to repair movement and for farmers who have long pushed for greater access to repair information and tools. By examining the relationship between the “Right to Repair” movement and intellectual property law, a harmonious construct can be made between consumer rights and intellectual property rights, enabling both interests to be protected. However, in order to achieve these goals, we need to navigate the complex relationship between consumer rights and intellectual property rights. Thus by promoting greater transparency and access to information, the movement can find a way to protect both interests.

II. HISTORY AND DEVELOPMENT OF RIGHT TO REPAIR

The “Right to Repair” movement dates back to the initial 20th century, when manufacturers began exploring the strategies that would after some time malfunction or stop working become known as planned obsolescence. This practice, which sought to encourage consumption and discourage repair by intentionally designing products with shorter lifespans, became a cornerstone of the consumer economy in the 1950s. As electronics and other products became more prevalent, some manufacturers industries ranging from automobiles to smartphones began implementing similar strategies such as software locks and proprietary components that restricted access to repair manuals, tools, and parts, which limited the capacity of individual consumers and independent repair providers to repair electronic devices. This practice also contributed to a “throwaway culture” where it is easier and cheaper to replace an item than to repair it.⁴

A. POSITION IN US:

The 1947 case of *Champion Spark Plug Co. v. Sanders*⁵ marked a watershed moment in the progress of the right to repair. At issue was the sale of refurbished spark plugs under the Champion name by Sanders, which prompted Champion Spark Plug Co. to file suit for trademark infringement. The Supreme Court presided over the case in which it gave two-fold ruling that firstly confirming Sanders violation of Champion’s trademark and secondly applied the doctrine of patent exhaustion which means that when a product is sold legitimately the patent holder’s control over it exhausts, and the purchaser was free to repair, use, or resell it as they wished. The ruling thus enshrined the notion of the right to repair, serving as a groundbreaking paradigm that has gained momentum with technological progress and the efforts of manufacturers to restrict the availability of repair parts and data. The doctrine of ‘patent exhaustion’ also became an important limit on the power of patent holders.

With time, the legal position regarding the right to repair has undergone changes, which are evident through two pivotal cases. One of these cases is the *Eastman Kodak Co. v. Image Technical Services, Inc.*⁶ of 1992, in which Kodak was accused of impeding the sale of patented repair parts and refusing to fix Kodak equipment obtained from non-affiliated shops. The court's ruling stated that such behavior was against antitrust law and restricted consumer repair options. However, it was

² P Huffstutter, ‘Deere & Co. Will Allow Farmers to Repair Their Own Equipment’ (Reuters, 8 January 2023) <www.reuters.com/markets/commodities/farm-bureau-deere-co-sign-mou-ensuring-farmers-right-repair-equipment-2023-01-08/> accessed 21 April 2023.

³ Miller M, ‘US Farmers Win Right to Repair John Deere Equipment’ (BBC News, 9 January 2023) <www.bbc.com/news/business-64206913> accessed 21 April 2023.

⁴ Perzanowski A, “The History of Repair,” *The Right to Repair: Reclaiming the Things We Own* (Cambridge University Press 2022)

⁵ *Champion Spark Plug Co. v. Sanders*, Supreme Court, (1947) 331 U.S. 125.

⁶ *Eastman Kodak Co. v. Image Technical Services, Inc* (1992) 504 U.S. 451

determined that the exclusionary conduct was permissible for patented parts, provided they were offered at reasonable prices. Conversely, in 2017, the Supreme Court adopted a different approach in *Impression Products Inc. v. Lexmark International Inc.*⁷ In this case, Lexmark sued Impression Products for violating its digital right management (DRM) mechanisms to repair and resell its products. The court concluded that patent rights were depleted once the item was sold and that the patent holder could not impose post-sale restrictions. Therefore, the utilization of intellectual property rights to limit repair has been disallowed by the US Supreme Court.⁸

In addition to legal precedents set by court cases, the right to repair has also gained recognition from legislative bodies. Over 20 states have introduced bills to legally recognize the right to repair. With the aim of overcoming the existing limitations, various groups such as environmental organizations, repair advocates, and small business owners have put forward a crusade for legislations that would grant consumers the right to conduct repairs on their own electronic gadgets. The concept of this movement was first adopted in the US with the passage of “Motor Vehicle Owner’s Right to Repair Act” back in 2012. As a result, Massachusetts became the inaugural state to instate this act which necessitated manufacturers to furnish all documents and information required by individuals for performing self-repairs on their vehicles. The emergence of the Digital Right to Repair Coalition in 2013 brought together diverse entities including independent repair shops, consumer advocates, and environmental groups. The mission behind this coalition was a logical extension expanding right to repair laws for electronics like smartphones and laptops. Although certain states such as New York, Minnesota or Nebraska proposed relevant legislation over time, none were able to pass any particular legal action into motion. Nonetheless, enthusiasts of this ideal may find hope in knowing that President Biden authorized an executive order during his term directing instruction towards the Federal Trade Commission providing consumers the unilateral ability to exercise device fixing rights.⁹ A historic legislative bill called the “Fair Repair Act”¹⁰ for digital electronics has been passed by the New York state legislature in 2022, marking an unprecedented move towards enhanced consumer and independent technician protection. This groundbreaking piece of legislation mandates that manufacturers of digital electronics must provide clients and other third-party technicians with the tools, parts, software, and information requisite for repairing such products.

B. POSITION IN EU:

The European Union has been actively promoting the right to repair in recent years as part of its efforts to create a more sustainable and circular economy. The right to repair refers to the ability of consumers to repair, reuse, and recycle products, which can help to extend their lifespan and reduce waste. Several EU legislative initiatives support the right to repair, including the Eco Design Directive, the Eco Label Directive, the Circular Economy Action Plan, and the Consumer Agenda.¹¹

The Eco Design Directive sets minimum energy performance standards and environmental criteria for energy-related products. By promoting eco-design requirements, the directive ensures that products are designed to be more durable, repairable, and upgradeable. This helps to extend their lifespan and reduce waste, contributing to a more circular economy. The Eco Label Directive provides consumers with information on the environmental performance of products, including their durability and repair ability. By providing consumers with this information, the Eco Label helps them make more informed purchasing decisions and encourages manufacturers to develop more eco-friendly and repairable products.¹²

⁷ *Impression Products Inc. v. Lexmark International Inc* (2017) 137 S. Ct. 1523

⁸ Aradhana Pandit Yash Chadha, ‘Monopolising Repair: A Critical Appraisal of the Right to Repair’ (IRCCL, 30 November 2021) <www.irccl.in/post/monopolising-repair-a-critical-appraisal-of-the-right-to-repair> accessed 21 April 2023.

⁹ ‘Right to Repair — Culture of Repair’ (Culture of Repair) <www.cultureofrepair.org/advocacy> accessed 21 April 2023.

¹⁰ ‘S.3830 - 117th Congress (2021-2022): Fair Repair Act’ (Congress.Gov March 14, 2022) <<https://www.congress.gov/bill/117th-congress/senate-bill/3830/text>>> accessed April 21, 2023

¹¹ ‘EUR-Lex - 32009L0125 - EN - EUR-Lex’ (EUR-Lex — Access to European Union law — choose your language) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32009L0125>> accessed 21 April 2023.

¹² Ricardo J Hernandez, Constanza Miranda and Julian Goñi, ‘Empowering Sustainable Consumption by Giving Back to Consumers the ‘Right to Repair’ (2020) 12(3) Sustainability 850, <<http://dx.doi.org/10.3390/su12030850>> accessed 21 April 2023.

The Circular Economy Action Plan¹³ is a comprehensive policy framework that aims to promote a more sustainable and circular economy, which minimizes waste and maximizes the use of resources. The plan includes a range of measures and initiatives to support circular business models, reduce waste, and promote the use of recycled materials. The plan includes initiatives such as eco-design, product reuse, repair, and recycling, as well as measures to promote sustainable production and consumption. The Consumer Agenda sets out the EU's priorities for consumer protection and empowerment. The Agenda includes a commitment to promoting sustainable consumption and production and supporting the right to repair. The Commission plans to work with stakeholders to develop a comprehensive "right to repair" framework that ensures consumers have access to repair services, spare parts, and repair information.¹⁴

In its ruling on *Top Systems v. Belgium*¹⁵, the European Court of Justice interpreted the exceptions to copyright protection for computer programs that are enshrined in articles 5 and 6 of Directive 91/2501. The court affirmed that consumers have the right to decompile and reverse engineer software if it malfunctions and that such actions do not infringe on the manufacturer's copyright. The judgment clarifies the scope of the exceptions to copyright protection for computer programs and emphasizes the importance of the right to repair for consumers.

C. POSITION IN UK:

The United Kingdom Government has recently instated novel ecodesign and labelling mandates for specific electrical items retailed in Great Britain. These regulations, known as the "Ecodesign for Energy-Related Products and Energy Information Regulations 2021", or the "Right to Repair Regulations" were introduced on 18 June 2021, with most provisions taking effect on 1 July 2021.¹⁶ The underlying objective of these regulations is to enhance producer responsibility, minimize energy consumption, electronic waste, and endow consumers with the ability to distinguish the most energy-efficient products obtainable in the market. One of the key features of the Right to Repair Regulations is the "right to repair" provision, which allows professional repairers to access spare parts and technical information from July 2021.¹⁷ However, manufacturers have been given a grace period of up to 2 years to make spare parts available, leading to some uncertainty about the timeline for implementation. The UK government has chosen to follow equivalent EU regulations after the UK's departure from the EU, adding to the complexity of the situation. Overall, while the Right to Repair Regulations represent an important step towards sustainability and consumer empowerment, their implementation remains a somewhat perplexing issue due to the various factors at play.

D. POSITION IN AUSTRALIA:

The Motor Vehicle Service and Repair Information Sharing Scheme (MVSRIIS) was implemented across Australia on 1 July 2022.¹⁸ It requires car manufacturers to share service and repair information with independent repairers and other third-party providers. The scheme aims to promote competition and provide consumers with more choice. Manufacturers who fail

¹³ 'Circular economy action plan' (Environment) <https://environment.ec.europa.eu/strategy/circular-economy-action-plan_en> accessed 21 April 2023.

¹⁴ 'Circular Economy: Definition, Importance and Benefits | News | European Parliament' (News European Parliament, 23 February 2023) <www.europarl.europa.eu/news/en/headlines/priorities/circular-economy/20151201STO05603/circular-economy-definition-importance-and-benefits> accessed 21 April 2023.

¹⁵ *Top Systems v. Belgium*, Court of Justice of the European Union ("CJEU"), 6 October 2021, Case C-13/20, InfoCuria Case-law, ECLI:EU:C:2021:811 (European Union) <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=247056&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9912038>> accessed 21 April 2023.

¹⁶ 'Right to Repair Regulations Research Briefing' (UK Parliament House of Commons Library, 24 September 2021) <<https://commonslibrary.parliament.uk/research-briefings/cbp-9302/>> accessed 21 April 2023.

¹⁷ Adam Speight, 'The UK's Right to Repair Law Already Needs Repairing' (WIRED UK, 10 July 2021) <www.wired.co.uk/article/right-to-repair-uk> accessed 21 April 2023.

¹⁸ Dave LaChance, 'Australian 'Right to Repair' Law Guarantees Data Access to Repairers, Not Part Makers' (Repairer Driven News, 6 July 2022) <www.repairerdrivennews.com/2022/07/06/australian-right-to-repair-law-guarantees-data-access-to-repairers-not-part> accessed 21 April 2023.

to comply with the MVSRIS face penalties of up to \$10 million.¹⁹ The scheme has been welcomed by independent repairers and consumer groups, but some manufacturers have expressed concerns about vehicle safety and security.²⁰

E. POSITION IN INDIA:

While progress has been made in some countries, including the United States and the European Union, the Right to Repair movement is still gaining momentum in other parts of the world, including India.²¹ The following table is highlighting some of the major events that took place in this regarding India:-

Year	Actions taken by Government
2016	The Ministry of Environment, Forest and Climate Change in India announces that it will establish e-waste collection centers to encourage proper removal of e-waste under “The E-Waste (Management) Rules, 2016” ²²
2019	The Indian government introduces a series of “Automobile Industry Standards(AIS) on Information on Technical Specifications” to be submitted by the Vehicle Manufacturer ²³
2020	The Indian government launched the “Waste to Wealth Mission”, which aims to tackle the challenge of waste management sustainably. ²⁴
2022	Department of Consumer Affairs takes steps towards developing a framework for the Right to Repair in India as part of the LiFE (Lifestyle for the Environment) movement. ²⁵
2023	The Indian Ministry notified the "E-Waste (Management) Rules, 2022" with an “Extended Producer Responsibility (EPR) regime” for e-waste recycling, effective from April 1, 2023. ²⁶

III. IMPLICATION OF IPR ON RIGHT TO REPAIR

From the advent of the right to repair movement, a clash between manufacturer’s intellectual property rights and providing access to necessary equipment has been ongoing. Varied arguments arise over whether giving out repair manuals, giving diagnostic tools, or granting access to proprietary software infringes on copyright or trade secret rights. A certain group of manufacturers might argue that creating or selling replacement components for their items could be an infringement of their patent rights. Additionally, these firms may utilize software updates for limiting product functionality after they are repaired by third-party providers- which many critics infer infringes upon customer’s right to repair.

¹⁹ Motor Vehicle Service and Repair Information Sharing Scheme: Guidance for Data Providers (Australian Competition & Consumer Protection 2022) <www.accc.gov.au/about-us/publications/motor-vehicle-service-and-repair-information-sharing-scheme-guidance-for-data-providers#:~:text=The%20Motor%20Vehicle%20Service%20and,to%20service%20and%20repair%20vehicles.> accessed 21 April 2023.

²⁰ Repair, Replace, Refund, Cancel (Australian Competition and Consumer Commission 2023) <www.accc.gov.au/consumers/problem-with-a-product-or-service-you-bought/repair-replace-refund-cancel> accessed 21 April 2023.

²¹ Jurgita Malinauskaite and Fatih Buğra Erdem, ‘Planned Obsolescence in the Context of a Holistic Legal Sphere and the Circular Economy’ [2021] Oxford Journal of Legal Studies <<http://dx.doi.org/10.1093/ojls/gqaa061>> accessed 21 April 2023.

²² ‘E- Waste (Management) Rules, 2016’ (Central Pollution Control Board 2023)<<https://cpcb.nic.in/e-waste/>> accessed 21 April 2023.

²³ Automotive Industry Standards(AIS) (Amd. 7 to AIS-007(Rev. 5), Ministry of Road Transport and Highways, Government of India 2019) <<https://morth.nic.in/ais>> accessed 21 April 2023.

²⁴ ‘Waste to Wealth Mission’ (Waste to Wealth) <www.wastetowealth.gov.in/> accessed 21 April 2023.

²⁵ ‘Department of Consumer Affairs Sets Up Committee to Develop Comprehensive Framework on the Right to Repair’ (PIB, Delhi 2022) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1841403>> accessed 21 April 2023.

²⁶ ‘E- Waste (Management) Rules, 2022’ (Central Pollution Control Board 2023)<<https://cpcb.nic.in/e-waste/>> accessed 21 April 2023.

At the center of the debate between manufacturers and right to repair advocates is whether or not manufacturers should provide repair materials to consumers and independent repair shops. Advocates argue that this requirement would reduce costs, increase consumer choice, promote competitiveness in the market, and support sustainability. However, navigating the intersection of intellectual property law and consumer rights poses a challenge to policy makers.²⁷ The recent COVID-19 crisis has emphasized the importance of repair efforts, as demonstrated by right to repair advocates stepping up to provide ventilator repairs.²⁸ As manufacturers resist the call for repair, many consumers and public figures are coming to appreciate its benefits. Despite challenges from manufacturers, consumers and public representatives are recognizing the value of repair and advocating for lawful ways to circumvent software locks. While intellectual property laws aim to protect creators and inventors, they can also restrict consumer freedom in terms of repairing or modifying products. This may result in higher costs and limited options for consumers; however, legislation supporting the right to repair could mitigate these issues. To fully comprehend the impact of IP on the right to repair, it is crucial to examine the specific type of IP involved and the circumstances surrounding product repair or modification. Striking a balance between manufacturer's interests and consumer's needs can be challenging, but it is vital for promoting innovation, competition, and consumer choice.²⁹

A. NAVIGATING PATENT LAWS FOR RIGHT TO REPAIR

The relationship between patent law and the right to repair is a complex and multi-layered issue. Section 48 of the Patent Act 1970 provides patent holders with exclusive rights to their inventions, encompassing the ability to produce, utilize, and market the patented technology and right to prevent the third parties from doing any such activities.³⁰ Thus, it can be concluded that violating these monopoly rights constitutes patent infringement. However, the patent exhaustion doctrine is a legal concept that restricts the scope of a patent holder's exclusive rights following an authorized sale of a patented item. In essence, once a patent holder sells a patented product, their rights concerning that specific product are considered "exhausted".³¹ Consequently, the buyer should have the freedom to use, resell, or repair the product without needing further consent from the patent holder.

The patent exhaustion doctrine which is provided under Section 107A (b) of The Patents Act 1970³² can act as a shield against patent infringement claims in patent law that can sometimes have exceptions to its own application. In situations where a patent holder has authorized the sale of a patented product subject to certain conditions or limitations, such as license agreements or warranties, the exhaustion doctrine may not apply, and the patent holder may still be able to enforce their exclusive rights. The exceptions to the exhaustion doctrine can make patent law even more complicated and difficult to navigate, as they require a thorough analysis of the specific terms and limitations of the sale agreement. In cases where a purchaser of a patented product attempts to modify or repair the product in violation of the agreed-upon limitations, the exhaustion doctrine may not provide a shield against a potential patent infringement claim. Similarly, if a purchaser asserts restricted rights under a limited warranty, the exhaustion doctrine may not apply if the asserted rights go beyond what was authorized by the patent holder. This meant that patent holders could file infringement lawsuits to enforce post-sale restrictions, even if the doctrine of exhaustion would otherwise suggest that the sale of a product extinguished the patent holder's exclusive rights.³³ Therefore, while the exhaustion doctrine can provide some clarity and predictability in patent law, its exceptions can

²⁷ Michael A Carrier, 'The Right to Repair, Competition, and Intellectual Property' (2023) 15(2) *Landslide* (Dec. 2022 / Jan. 2023) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4323277>.

²⁸ Courtney Linder, 'Hospitals Need to Fix Ventilators. Why Won't Manufacturers Let Them?' (*Popular Mechanics*, 16 April 2020) <www.popularmechanics.com/science/health/a32144222/hospitals-ventilators-right-repair-covid-19/> accessed 21 April 2023.

²⁹ Evelyne Terryn, 'A Right to Repair? Towards Sustainable Remedies in Consumer Law' (2019) 27(Issue 4) *European Review of Private Law* 851, <<http://dx.doi.org/10.54648/erpl2019044>> accessed 20 April 2023.

³⁰ 'The Patents Act 1970: Section 48. Rights of patentees.' <<https://ipindia.gov.in/writereaddata/Portal/ev/sections/ps48.html>>

³¹ 'Patent Exhaustion in India' (*BananaIP*, 7 October 2010) <www.bananaip.com/ip-news-center/patent-exhaustion-in-india/> accessed 21 April 2023.

³² 'The Patents Act 1970: Section 107A. Certain acts not to be considered as infringement.' <https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf>

³³ Leah Chan Grinvald and Ofer Tur-Sinai, 'Intellectual Property Law and the Right to Repair' [2019] *SSRN Electronic Journal* <<http://dx.doi.org/10.2139/ssrn.3317623>> accessed 21 April 2023.

create further confusion and complexity that require a careful analysis of the specific circumstances surrounding each case. Consequently, this creates obstacles for repairing products containing patented elements. Individuals or repairers seeking to fix such products may unintentionally infringe upon the patent holder's rights by working on patented components without authorization.

However, right-to-repair advocates argue that repair or modification does not always equate to patent infringement, as long as these actions do not lead to the development of a new product utilizing patented technology without consent. Anti-repair practices can lead to the violation of Section 4 of the Competition Act, 2002, as they grant OEMs a monopoly over repairs, allowing them to control prices and make repairs as expensive as buying a new product. The judgment in the *Shri Shamsher Kataria versus Honda Siel Cars Limited & Ors.*³⁴ Case, set a precedent for the invalidation of anti-competitive practices by automobile companies under the guise of IP rights. In a momentous decision, the court found 14 automobile behemoths culpable of engaging in anti-competitive practices, wherein they prevented the sale of goods and services only through authorized dealers and denied independent automobile repairers access to spare parts. The judgment underlined that intellectual property rights cannot be used as an insurmountable barrier to infringe Indian competition law and set a new precedent in safeguarding consumer welfare against the pernicious machinations of profit-hungry corporations.³⁵

The decision in a US case *Impression Products, Inc. v. Lexmark International, Inc.*³⁶ has thrown patent holders into a state of confusion and uncertainty. While it has been established that an authorized sale of a patented item exhausts all patent rights, thereby rendering post-sale restrictions on use null and void, enforcing these restrictions under contract law is not completely off the table.³⁷ In conclusion, patent law may not offer a straightforward solution for non-repair clause violations and this legal limbo leaves consumers and repair businesses hesitant to exercise their right to repair for fear of legal repercussions. To alleviate this quandary, some legal experts have suggested invoking contract law doctrines, such as the public policy exception and unconscionability doctrine, to challenge post-sale restrictions.³⁸ However, this approach comes with its own set of uncertainties and potential liabilities, leaving consumers and repair businesses in a state of flux. In order to prevent intellectual property rights from undermining the right to repair, developing precise legal tests to differentiate between sales and other transactions is crucial. Ultimately, safeguarding the right to repair is not only crucial for consumer's financial well-being but also for the sake of environmental sustainability.

B. NAVIGATING COPYRIGHT LAWS FOR RIGHT TO REPAIR

Copyright law and consumer durables share a symbiotic relationship concerning electronic gadgets like smartphones, notebooks, among others. It arises due to the reliance on copyrighted software and firmware for proper functioning purposes. As a result, manufacturers involved in marketing such gadgets have been vested with explicit copyrights authorizing them exclusively to duplicate or circulate copyrighted material used in the trademarked goods being sold to consumers. Moreover, these companies have put into place various technical mechanisms like digital locks aimed at assuring legitimacy while avoiding unfair tampering/repairation attempts. Preventing or restricting unauthorized use or access to copyrighted material involves utilizing technological protection measures (TPMs). Examples include encryption, password protection, digital rights management (DRMs) and other similar methods. Repair markets may suffer significant drawbacks due to the introduction of TPMs since these preventive methods can limit access to vital software and firmware updates which are essential for product

³⁴ *Shri Shamsher Kataria vs Honda Siel Cars India Ltd. & Ors* Case No. 03/2011 (Competition Commission of India, 25/08/2014)

³⁵ Priya Raghuvanshi and Aryaveer Hooda, 'IP vs. The Right to Repair: Deciphering the Legal Conundrum – The Leaflet' (The Leaflet – An independent platform for cutting-edge, progressive, legal, and political opinion, 11 October 2021) <<https://theleaflet.in/ip-vs-the-right-to-repair-deciphering-the-legal-conundrum/>> accessed 21 April 2023.

³⁶ *Impression Products Inc. v. Lexmark International Inc.*, (2017) 137 S. Ct. 1523

³⁷ D Brian Kacedon and Kevin D. Rodkey, 'The Aftermath of *Impression Products v. Lexmark*' (Finnegan | Leading IP Law Firm, 13 November 2017) <www.finnegan.com/en/insights/articles/the-aftermath-of-impression-products-v-lexmark.html> accessed 21 April 2023.

³⁸ Leah Chan Grinvald and Ofer Tur-Sinai, 'Intellectual Property Law and the Right to Repair' [2019] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.3317623>> accessed 21 April 2023.

repairs thus diminishing the capacity for consumer self-repairs alongside third-party repairs. One possible consequence of using TPMs is that they can limit the availability of third-party replacement parts, as the software may only recognize and function with specific components produced by the original equipment manufacturer (OEM). This can have the effect of limiting competition and driving up the cost of repair services.

The use of repair-resistant software TPMs by manufacturers raises concerns from both independent repair technicians and individual consumers. From the perspective of repair technicians, these TPMs limit their ability to offer repair services and effectively reserve the market for the manufacturer. From the perspective of consumers, the TPMs blur the lines between ownership and a license to use. This raises questions about the nature of ownership - do consumers really own their things if they are unable to use them as they wish? Some manufacturers have even gone so far as to claim that consumers do not own their products, but instead have an implied license to use them.³⁹ This raises challenges for consumers who may want to repair or modify their electronic devices, as well as for independent repair shops who may need access to copyrighted software to perform repairs. The right to repair movement seeks to address this issue by advocating for increased access to repair information and tools, as well as the right to circumvent digital locks or other technological measures for the purpose of repair which would amount to infringement of rights unless covered by exceptions.

While the Indian Copyright Act of 1957 does not specifically address the right to repair but its provisions on fair dealing may potentially apply to certain limited uses. Under Indian Copyright law, Section 65A⁴⁰ prohibits the circumvention of technological measures applied for the purpose of protecting any of the rights conferred by the Act. Individuals who deliberately bypass such security measures with the intention of violating the rights granted by the Act may face severe consequences, including imprisonment for a period of up to two years and may be subject to monetary fines. However, Section 65A also provides for certain exemptions that allow individuals to circumvent technological measures for certain purposes. One such exemption is for activities that are not expressly prohibited by the Act. This means a person can circumvent a technological measure for repairing purposes only if it is not expressly prohibited by the Act. This implies the exemption can be used for repairing purposes, as long as it is not for the purpose of copyright infringement. Therefore, it may be possible for individuals to repair their own devices by circumventing technological measures under Section 65A of the Indian Copyright Act. However, the success of such an argument would depend on the specific circumstances of the case and how the court interprets the provisions of the Act.

In contrast, the US Digital Millennium Copyright Act (DMCA) has a more specific provision, Section 1201(f), which provides an exemption for individuals to circumvent technological measures for repairing purposes.⁴¹ This provision allows a person to circumvent a technological measure that controls access to a computer program for the sole purpose of diagnosing, repairing, or maintaining a device.⁴² However, the exemption is limited to the extent necessary to accomplish the authorized activity and does not permit any copyright infringement or other unlawful activity. Therefore, while both Indian and US Copyright laws prohibit the circumvention of technological measures, the US DMCA provides a more specific exemption for repairing purposes, whereas the Indian Copyright Act provides a general exemption that may be interpreted to include repairing one's own device.

C. NAVIGATING TRADEMARK LAWS FOR RIGHT TO REPAIR

³⁹ Leah Chan Grinvald and Ofer Tur-Sinai, 'Intellectual Property Law and the Right to Repair' [2019] SSRN Electronic Journal <<http://dx.doi.org/10.2139/ssrn.3317623>> accessed 21 April 2023.

⁴⁰ 'The Copyright Act 1957: Section 65A. Protection of technological measures.' <<https://copyright.gov.in/documents/copyrightrules1957.pdf>>

⁴¹The Digital Millennium Copyright Act of 1998: Section 1201 Exemptions to Prohibition Against Circumvention of Technological Measures Protecting Copyrighted Works, < [Section 1201 | U.S. Copyright Office](#)>

⁴² Leah Chan Grinvald and Ofer Tur-Sinai, 'The Right to Repair: Perspectives From the United States' 31 Australian Intellectual Property Journal 98(2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3763088> accessed 21 April 2023.

The purpose of trademarks is ultimately to protect consumers. However, when companies overreach in their pursuit of trademark protections, they risk hampering consumer's rights with respect to repair which is the opposite of what they are meant to accomplish.⁴³ Trademark law permits manufacturers to restrict the usage of their brand identification so that only legitimate service providers may utilize it for repairs. While firms defend this practice on grounds of quality control and counterfeit prevention, it threatens independent competition within the marketplace while also driving up repair costs for customers. In the pursuit of controlling importation and distribution of parts, manufacturers have gone so far as to obtain trademarks on even the smallest components, despite their barely visible nature.⁴⁴ Additionally, these same manufacturers have taken advantage of trademark provisions to label refurbished replacement parts as counterfeit, thereby impeding competition in the repair industry. While protecting consumers from unfair competition is vital, it should not come at the cost of limiting consumer choice and suppressing independent repair through excessive trademark enforcement. A recent example of such overreach occurred when Apple successfully sued an independent electronics repairer in Norway for importing iPhone-compatible replacement screens with alleged counterfeit logos.⁴⁵

The concept of nominative fair use can be used as a defense for the right to repair. In the US, some courts have allowed aftermarket sellers of replacement parts minimal use of the original equipment manufacturers (OEM) trademark in their marketing materials, with the basic elements of nominative fair use including accurate reference to the trademark of goods or services sold, no implication of endorsement or sponsorship by the trademark owner, no easier way to refer to the products or owner, and use only of so much of the trademark as is needed to identify the trademark owner. When it comes to the right to repair, independent repair providers can use third-party spare parts to repair products, as long as they do not infringe on trademarks. However, this can lead to disputes about trademark infringement, and to avoid infringing on trademarks, independent manufacturers must follow three key points under section 30(2)(d) of the Indian Trademarks Act, 1999. If independent manufacturers follow these rules, they can use the registered trademark of the parent product, but not in an eye-catching manner.⁴⁶

Incorporating repair into the provisions of trademark law is crucial, especially when counterfeiting of trademarks is considered a criminal offense.⁴⁷ The criminalization of trademark infringement can obstruct the ability to carry out repairs, so it is important to have provisions that explicitly allow for the fair use of trademarks for repair purposes to ensure that individuals and independent repair providers are not unjustly penalized for repairing and maintaining products. Overall, the right to repair is essential for consumer choice and competition in the repair market, and it is important to ensure that manufacturers do not overreach their trademark protections to stifle independent repair.

IV. CONCLUSION

The issue of electronic waste (e-waste) is a growing problem worldwide, and India is no exception. The inability to repair and modify electronic devices and appliances can contribute to this problem, as consumers may discard products that are otherwise functional but require a simple repair. The "right to repair" movement is a vital step towards promoting sustainability, reducing e-waste, and empowering consumers to take ownership and control over their purchases. While the movement has

⁴³ Sahra Svensson-Hoglund and others, 'Barriers, Enablers and Market Governance: A Review of the Policy Landscape for Repair of Consumer Electronics in the EU and the U.S.' (2021) 288 *Journal of Cleaner Production* 125488, <<http://dx.doi.org/10.1016/j.jclepro.2020.125488>> accessed 21 April 2023.

⁴⁴ Anthony D Rosborough, 'Toward a Canadian Right to Repair: Opportunities and Challenges' [2022] *SSRN Electronic Journal* <<http://dx.doi.org/10.2139/ssrn.4236843>> accessed 21 April 2023.

⁴⁵ Kristina Stenvik, 'Importation of Goods Affixed With a Trademark Concealed by a Removable Marker' (2021) 70(3) *GRUR International* 285, <<http://dx.doi.org/10.1093/grurint/ikab013>> accessed 21 April 2023.

⁴⁶ Susan Froling, 'OEM Trademarks in the AfterMarket: Exploring the Boundaries' (IPWatchdog.com | Patents & Intellectual Property Law, 19 September 2018) <<https://ipwatchdog.com/2018/09/19/oem-trademarks-aftermarket-exploring-boundaries/id=101163/>> accessed 21 April 2023.

⁴⁷ Nandan Pendsey, 'Doctrine of 'Nominative Fair Use' Under Trademark Law - Trademark - India' (Welcome to Mondaq, 3 January 2020) <www.mondaq.com/india/trademark/879442/doctrine-of-nominative-fair-use-under-trademark-law> accessed 21 April 2023.

gained momentum in the US and the European Union, it is also gaining traction in India through the development of a framework for the Right to Repair as part of the LiFE movement and the implementation of the E-Waste (Management) Rules. With the alarming increase in e-waste generation, it is essential to empower consumers and repair businesses with the necessary tools and information to repair and reuse electronic devices and appliances. It is imperative that we take action now to ensure a better future for our planet and future generations. However, intellectual property laws currently do not support the right to repair. The monopolistic repair practices of firms violate the fundamental right to choose as consumers are denied access to third-party repair services and spare parts. To address this issue, intellectual property rights must be redefined through legislation to ensure they do not infringe upon the right to repair. To ensure the successful implementation of this movement, certain fine tunings are suggested, including repair-friendly interpretations of patent, copyright, and trademark law doctrines or accommodating explicit repair protection laws. It is crucial to develop precise legal tests to differentiate between sales and other transactions to prevent intellectual property rights from undermining the right to repair. The inclusion of specific provisions for the right to repair in Indian patent, copyright and trademark law would provide greater clarity and protection for individuals and independent repairers seeking to repair their electronic devices without infringing on intellectual property rights. The right to repair should not be hindered by intellectual property laws, and the two should be reconciled to promote sustainable practices and consumer empowerment. Therefore, comprehensive and fair “right to repair” legislation needs to be established to cover all industries concerned. Such laws would not only benefit consumers but also promote long-term development. The need of the hour is for urgent action to be taken in establishing equitable right to repair laws that balance consumer rights and business interests.