

The Consumer's Right to Repair

By: Brendan Kelly

When a consumer makes a purchase in full, they own the right to do as they chose with their new items, right? Wrong. Warranties and guarantees will often only go so far as giving a consumer the right to an “authorized” repair. This means that consumers must abide by manufacturer rules on how to go about getting a repair. It is often almost as expensive to repair an old device as it is to upgrade to a new one, so it is obvious consumers should just upgrade to a new device, right?¹ Again, wrong. Consumers and advocates alike are often faced with these decisions, thus the movement for right to repair laws has taken off in recent years. Right to repair is a basic movement; if a consumer owns a good, they should be able to repair it.²

The concept of right to repair is not new, with emerging and ever complicated technologies make the process more and more complicated. Intricate technology has created a wave of backlash to proposed right to repair legislation. Opponents of right to repair legislation suggest that requiring a manufacturer to disclose “in-house” diagnostic tools that they use “in-house,” and specific replacement parts could lead to unnecessary (and potentially illegal) impositions on copyrights, leaking of trade secrets, and exposing intellectual property when it otherwise could remain hidden.³ However, advocates for right to repair laws claim that there is nothing that could legally harm tech companies, pointing out that patents are available to the public already and true trade secrets would be unnecessary to make repairs.⁴

Advocates for right to repair laws claim that state legislation guaranteeing a right to repair would help break monopolies in the repair market and help consumers in the long run.⁵ Additionally, advocates claims that right to repair laws would provide environmental benefits.⁶ If consumers are able to repair their products more easily, they can keep them longer. They would not need to throw out their old products and purchase a new one, therefore creating less waste in landfills.⁷

Right to repair might also impact consumer costs. To maximize profit, companies may begin to factor in lost repair proceeds into the original price, driving up the original cost of the

¹ Thorin Klosowski, *What You Should Know About Right to Repair*, WIRECUTTER (July 15, 2021), <https://www.nytimes.com/wirecutter/blog/what-is-right-to-repair/>.

² *Id.*

³ Isiah Portiz, *NY's Right to Repair Law Shaped by Contentious IP, Safety Issues*, BLOOMBERG LAW (January 9, 2023), <https://news.bloomberglaw.com/ip-law/nys-right-to-repair-law-shaped-by-contentious-ip-safety-issues>.

⁴ *Id.*

⁵ Luyi Yang, Chen Jin, and Cungen Zhu, *Research: The Unintended Consequences of Right-to-Repair Laws*, HARVARD BUSINESS REVIEW (January 19, 2023), <https://hbr.org/2023/01/research-the-unintended-consequences-of-right-to-repair-laws>.

⁶ *Id.*

⁷ *Id.*

goods.⁸ The real impact on consumer pricing is speculative, with increasing state legislation and federal propositions still working their way through the respective legislative bodies.

One of the biggest fights in the right to repair movement is not about proprietary information in the latest Apple iPhone, high speed laptop, or brand-new biomedical engineering devices. Instead, it is being waged across the farmlands of the U.S. Farmers and advocates in their movement to gain access to easier repairs on tractors are going up against John Deere. Tractors, like many pieces of equipment, have become more advanced, and are increasingly being integrated with electronic equipment.⁹ Manufactures like John Deere were previously very apprehensive on releasing any information on how their integrated computer systems work. This makes it very difficult to properly repair anything. However, John Deere and the American Farm Bureau Federation recently reached a memorandum of understanding promising repair shops and farmers the information needed to properly fix their new equipment.¹⁰ While the memo is a step in the right direction, it contained one small important caveat. John Deere may pull out of their obligations if right to repair legislation is passed.¹¹ Therefore, the memo has very little legal ground to stand on and offers very little in protections for farmers to have long standing rights to repair the tractors.

Companies are increasingly lobbying against right to repair laws to protect their interests. Consumer advocates claim this is for the worse, but new research may suggest that the existing model is more beneficial. It is uncertain how the right to repair movement will ultimately impact consumers. The legal framework has been set in several states, but the federal movement is slow and faces an uphill climb. The true test will be whether lobbying groups against the legislation can successfully find legal grounds to protect their IP or if consumers rights will ultimately win out.

⁸ *Id.*

⁹ Joe Hernandez, *John Deere vows to open up its tractor tech, but right-to-repair backers have doubts*, NPR (January 10, 2023), <https://www.npr.org/2023/01/10/1147934682/john-deere-right-to-repair-farmers-tractors>.

¹⁰ *Id.*

¹¹ *Id.*