

### Identifying Information

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### Paper Information

Title:	Intellectual Property Law and the Right to Repair
Abstract:	<p>In recent years, there has been a growing push in different U.S. states towards legislation that would provide consumers with a “right to repair” their products. Currently 18 states have pending legislation that would require product manufacturers to, among other things, make available replacement parts and repair manuals. This grassroots movement has been triggered by a combination of related factors. One such factor is the ubiquity of microchips and software in an increasing number of consumer products, from smartphones to cars, which makes the repair of such products more complicated and dependent upon the availability of information supplied by the manufacturers. Another factor is the unscrupulous practices of large, multinational corporations designed to force consumers to repair their products only through their own offered services, and ultimately, to manipulate consumers into buying newer products instead of repairing them. For example, in late 2017, Apple was caught having implemented a policy of slowing down its operating software on older iPhones to “compensate for the effects of age on their batteries.” Although Apple’s purported reasoning behind this “slow down” was not to push consumers into upgrading their phones, the secrecy behind the slowdown, along with Apple’s strenuous objection to the repair movement, paint it with more nefarious colors. These types of stories have rallied repair shops, e-recyclers, and other do-it-yourselfers to push forward, demanding a right to repair. Unfortunately, though, this legislation has stalled in some of the states. Many of the manufacturers have been lobbying the legislatures to stop the enactment of the right to repair laws based on different concerns, including how these laws may impinge on their intellectual property rights. Indeed, a right to repair may not be easily reconcilable with the United States’ far-reaching intellectual property rights regime. For example, requiring manufacturers to release repair manuals could violate a whole host of intellectual property laws, including trade secret law and copyright law. Similarly, employing measures undercutting a manufacturer’s control of the market for replacement parts might conflict with its exclusive rights under patent and design laws. This Article posits that one of the reasons for the success of the manufacturers’ lobbying campaign is that a cohesive theory that justifies a right to repair, but yet is consistent with the protection of intellectual property rights, is needed. This Article attempts to develop such a theory. In short, this Article argues that a right to repair can be justified by the very same rationales that have been used traditionally to justify intellectual property rights: it is a vital component of “Progress”; enables user innovation; and enhances the flow of technological information to the public. In addition, this Article is the first to provide a broad exploration of the various intellectual property rules and doctrines that may be relevant in the context of the current repair movement. As part of this overview, this Article identifies those areas where intellectual property rights could prevent repair laws from being fully realized, even if some of the states pass the legislation, and recommends certain reforms that are necessary to accommodate the need for a right to repair and enable it to take hold.</p>