Rebalancing IP rights: a reflection on IPRs, Consumer and Environmental Rights

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Abstract

Manufacturers of digitally enabled or ‘smart’ goods use their IPRs in the computer software to ‘lock’ up everyday digital consumer goods, which, among other things, ties consumers to the manufacturers for repair and service. Increasingly, manufacturers are embedding smart goods with technological protection measures (TPMs) which prevent consumers from repairing or seeking third party repairs when these consumer goods malfunction or stop working. It is not only copyright and TPMs over the embedded software that are being used to prevent access and repair but also contributing to the problem are the copyright licences that restrict access to the technology and the repair information in service manuals. Manufacturers are also using patents, trademarks, designs, trade secrets and confidentiality in the hardware, software, spare parts and repair manuals to control the aftermarket of spare parts, repairs and servicing. Consumers, who realise that their rights of ownership of their goods are being undermined by their inability to deal with their goods in ways that they used to be able to, are increasingly supporting the rise of the Right to Repair movement. Reimagining IP rights to take into account consumers’ rights to repair their digital goods is not only fundamental to determining what potential regulatory reforms are needed to strike the balance between IPRs and consumer rights but also to ensuring IPRs can play a more positive role in the broader environmental sustainability goals of the UN SDGs.

This paper will examine how IPRs could be reimaged to enable, as oppose to hinder, repairability of consumables and in so doing, revisiting IP’s role in the broader goal of achieving environmental sustainability.