

UNLOCKING THE FUTURE OF REPAIR



The founder of the reuse group iFixit offers the inside story on how recycling advocates fought and defeated wireless giants in the fight over phone unlocking. He also explains why that was just one battle in an ongoing war. BY KYLE WIENS

In 2012, the Librarian of Congress (LoC) made a bad decision. James Hadley Billington ruled that consumers weren't allowed to unlock their own cellphones without their carriers' permission.

Usually, the LoC's decisions don't make the headlines. After all, that office rules on intellectual property – a topic that doesn't exactly whip the general public into a fervor. But this time was different. When the LoC made cellphone unlocking illegal, he kicked off a nationwide debate about who controls the life (and the afterlife) of a cellphone – a debate that pitted manufacturers and carriers against consumers and recyclers.

Most cellphones sold in the U.S. come digitally “locked” to one specific carrier, like AT&T or Verizon. If you have an AT&T phone, you have to keep using it on AT&T – even after you satisfy the terms of your contract. “Unlocking” lets the owner pick those digital locks, tweak the software and move that phone to another carrier. Devices are, not surprisingly, worth more without these locks, so most recyclers unlock phones for resale overseas. Or at least, they used to.

The LoC 2012 ruling determined circumventing those digital

locks was a violation of copyright laws under the Digital Millennium Copyright Act (DMCA). The ruling didn't make much sense to me. What in the world does recycling have to do with copyright? How could unlocking a phone I own violate someone else's property rights? After all, unlockers aren't breaking digital locks to steal the copyrighted software on their phones. They just want to alter the programming on a phone they legally purchased and thought they owned.

Digital rights activists, such as Sina Khanifar, the Electronic Frontier Foundation, Public Knowledge and my company, iFixit, all raised the alarm. Overnight, unlocking became a dark horse technology issue. If you bought it, you should own it, we argued. AT&T and Verizon don't have the right to dictate how people are allowed to modify their own devices. What's more, the fight over phones goes beyond just consumer rights. Cellphone unlocking is a green issue too.

Unlocking lengthens the life cycle of a phone. Consumers that are able to take their phone with them to a different carrier will be able to use that same phone longer, instead of being forced to buy a new one. More than that, cell phone unlocking is often the first

step in the refurbishing process. Unlocking a secondhand phone widens its marketability and versatility, and it allows the phone to go on to a second user, instead of being destroyed in a shredder. Unlocking is a sustainability win, promoting reuse, preventing needless material extraction and cutting down on waste. Why should recyclers be penalized for advancing those causes?

To the White House

As iFixit geared up to fight for the right to unlock, we banded together with activists and recyclers. We made our case to the public. Khanifar, the technology rights advocate, started a petition on We the People, the White House's official online petitioning platform. The petition went viral with more than 110,000 people asking President Obama to carve out legal protection for unlocking – and the White House agreed that it should be done. R. David Edelman, the White House's senior advisor on the Internet, urged the House and the Senate to work together and find a legislative solution.

Within days, members of Congress were penning their own unlocking bills. We had hoped that the rest would be easy, that Congress would reverse the law and tackle the DMCA issues that had made cellphone unlocking illegal in the first place. But, as we all learned, the political process is never as simple as it should be. For every boat that activists try to rock, there's an army of corporate lobbyists trying to keep that boat anchored.

Carriers and manufacturers – backed by their lobbyists – did everything they could to neuter any potential the bill had for real change. Under their influences, lawmakers decided to pursue the narrowest legislative option, one that reversed the Librarian of Congress's decision but didn't address the abuse of copyright law. But it was the only bill we had. So, with the help of ISRI, we worked hard to strengthen the Unlocking Consumer Choice and Wireless Competition Bill – and to ensure that corporate lobbyists didn't water down the bill even further.

The day before the vote, during a closed-door meeting, the bill's author, Rep. Bob Goodlatte (R-VA), was prevailed upon to exclude legal protection for bulk unlocking in the bill. That's exactly the kind of unlocking that recyclers and refurbishers perform before returning phones to the market. The amendment was another bare-faced attempt by carriers and manufacturers

to control the cellphone aftermarket. For the bill, it was a poison pill and one we were determined not to swallow.

Taking it to the streets

ISRI and iFixit pulled our support for the bill, and many digital rights organizations followed our lead. We railed against the last minute changes that singled out recyclers as evil “bulk unlockers.” The bill still passed the House, but just barely – at the last minute, we rallied 114 members of Congress to vote against our own bill. A strong signal had been sent.

Renewed in our determination that the ban on bulk unlocking would not become law, we turned our attention to the Senate. We made hundreds of phone calls with lawmakers and activists, sat in on dozens of strategy meetings, and fought tooth and nail

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to get the language about bulk unlocking removed. I even wrote a personal appeal with Sina Khanifar in *Wired* to Sen. Patrick Leahy (D-VT), the author of the equivalent Senate bill and the only lawmaker with direct power to change the language.

Then something unexpected happened. Lawmakers actually started to listen. They listened because the ramifications of making the wrong decision on technology sets a dangerous precedent – and it affects people's livelihoods. But most of all, they listened because we made ourselves too loud to ignore.

Sen. Leahy removed the language about “bulk unlocking” from the bill. With the poison pill quashed, the Unlocking Consumer Choice and Wireless Competition was unanimously approved first by the Senate and then again by the House. And finally, after nearly two years of fighting, an unlocking bill found its way onto President Obama's desk. He signed it on Aug. 1.

This law protects the interests of recyclers, consumers and the environment – and it only came out that way because activist groups shaped the conversation. Common sense legislation happened because groups like ISRI's electronics division, iFixit, Gazelle, Public Knowledge and Electronic Frontier Foundation refused to be ignored. Together, we got two words – bulk unlocking – removed from a bill, and those words make all the difference in the world to refurbishers.

The fight's not over

Cellphone unlocking was a battle over the intersection between hardware and intellectual property. And it won't be last one.

The LoC will again review whether unlocking devices is permissible under Section 1201 of the Digital Millennium Copyright Act in 2015. That section is what needs to be changed in order to avoid further fights surrounding the right to unlock electronic devices that consumers own.

Recyclers, refurbishers and reuse experts need to get more involved in these discussions. There is no difference between hardware and software anymore, and the lines between a manufacturer's intellectual property and a person's physical property are disappearing. These aren't ivory tower, abstract digital issues. The copyright debate will play out on the factory floor of every electronics recycler and refurbisher, and it will drive our bottom line over the next decade.

If we don't speak up for our right to repair, refurbish, and reuse products, then no one will. **RR**

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