

[REDACTED]

From: Alan Smith <[REDACTED]>
Sent: Wednesday, July 14, 2021 9:06 AM
To: JulyPublicComments
Subject: Written Comment July 21, 2021 Open Commission Meeting

The automobile industry in the United States (except for Tesla, Inc.) is operating in violation of Section 1 of the Sherman Act. There are several *Plus Factors* involved, but, here, I will elucidate only one: absence of a plausible, legitimate business rationale for conduct.

The automobile industry in the United States (except Tesla, Inc.) is churning vehicle components. I define the churning of components, "Parts Churn," as the periodic but temporally random substitution of functionally identical yet physically non-interchangeable parts for a previous set of parts comprising a vehicle wherein the new parts provide no advantage to the consumer over the previous set of parts but have a higher price because of limited economy of scale and a higher defect rate due to an increased risk of random design or manufacturing error in the design and manufacture of the new parts. There is no plausible, legitimate business rationale for Parts Churn.

Any manufacturer selling vehicles in the United States, except for Tesla, could be used to illustrate Parts Churn, but I will choose the modern Ford Motor Company because the founder, Henry Ford, was the only major manufacturer, except for Tesla, to eschew Parts Churn.* Two parts will be examined in detail. The first is the horn. A summary table will be presented. Also, included will be links to spreadsheets showing the entire tables of all the components. It should be noted that it has been the author's experience that it can be expected that every component in every vehicle sold in the United States (except for Tesla vehicles) will have more or less similar Parts Churning as shown herein. Without having subpoena power, the gathering of the included data was an extremely laborious, time consuming, and tedious task. There is no plausible, legitimate business rationale for the use of 85 different horns in 13 years by Ford Motor Company.

As an example, compare Ford Motor Company horns for the years 2008 through 2020 using Parts Churn with Tesla, Inc. horns for the same years which are not churned.

Ford Horns 2008 - 2020

Number of Horns	85
Average Years in Use	4.7
Fewest years in use	1
Most years in use	11
Least Expensive	\$9.95
Most Expensive	\$108.61
Number churned after year 1	3
Number churned after year 2	11
Number churned after year 3	14
Number churned after year 4	16
Number churned in 2 years	14
Number churned in 3 years	28
Number churned in 4 years	44
% churned in 1 year	4.2%
% churned in 2 years	19.4%
% churned in 3 years	38.9%
% churned in 4 years	61.1%
Number Unavailable 10 years	1

Tesla Horns 2008 - 2020

Number of horns used	8	
Average Years in Use		
Fewest years in use		
Most years in use	13	
Number churned in year 1	0	
Number churned in year 2	0	
Number churned in year 3	0	
Number churned in year 4	0	
% churned after 1 year	0	
% churned after 2 years	0	
% churned after 3 years	0	
% churned after 4 years	0	
Discontinued 10 years	0	
Percent discontinued	0	
Number of Different Parts	8	
Number of Models	5	
Horns per Model	1.6	
Model with most Horns	2	X, S, 3
Model with most Horns/Year	1.0	Model Y
Model with fewest Horns	1	Roadster
Model with fewest Horns/Year	0.1	Roadster

The automobile horn is an important safety device. However, many people consider the airbag to be more important than the horn. Nonetheless, even crucial safety components such as airbag inflators are churned.

Takata is an example of the great costs of churning safety devices such as airbag inflators and not enforcing antitrust laws. Although Takata did produce airbag inflators that **eventually** became defective, they performed as intended for several years after manufacture. Several years would have been longer than necessary to produce new, non-exploding inflators had airbag inflators been **standardized** as all safety devices should be. However, automobile manufacturers enjoy freedoms that other manufacturers do not. Automobile manufacturers are free to churn crucial safety-related devices such as airbags using proprietary, non-standard, non-interchangeable designs unlike electrical component manufacturers, for example, which produce standardized, interchangeable components.**

Below are summary tables showing the airbag inflators used by Ford Motor Company and Tesla, Inc. during the 13-year period of 2008 through 2020. URLs to spreadsheets listing the components and part numbers are provided at the end of this submission.

Ford Airbag Summary 2008 - 2020		Tesla Airbag Inflator Summary 2008 - 2020		
Number of Airbag Inflators	634	Airbags used 2008 - 2020	33	
Average Years in Use	4.1	Average Years in Use	-	
Fewest years in use	1	Fewest years in use	-	
Most years in use	11	Most years in use	13	
Least Expensive	\$32.40	Number churned in year 1	0	
Most Expensive	\$1,512.32	Number churned in year 2	0	
Number churned in year 1	35	Number churned in year 3	0	
Number churned in year 2	91	Number churned in year 4	0	
Number churned in year 3	138	% churned after 1 year	0	
Number churned in year 4	98	% churned after 2 years	0	
% churned after 1 year	5.5%	% churned after 3 years	0	
% churned after 2 years	19.9%	% churned after 4 years	0	
% churned after 3 years	41.6%	Discontinued 10 years	0	
% churned after 4 years	57.1%	Percent discontinued	0	
Number Discontinued	50	Number of Different Airbags	33	
Mustang Driver	13	Number of Models	5	
Mustang Driver Disc.	4	Airbags per Model	6.6	
Mustang Pass.	20	Model with most Airbags	14	Model S
Mustang Pass. Disc.	14	Model with most Airbags/Yr.	2	Model 3
Driver	211	Model with fewest Airbags	2	Roadster
Passenger	102	Model with fewest Airbags/Yr.	0.2	Roadster
Side Impact	150			
Curtain Airbag	134			
Knee	36			

To demonstrate that churning of components and particularly safety components is an industry-wide practice, except for Tesla, tables and spreadsheets showing the horns for General Motors, Nissan, and VW are included.

Nissan Horn Summary
2008 - 2020

GM Horns 2008 - 2020

Number of Horns	93
Average Years in Use	3.9
Fewest years in use	1
Most years in use	8
Least Expensive	\$9.44
Most Expensive	\$79.33
Number churned in year 1	10
Number churned in year 2	6
Number churned in year 3	24
Number churned in year 4	13
% churned after 1 year	10.8%
% churned after 2 years	17.2%
% churned after 3 years	43.0%
% churned after 4 years	57.0%

Horns used 2008 - 2020	69
Average Years in Use	5.8
Fewest years in use	1
Most years in use	15
Number churned in year 1	4
Number churned in year 2	7
Number churned in year 3	12
Number churned in year 4	5
% churned after 1 year	5.8%
% churned after 2 years	15.9%
% churned after 3 years	33.3%
% churned after 4 years	40.6%
Discontinued 10 years	2
Percent discontinued	2.9%
Number of Different Horns	69
Number of Models	18
Horns per Model	3.8

VW Horn Summary
2008 - 2020

Horns used 2008 - 2020	67
Average Years in Use	5.2
Fewest years in use	1
Most years in use	16
Number churned in year 1	2
Number churned in year 2	6
Number churned in year 3	12
Number churned in year 4	13
% churned after 1 year	3.0%
% churned after 2 years	11.9%
% churned after 3 years	29.9%
% churned after 4 years	49.3%
Discontinued 10 years	0
Percent discontinued	0%

Alan Smith, BSME, JD, Member Ohio Bar (inactive status), Former Member United States Patent Bar Reg. No. 29,866

*It is considered good manufacturing practice, and not bad ethics, occasionally to change designs so that old models will become obsolete and new ones will have to be bought either because repair parts for the old cannot be had, or because the new model offers a new sales argument which can be used to persuade a consumer to scrap what he has and buy something new. We have been told that this is good business, that it is clever business

Our principle of business is precisely to the contrary. . . . The parts of a specific model are not only interchangeable with all other cars of that model, but they are interchangeable with similar parts on all the cars that we have turned out.

Ford, Henry, and Samuel Crowther. *My Life and Work*. Garden City, NY: Doubleday, Page, 1922. 148-149. Print.

**It is NEMA's belief that standards play a vital part in the design, production, and distribution of products destined for both national and international commerce. Sound technical standards benefit the user, as well as the manufacturer, by improving safety, bringing about economies in product, eliminating misunderstandings between

manufacturer and purchaser, and assisting the purchaser in selecting and obtaining the proper product for his particular need.

<https://www.nema.org/Standards/About-Standards/Pages/default.aspx>

National Electrical Manufacturers Association

Tesla Horns 2008 -

2020 <https://docs.google.com/spreadsheets/d/158X13fwnXARI3sKq0DKEuy2hQoEsYa2hoAiSutY4g6M/edit?usp=sharing>

Tesla Airbags 2008 - 2020 <https://docs.google.com/spreadsheets/d/1XYG9aSeUuGPN4F1otnMbd-tVJjVMhSQtv9q3lWsWILA/edit?usp=sharing>

Ford Horns 2008 -

2020 <https://docs.google.com/spreadsheets/d/1FlvqF3WEVbMTb2bFhZHijGXJTJGvcy1facEBeNCXWFO/edit?usp=sharing>

Ford Airbags 2008 -

2020 <https://docs.google.com/spreadsheets/d/1h5t3Jmw5B6g33nIGiS5qmfhcHuvH8FEor2hsqFGRFEU/edit?usp=sharing>

GM Horns 2008 -

2020 <https://docs.google.com/spreadsheets/d/1obWbBepk1DzQhZY2yVmIMEivFuozlbRz5AELjFJQBaM/edit?usp=sharing>

Nissan Horns 2008 -

2020 <https://docs.google.com/spreadsheets/d/1Xx8U9apTzpWoLd1NTmc7qTCz91nitz7SyPuutOM5GHw/edit?usp=sharing>

VW Horns 2008 -

2020 <https://docs.google.com/spreadsheets/d/1F46wT0IIMYeINvq4ZvY487urcWQUs5zBXp6JwUWxzg4/edit?usp=sharing>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 3:47 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 15:46 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Ali

Last Name: Hemani

Affiliation: MoffettNathanson

Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

Thank you Chairperson for making these meetings public. Two part question:

- 1) What changes are needed to designate large two-sided marketplaces an essential facility or common carrier?
- 2) How do you do quantify and balance the costs and benefits of a merger without the consumer welfare standard?

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/42>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 8:00 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 07:59 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Andrew
Last Name: Kim
Affiliation: Business Owner
Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: FTC Operations
Register to speak during meeting: No
Link to web video statement: NY
Submit written comment:
Dear Commissioners,

The Care Label Rule is essential to professional garment care. Very often, we find that the care instructions are inaccurate and damage occurs such as when a beaded dress has a dry clean label and the beads distort and melt or white dress with black trim is discolored because the black trim bled into the white after cleaning, or a man's suit coat has rippling down the front due to the interfacing which is sandwiched between two pieces of fabric comes apart but these damages are infrequent in comparison to the number of damages that could occur if there was no guidance.

If there were no care label, I would be at a loss, as would the consumer; it becomes a guessing game as to how to handle the garment. In all likelihood, the consumer would be out the cost of the damaged garment. Consumers have a right to expect that products they purchase will survive reasonable wearing and cleaning.

Sincerely,
Andrew Kim
Success Cleaning Corporation
Commack, NY 11725

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/6>

[REDACTED]

From: Ashley Baker <[REDACTED]>
Sent: Sunday, July 18, 2021 7:48 PM
To: JulyPublicComments
Subject: Public Comment Submission for July 21, 2021 Open Commission Meeting
Attachments: FTC_July 21 Meeting.pdf

To whom it may concern,

I would like to submit the attached written comments on behalf of the Committee for Justice to be placed on the public record of the Commission for the July 21 open meeting.

Please let me know if you have any questions.

Thank you,

Ashley Baker

Ashley Baker
Director of Public Policy
The Committee for Justice

[REDACTED]

Website | www.committeeforjustice.org
Twitter | [REDACTED] | [@CmteForJustice](https://twitter.com/CmteForJustice)



Lina Khan
Chair, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

COMMENTS TO THE FEDERAL TRADE COMMISSION CONCERNING THE JULY 21, 2021 OPEN MEETING AGENDA

In Re: Rescission of 1995 Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases

Submitted: July 18, 2021

Dear Chair Khan and Commissioners Phillips, Chopra, Slaughter, and Wilson:

On behalf of the Committee for Justice, please consider this comment concerning the July 21, 2021 open meeting agenda. We appreciate this opportunity to provide comments regarding the possible rescission of the Commission's 1995 Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases (1995 statement).

The Commission claims to have a broader goal of bringing transparency through a series of monthly open meetings. The July 1 meeting fell short of this goal on all accounts.¹ The July 21 meeting does not seem to be an improvement.

The public was given a mere *four business days* to comment on the proceedings. Allowing only several days for public comment on significant agenda items that will drastically affect the merger approval process is a deterrent to substantive public input. To allow for both transparency and public participation in these proceedings, the Commission should allow for a standard of 30 days of public input.

With this in mind, it is troubling that the Commission will be considering a significant shift in policy as the open meeting agenda will include this sudden push to revoke the 1995 statement. Of particular concern is the rejection of the prior approval provisions.

With the adoption of the 1995 statement, the Commission accepted the Hart-Scott-Rodino Act (HSR) framework as adequate for handling mergers and thereby determined that prior approval of future acquisitions by a respondent should no longer be required as a routine matter.

As the Commission explained when issuing its 1995 policy statement: "In light of its now extensive experience with the HSR Act, the Commission has reassessed whether it needs to continue regularly to impose prior approval requirements. Although prior approval requirements in some cases may save the Commission the costs of re-litigating issues that already have been

¹ <https://www.allianceonantitrust.org/blog/ftc-july-open-meeting>

resolved, prior approval provisions also may impose costs on a company subject to such a requirement. Moreover, the HSR Act has proven to be an effective means of investigating and challenging most anticompetitive transactions before they occur.”²

The rescission of the 1995 statement is another step in the direction of rejecting the HSR regime which, in the words of Peter W. Rodino, Jr on the 25th anniversary of the Act, “absolutely has transformed merger enforcement. Competition, as well as the consumer, has benefitted.”³

By requiring agency approval when there is no proof of harm, the Commission is essentially shifting the burden to companies to justify deals within the same market. Congress has considered, but has failed to pass, similar proposals. Furthermore, a bright-line rule that prohibits transactions is not only burdensome, but also unnecessary when agency professionals are more than capable of reviewing these deals.

The Commission’s recent notice of the open meeting did not even state an objective justification for the quick removal of the 1995 policy. But whatever the justifications may be, the likely outcome of rescinding the 1995 statement will be much more litigation over mergers rather than economizing resources and saving law enforcement dollars.

Above all, we are concerned that the Commission’s sudden rush to revoke the 1995 statement foreshadows a broader agenda to radically change antitrust law by shifting towards ex ante control and away from the HSR regime while insulating itself from Congress.

Proposals to change well-functioning policies deserve serious deliberation and an opportunity for meaningful input from the public and from all stakeholders. As Commissioner Christine Wilson stated: “American consumers are best served when policy decisions are made with input from a variety of stakeholders. The FTC has a laudable history of seeking this input by issuing for notice and comment draft policy statements and other initiatives; holding workshops and hearings on policy issues; and preparing thoughtful and thorough reports.”⁴

We encourage the Commission to adopt a more open process and transparent approach that allows for proper notice and consideration of proposals. We welcome the opportunity to further discuss these views and stand ready to provide additional input.

Sincerely,

Ashley Baker
Director of Public Policy, The Committee for Justice
Founder, The Alliance on Antitrust

² https://www.ftc.gov/system/files/documents/public_statements/410471/frnpriorapproval.pdf

³ <https://www.ftc.gov/enforcement/premerger-notification-program/hsr-resources/pno-news-archive/statement-peter-w-rodino>

⁴ https://www.ftc.gov/system/files/documents/public_statements/1591554/p210100wilsoncommnmeetingdissent.pdf

[REDACTED]

From: Emil Nusbaum <[REDACTED]>
Sent: Tuesday, July 20, 2021 5:39 PM
To: JulyPublicComments
Subject: Automotive Recyclers Association (ARA): Comments for July 21st Open Commission Meeting
Attachments: Automotive Recyclers Association (ARA) FTC Comments for July 21st Meeting.pdf

Dear Federal Trade Commission,

Attached is the Automotive Recyclers Association's (ARA) comments for the Open Commission Meeting tomorrow respectfully urging the Commission to adopt a new policy statement on manufacturer repair restrictions.

Respectfully,

Emil Nusbaum
Director of Government Relations
Automotive Recyclers Association (ARA)



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Via electronic delivery

July 20, 2021

The Honorable Lina Khan, Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: July 21, 2021 Open Commission Meeting: Comments on FTC Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear Chair Khan,

The Automotive Recyclers Association (ARA) appreciates the opportunity to submit the following comments for consideration by the U.S. Federal Trade Commission (the Commission) to assist in the Commission's evaluation as to whether it should issue a policy statement on repair restrictions following the Commission's report to Congress entitled, "Nixing the Fix." The ARA would like to congratulate the Commission on its "Nixing the Fix" report (Commission's Report), which highlights the barriers vehicle owners face when they attempt to have their vehicles repaired by independent repair shops rather than OEM/authorized dealers. *The ARA applauds the FTC for its pro-consumer work on right-to-repair issues and encourages the Commission to issue a new policy statement that would protect vehicle owners' ability to choose affordable ROE-Recycled Original Equipment® in vehicle repairs while also protecting vehicle owners' ability to choose where to have their car repaired.*

Since 1943, the Automotive Recyclers Association (ARA) has represented the professional automotive recycling industry -- a vibrant and thriving part of the automotive supply chain. In the United States, automotive recycling businesses employ over 140,000 people at more than 9,000 locations, representing over \$32 billion in annual sales.

Professional automotive recycling facilities play an important role in the vehicle repair market by providing vehicle owners with cost-effective alternatives to the more expensive new original equipment manufacturer (OEM) replacement parts. Professional automotive recyclers provide vehicle owners with the ability to choose recycled automotive repair parts, ensuring competition in the replacement parts market and providing vehicle owners with the ability to repair their vehicles with OEM replacement parts. Every day, professional automotive recyclers supply ROE-Recycled Original Equipment® motor vehicle replacement parts to consumers around the world. In many cases, automotive recyclers are the only source for replacement vehicle parts. This is especially true for older model vehicles.

In addition to the critical role they play in the automotive supply chain and replacement parts market, professional automotive recyclers play a valuable role in the efficient, environmentally friendly recycling of End of Life Vehicles (ELVs). Automotive recycling preserves natural resources, reduces the demand for scarce landfill space, and plays an important role in reducing air and water pollution. A study conducted by the Worcester Polytechnic Institute in Massachusetts found that automotive recyclers in that state help to drive a circular economy in auto manufacturing and that the automotive recycling industry has a negative carbon footprint.

From the earliest days of motorized travel to today, professional automotive recycling has evolved into a sophisticated market and technology-driven industry that constantly changes to keep abreast of innovations in automotive technology and manufacturing techniques.

I. Summary

The ARA respectfully recommends that the Commission continue its work on protecting consumers from manufacturer repair restrictions – especially as it relates to vehicle owners being able to choose where to repair their vehicles and with repair parts of their choosing. While the Commission’s Report was a good first step in identifying the barriers vehicle owners regularly face when choosing where and what parts vehicle owners can use in vehicle repairs, the Commission should continue its work to protect consumers’ ability to choose where and what parts are used in vehicle repair by adopting a new policy statement. *As part of a new policy statement,*

the Commission should include the following elements: (1) right-to-repair; (2) consumer access and control of vehicle generated data; (3) FTC rulemaking designed to protect consumer choice and encourage fair competition. Should the Commission choose to adopt these three elements in a new policy statement, vehicle owners will be protected from current OEM repair restrictions that are resulting in higher repair prices and reduced purchasing options.

II. Right-to-Repair

As part of the Commission’s new policy statement that would serve to protect consumers from manufacturer repair restrictions, the Commission should support right-to-repair and recognize the necessity for vehicle owners to have access to repair and maintenance data. Without the ability to have access and control of their vehicle’s repair and maintenance data, OEM/authorized dealers will be able to restrict vehicle owners’ ability to affordably repair their vehicles by choosing an independent repair shop or by using ROE-Recycled Original Equipment®. It is necessary that the Commission recognize the need for consumers to have access and control of their vehicle’s repair and maintenance data so that manufacturers cannot restrict the ability of a consumer to choose where and how their vehicle is repaired through software and technology. As described in the Commission’s Report, manufacturers are using technology such as embedded software that is forcing consumers to have maintenance and repair performed by manufacturers’ authorized service networks – thereby stifling competition and the repair market. Therefore, the Commission should vote to approve a policy statement that recognizes the need for right-to-repair, which will protect consumers from repair restrictions.

III. Consumer Access and Control of Vehicle Generated Data

Along with recognizing right-to-repair principles within a new policy statement, the Commission should “future-proof” any new policy statement by focusing on broader consumer protection principles that recognize that consumers own all aspects of their personal property. Historically, the notion of vehicle ownership meant that consumers owned their vehicles and could choose when, where, and how their vehicle should be repaired. However, with the rise of technologies and services such as telematics, manufacturers are challenging the traditional notion of ownership by

maintaining close control of vehicle generated data. As detailed in the Commission's Report, vehicle generated data and telematics have given manufacturers a way to steer consumers to OEM/authorized dealers for repairs and have also been used to make independent repairs more difficult.

Therefore, for an FTC policy statement to effectively address motor vehicle repair restrictions, a policy statement should encourage a framework that recognizes a vehicle owner's right to have access and control over vehicle generated data. Vehicle owner access and control over vehicle generated data is and will prove to be essential if the Commission is going to take a lead role in encouraging competition in the market and fair practices that allow for repairs to be made independently of manufacturers and their authorized service providers. ARA supports enactment of federal policies that promote the rights of vehicle owners to securely access and control their vehicle data (including authorized access by third parties) in real time through in-vehicle access through a technology neutral standard based and secured interface.

IV. FTC Rulemaking Designed to Protect Consumer Choice and Encourage Fair Competition

In a new policy issued by the FTC designed to protect consumers' ability to choose where and what parts to use in vehicle repairs, the Commission should conduct educational initiatives to promote compliance with the Magnuson-Moss Warranty Act (MMWA). The Commission should exercise its authority under the MMWA to:

- Require OEMs/authorized dealers to provide written notice of MMWA rights at the time of any vehicle warranty repair denial and a written explanation of the evidence justifying warranty coverage denial.
- Require OEMs/authorized dealers to provide written notice of any maintenance or repair claimed to be required as a result of prior vehicle maintenance with an aftermarket part and/or done by an aftermarket service provider. This must be done prior to performing the maintenance or repair.
- Update FTC educational materials to note that consumers have the right to modify their vehicle and that warranty repairs may not be denied simply by the presence of a non-original, recycled or specialty part.
- Mandate that disclosure of MMWA rights be included with warranty information provided at the time of vehicle purchase in a clear and obvious manner.

- Update FTC’s online consumer complaint form by adding notice of MMWA rights and contract dispute resolution options, e.g., BBB Auto Line, for vehicle warranty denial situations.
- Provide a specific site where automotive consumers can report MMWA-related issues experienced with OEMs/authorized dealers rather than forcing them to navigate the general consumer complaint site. Such action would both guide consumers in their stressful time of transportation crisis and provide improved compliance efforts for the Commission.

By adopting and promulgating these educational initiatives and strengthening the MMWA, the FTC will be protecting consumers from repair restrictions outlined in the Commission’s Report.

V. Conclusion

As the voice of the professional automotive recycling industry, the Automotive Recyclers Association (ARA) appreciates the opportunity to submit these comments encouraging the FTC to issue a policy statement against repair restrictions imposed by manufacturers. We appreciate the opportunity to submit comments and welcome the opportunity to continue to work with the Commission. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in these comments.

Sincerely,

Sandy Blalock

Sandy Blalock
Executive Director

[Redacted]

Automotive Recycling Association

[Redacted]

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 6:18 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 18:17 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Benjamin

Last Name: Golant

Affiliation: Entertainment Software Association Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Comment sent via email address provided above

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/46>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 3:42 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 15:42 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Binseng

Last Name: Wang

Affiliation: Sodexo Clinical Technology Management Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: My comment has been submitted via email to julypubliccomments@ftc.gov. Thank you!

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/30>

[REDACTED]

From: Wang, Binseng <[REDACTED]>
Sent: Sunday, July 18, 2021 3:42 PM
To: JulyPublicComments
Subject: Written comment for Written comment for July 21, 2021, Open Commission Meeting
Attachments: Sodexo Comment for July 21, 2021 FTC Open Commission Meeting.pdf

Dear Sir/Madam:

This is to submit my comment for the July 21, 2021, FTC Open Commission Meeting. Please see attached signed PDF document.

Best regards,

Binseng

Binseng Wang, ScD, CCE
Vice President Program Management
Sodexo Healthcare - Clinical Engineering

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The Federal Trade Commission
Washington, DC
Via email: julypubliccomments@ftc.gov

July 18, 2021

Ref.: Written comment for July 21, 2021, Open Commission Meeting

Dear FTC Commissioners:

This is to support the “Nixing the Fix” report FTC issued in May 2021 and to request the inclusion of medical devices into the scope of FTC policy on repair restrictions.

First, please allow me to introduce myself and my employer so you can understand my qualification and our perspective. I currently serve as the Vice President, Program Management, for Sodexo Clinical Technology Management, an independent service organization (ISO) that provides medical equipment maintenance and management services to healthcare delivery organizations (HDOs). Prior to working for Sodexo, I worked for over 30 years in the medical device industry as the quality and regulatory compliance officer for manufacturers, ISOs and a medical equipment rental company. I also worked in academia and research institutions such as the National Institutes of Health (NIH). I earned a Doctor of Science degree from the Massachusetts Institute of Technology (MIT) and certification as a Certified Clinical Engineer (CCE). In addition, I have been elected to be a fellow member by the American College of Clinical Engineering (ACCE) and American Institute of Medical & Biological Engineering (AIMBE). Sodexo Clinical Technology Management has been in the repair business for over 20 years and currently has about 500 highly-qualified engineers and technicians stationed in about 100 acute-care facilities around the country, managing and maintaining roughly 500,000 pieces of medical equipment, ranging from infusion pumps and ventilators to CT and MRI scanners.

HDOs prefer us over the manufacturers not only because we are more cost effective, but due to the fact that—unlike the manufacturers—we maintain technical staff either at their locations or nearby, so we can promptly repair and return their faulty medical equipment to clinical use, as well as extending the useful life of equipment beyond the “end of life/support” declared by the manufacturers. Not being affiliated with manufacturers also allows us to provide impartial recommendations to healthcare institutions with regards to technology acquisition and replacement.

The fact that we are better prepared to support HDOs than manufacturers became evident during the COVID-19 pandemic. Many manufacturers were unable or unwilling to send their field service personnel to healthcare facilities due to the travel restrictions and their desire to protect their employees¹. Thus, the burden of keeping equipment safe and available for care fell on the technical staff we maintain locally. Our staff struggled to get service instructions and replacement parts from the manufacturers in

¹ Please see this article: <https://24x7mag.com/inside-htm/htm-expert-panel/>

order to keep essential medical equipment safe and usable for the care of COVID-19 patients. Despite these challenges, we remained firmly along the side of the devoted healthcare professionals enabling them to save thousands of lives.

Although during the peak of the pandemic some manufacturers relented and provided service instructions and repair parts, most of them have since retreated to their traditional position of refusing to provide those critical resources, especially the keys to the software locks on the diagnostic and calibration software.

As your report accurately showed, the “explanations” provided by some manufacturers to restrict repairs by others are unfounded. No evidence has ever been produced to prove that the release service information, software keys or repair parts have caused them to lose their intellectual property rights. For example, the release of service information has been required in the European Union (EU) since 1993 by the Medical Device Directive (MDD).² When MDD was replaced earlier this year by the Medical Device Regulation (MDR), this requirement remained intact.³ So evidently, releasing service information cannot be possibly cause loss of intellectual property rights.

Regarding the safety of medical device maintenance by 3rd parties (including hospital employees and ISOs), FDA conducted an extensive study and reported to the Congress in 2018 that there is scant evidence to support manufacturers’ claim that maintenance services provided by 3rd parties have resulted in an unacceptably high number of patient harm or deaths⁴. Actually, the number of alleged incidents is far fewer than the recalls the manufacturers have made in the last couple of decades on medical devices with serious threats to patient lives and wellbeing⁵. Nonetheless, some manufacturers and their industry associations continue to disparage ISOs in the media^{6,7}.

Please allow me to provide some data so you can better understand the importance of medical equipment repair in the American healthcare complex:

- 1) On average, each one of the about 5,000 hospitals has about 20 pieces of medical equipment worth about \$250,000 for each hospital bed, which translates into about 16 million pieces for the entire country, worth about US\$200 B;
- 2) Each piece of equipment requires on average one scheduled/planned maintenance and 0.7 repairs per year, which translates into 26 million services/year;
- 3) The market for those maintenance services is estimated currently at about \$10 B⁸, over one half of which belongs to the manufacturers, while hospitals and ISOs detain the rest;
- 4) If hospitals were to depend solely on manufacturers for these maintenance services, they would have to acquire at least about 25% more equipment to compensate for the delay caused by the

² Please see <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993L0042:20071011:en:PDF>

³ Please see <https://eur-lex.europa.eu/eli/reg/2017/745/oj/eng>

⁴ Please see FDA’s report at <https://www.fda.gov/media/113431/download>

⁵ Please see GAO’s report at <https://www.gao.gov/assets/gao-11-468.pdf>

⁶ Please see WSJ article https://www.wsj.com/articles/right-to-repair-is-bad-for-your-health-11619986159?mod=article_inline

⁷ Please see this Forbes article <https://www.forbes.com/sites/sallypipes/2021/05/10/new-right-to-repair-legislation-endangers-california-patients/?sh=358f1a6d180c>

⁸ Please see <https://www.grandviewresearch.com/industry-analysis/medical-equipment-maintenance-market>

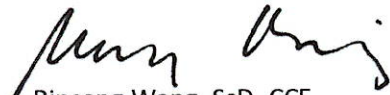
travel of manufacturer's field service staff to the hospital in order not to delay or deny care to patients. The total capital investment needed would be \$50B, which is about double the annual equipment investment by all hospitals nationwide;

- 5) In addition, hospitals would have to increase by 50% their annual budget for equipment maintenance, as the manufacturers maintenance services are not only more expensive but also because they charge for travel time and expenses. This additional operational expense would be about \$4 B/year for the entire country.

I hope the data above and the obvious personal impact of healthcare services to the American people help you understand why we are respectfully requesting the inclusion of medical devices into the FTC policy on repair restrictions. The importance of medical device repairs may not be so visible as those of cellphones and laptops in the public eye; however, its impact on the American people is actually even more significant than consumer products as this COVID-19 pandemic has visibly and painfully demonstrated. After all, material goods can be replaced but lives cannot. Therefore, it is clearly a "competition" and "[healthcare] consumer protection" issue that deserves the attention of FTC and the Congress.

In essence, I urge you to include the repair of medical devices into the FTC policy on repair restrictions. I remain at your disposal if you need any information or clarifications.

Very truly yours,



Binseng Wang, ScD, CCE
Vice President, Program Management
Sodexo CTM



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Tuesday, July 13, 2021 2:47 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Tuesday, July 13, 2021 - 14:47 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Biserka

Last Name: Zivkovic

Affiliation: Consumer

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement: California

Submit written comment:

Spectrum, Cable company, has a full monopoly in Santa Monica. Spectrum took over from Time Warner Cable in 2018. At that time I was paying \$127, and the minute they took over, they charged me \$155. When I called and asked why, they informed me that the stations have increased their fees, and if I wanted to reduce my bill, I had to give up certain TV stations. Today when I called Spectrum, since they have increased my bill to \$209, they told me that I could have kept the lineup I've had with Warner. So, they tricked all of us, by increasing our bills, and giving us a story about how they had to pay more for certain stations, instead of telling us that we can keep everything we had with Warner. I had to give up at least 50 stations by now, to be able to reduce their astronomical increases every single year. I would greatly appreciate if you could do anything to stop this from happening in our city.

The retirees are the hardest hit with these increases, me being one of them.

Kind Regards,

Biserka Zivkovic

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/14>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 5:10 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 17:10 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Brad
Last Name: Cofield
Affiliation: Wagner Equipment CO.
Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Competition
Register to speak during meeting: No
Link to web video statement:
Submit written comment:

My name is Brad Cofield and I work for Wagner Equipment Co., the Caterpillar equipment dealer in CO, NM, and far west Texas. We have 40 locations and most of our team members are supporting customers in product support roles every day.

I am writing today in opposition to H.R. 4006, Right to Repair. We not only already support our customer's right to repair their construction equipment, but it is a part of our overall product support strategy. Our do-it-yourself customers have access to more tools today than ever before.

We provide 24/7 parts access, free Cat apps to track their machine's health, Cat Electronic Technician diagnostic tools, parts and service documentation through SIS Web, technical training classes and access to our free technical communicators to assist in difficult repairs. As you know, our industry cannot hire all the technicians that we need to fill open positions today, so it is imperative that we help our customers fix their machines so they can maximize the uptime of their equipment to meet the needs of their business. We also not only support our direct customers but also the sub-dealers and third parties that also repair Cat machines. We believe that we already meet the intent of this legislation with our repair philosophy and firmly believe our industry should be exempt from H.R. 4006.

Additionally, we oppose sharing embedded software and firmware that could alter a machine's operating characteristics. For example, given access to embedded code, users could increase horsepower—this would violate the EPA emissions standards the industry and government have worked so hard to achieve. Allowing unfettered changes to electronic parameters could also override the safety features that protect our workers and the public.

Imagine a 40,000lb hydraulic excavator's boom swinging into traffic. We also question the impact of this legislation on existing contracts and interstate customers. For these reasons we oppose H.R. 4006.

Respectfully,

Brad Cofield
Executive Vice President
Wagner Equipment Co.
Aurora, CO

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/46>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 2:41 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 14:40 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Brad

Last Name: Griffin

Affiliation: Montana Equipment Dealers Association Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Honorable FTC Members, Thank you for the opportunity to present written comments. My name is Brad Griffin an I represent the Montana Equipment Dealers Association. our association represents over 50 farm and construction equipment dealers across the state. We have heard loud and clear that our customers, our farmers and contractors, want to be able to diagnose and repair their equipment. We support that and we are working to educate both our dealers and our customers about the diagnostic software and tools that available right now. Our State Conference in October will focus on this issue. Please let the free market work—we have received the message loud and clear and we are responding appropriately. Sincerely, Brad Griffin, Managing Director, Montana Equipment Dealers Association

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/22>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 9:33 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 09:32 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Brian
Last Name: Wright
Affiliation: Cherry Valley Tractor Sales Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Federal Trade Commission:

My name is Brian C. Wright. My position is President with Cherry Valley Tractor Sales, an equipment dealership located in Marlton, NJ. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,

Brian C. Wright
President
Cherry Valley Tractor Sales
[REDACTED]

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/6>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 9:42 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 09:41 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Bruce

Last Name: Bowman

Affiliation: Member of the Equipment Dealers Association Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

To Whom it may concern at the Federal Trade Commission:

My name is Bruce Bowman and I am the President at Star Equipment Ltd. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features. Additionally if we trade in a modified piece of equipment, we are not allowed to sell the unit until the emissions are returned to the standards in place at the time the machine was manufactured. This, on the size of equipment we sell, can cost thousands of dollars to replace or repair. If we decide to sell it as is, we can be fined several thousands of dollars.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,
Bruce Bowman

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/18>

[REDACTED]

From: Carl M. Szabo <[REDACTED]>
Sent: Saturday, July 17, 2021 3:40 PM
To: JulyPublicComments
Cc: Steve DelBianco; Trace Mitchell; Chris Marchese; Robert Winterton; Kir Nuthi; Zach Lilly
Subject: Public Comment Submission for July 21, 2021 Open Commission Meeting
Attachments: NetChoice Comment for the Record_ FTC Open Meeting, July 21, 2021.pdf

Please find attached and add to the record the comments of NetChoice for the FTC July 21, 2021 Open Commission Meeting

Thank you

-Carl Szabo | NetChoice
Vice President and General Counsel

[REDACTED]



NetChoice Comment for the Record: FTC Open Meeting, July 21, 2021

NetChoice¹ is a trade association of leading internet businesses that promotes the value, convenience, and choice internet business models provide American consumers. Our mission is to make the internet safe for free enterprise and for free expression. We also work to promote the integrity and availability of the internet on a global stage, and are engaged on issues in the states, in Washington, D.C., and in international internet governance organizations.

Introduction

We welcome the opportunity to provide the Federal Trade Commission with feedback about the important issues it will consider at its open meeting on July 21st, 2021. As discussed below, we ask that the FTC:

- Vote **against** rescinding the FTC's Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases;
- Carefully consider the trade-offs involved in any proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers; and
- Refrain from adopting major policy changes without providing adequate opportunity for meaningful public comment going forward.

We appreciate the Commission's consideration of our views, and welcome the opportunity to provide any additional information or answer any questions.

The Benefits of the FTC's Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases

The Commission is considering whether to rescind the FTC's Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases. It should vote against doing so. Overall, the statement on prior approval and prior notice provisions was a carefully considered proposal that struck a necessary balance between identifying and deterring anticompetitive mergers and ensuring that American businesses are not unduly burdened by overly cumbersome restrictions that stifle innovation, harm small businesses, detract from consumer welfare, or cripple America's competitiveness in the global economy. Repealing this policy statement would reimpose these burdens *and* waste the FTC's resources.

¹ NetChoice is a trade association of e-Commerce and online businesses, at www.netchoice.org. The views expressed here do not necessarily represent the views of every NetChoice member.

The FTC's Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases is the well-balanced product of careful consideration

The FTC's policy statement was the result of an extensive investigation into the efficacy of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino Act, and the burdens imposed by prior approval requirements on mergers and acquisitions by businesses subject to a previous order. The outcome was not a complete abandonment of prior approval requirements for businesses found to have engaged in or attempted to engage in an illegal merger. Instead, the FTC retains the ability to impose these requirements in situations where it deems them appropriate. The policy statement specifically provides that "[t]he Commission reserves its equitable power to fashion remedies needed to protect the public interest, including by ordering limited prior approval and/or notification in certain limited circumstances."

The statement was simply a recognition that in the majority of these cases, the Hart-Scott-Rodino procedures strike a better balance between the benefits and burdens of premerger notification and approval requirements. In circumstances where the FTC feels it is warranted, they retain the ability to impose prior approval requirements when issuing an order regarding a completed or attempted merger that is illegal under the United States' antitrust laws. In fact, the policy statement goes out of its way to describe the situations in which these requirements are most likely warranted. These include when:

- 1) "there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger"; or
- 2) "there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."²

The statement also explains that the need for prior approval requirements will "depend on circumstances such as the structural characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors (including whether the challenged transaction itself was not reportable)."³

² Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases, 60 Fed. Reg. 39,745 (Aug. 3, 1995).

³ *Id.*

The statement is nothing more than a modest attempt to weigh the benefits of prior approval requirements with the costs they impose. It does not prevent the FTC from imposing these requirements, it only limits their use to situations where they are appropriate and likely to create more benefits than they are costs. This is important because, as discussed below, the costs of prior approval requirements for mergers and acquisitions can be significant and can ultimately end up harming those that the FTC is trying to protect.

Moreover, reimposing these requirements in a significant number of additional cases would waste taxpayer money when it could be better spent in many of the other core functions of the FTC. By forcing the FTC to engage in unnecessary prior approval procedures in a significant number of additional cases, the Commission will have to bear costs that limit its ability to expend resources in more important areas that pose a greater threat of anticompetitive harm to consumers, such as cases of intentional fraud and COVID scams.

Prior Approval Requirements Can Harm Innovation, Small Businesses, and Consumers

The economy constantly finds new and better ways to serve the needs of consumers. A core component of this dynamism is the ability of businesses to merge with one another or acquire entities to provide innovative products and services that take advantage of each companies' comparative advantage in a way that could not be achieved in a premerger world. This innovation is possible only because of gained efficiencies and the development of capabilities that did not exist previously. Acquisitions and mergers are about far more than just acquiring another business, they're about gaining infrastructure, talent, intellectual property, and a variety of other capabilities that can help both businesses provide better products and services to consumers going forward.

Take the Amazon-Whole Foods acquisition, for example. This partnership sparked incredible innovation, much of which has been particularly important during the ongoing COVID-19 pandemic. From at-home delivery to pick-up lockers that minimize the need for interpersonal contact, Whole Foods was able to develop and integrate a number of new services that would have been unthinkable just five years ago. In addition, many consumers have seen fairly significant price decreases since the acquisition, as a result of continuous pricing cutting and Whole Food's post-merger Amazon Prime discounting program.

By imposing cumbersome prior approval requirements, the FTC risks deterring these kinds of consumer-welfare enhancing mergers and undermining the enormous potential for innovation that comes with them. Decisions regarding mergers and acquisitions are made on the margin and an increase in the cost of these transactions or the risk that they will not be approved even after the expense of significant administrative costs can have the effect of killing them before they even have the chance to be reviewed by the FTC. As such, many of these transactions that would spur innovation and promote economic growth will never see the light of day, regardless of whether the FTC would have ultimately approved them. By artificially deterring what would be procompetitive transactions, the FTC risks not only undermining innovation but also weakening the United States' economic position in the global community.

Unnecessary and overly burdensome prior approval requirements also threaten to harm small businesses and forward-thinking entrepreneurial endeavors. The potential of being purchased by a larger, more well-established business provides a major financial incentive for up-and-coming entrepreneurs to engage in innovative activities.⁴ It allows for greater specialization and creates incentives for entrepreneurs to invest in narrowly focused, but ultimately value-enhancing, ventures without having to stand up an entire corporate infrastructure to bring their innovative product or service to fruition. In fact, many entrepreneurs now begin innovative undertakings with the explicit goal of being acquired by one of the larger players, and venture capitalists often invest with an eye toward this possibility.⁵ It is important to remember that businesses only agree to merge or sell if they and their stakeholders feel it will ultimately be beneficial. By raising the costs and increasing the difficulty of these mergers and acquisitions, the FTC risks harming small businesses and cutting off a core incentive to invest in these enterprises, which can also serve to hinder innovation in and of itself.

Finally, and most importantly, imposing excessive prior approval requirements on a substantial number of additional mergers will ultimately harm consumers, which should be the primary focus of any action taken by the FTC. Not only will these requirements hinder innovation, as discussed above, they will also likely lead to higher prices and lower quality goods and services. Mergers and acquisitions do not

⁴ Michael Mandel & Diana G. Carew, *Innovation by Acquisition: New Dynamics of High-Tech Competition*, Progressive Policy Institute (Nov. 2011), https://www.progressivepolicy.org/wp-content/uploads/2011/11/11.2011-Mandel_Carew-Innovation_by_Acquisition-New_Dynamics_of_Hightech_Competition.pdf.

⁵ Gordon Phillips & Alexei Zhdanov, *Venture Capital Investments and Merger and Acquisition Activity around the World*, Harvard Law School Forum on Corporate Governance (Dec. 29, 2017), <https://corpgov.law.harvard.edu/2017/12/29/venture-capital-investments-and-merger-and-acquisition-activity-around-the-world/#:~:text=Most%20venture%20capital%20investments%20are.strategy%2C%20but%20increasingly%20less%20so.>

just allow businesses to develop new and innovative products and services, they provide businesses with the tools necessary to both improve and lower the prices of their currently existing products and services. The purchase of a company with superior data security capabilities allows an existing firm to improve their offerings by providing their customers greater privacy protections in the services they already supply. The purchase of a company with superior manufacturing capabilities allows an existing firm to make their production capabilities far more efficient, leading to lower prices for their customers. By raising the cost of these types of procompetitive transactions, the FTC risks harming consumers when it comes to innovation, price, and quality.

Moreover, the requirements jeopardize other core values of the FTC and undermine the agency's reputation for apolitical expertise. For example, without the consistency provided by the consumer welfare standard, and without objective criteria to replace it, the FTC's discretion over merger and acquisition approval will be even more concerning as this subjective approach allows the Commission to hinder what would otherwise be procompetitive transactions. In essence, the more deals the FTC gets to review and approve before they commence, the more likely it is to abuse its new ad-hoc, politicized approach to enforcement.

The Considerations Involved in Adopting a Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

The Commission is voting on whether to issue a new policy statement on Repair Restrictions Imposed by Manufacturers and Sellers, which would likely include restrictions on the use of adhesives that make parts difficult to replace, limiting the availability of spare parts for third-party repairers and users, and making diagnostic software unavailable to third-party repairers and users.

The Commission should consider the potential unintended consequences of such restrictions. For example, limiting the use of adhesives on electronic devices could end up making the products less safe and harming consumers, particularly as an increasing number of children are using these types of devices.

Moreover, it will also be important for the FTC to consider the equity of such restrictions, as forcing manufacturers to provide their diagnostic software and replacement parts indiscriminately would harm authorized third-party repairers who have expended the time and resources necessary to earn the trust of these manufacturers. Their investment would be all but wiped out by such requirements.

However, if the FTC is intent on imposing these restrictions on manufacturers, it should also adopt companion rules that serve to protect consumers from third-party actors and promote trust throughout the economy.

If the FTC is going to force businesses to provide replacement parts and diagnostic equipment to third-party repairers, it should:

- Require repairers to **clearly and conspicuously disclose** to consumers whether they are authorized by the manufacturer as an official repairer and whether they have undergone training from the manufacturer on the proper process for repairs to their devices or products.

These requirements will help provide necessary transparency for consumers. At the same time it helps businesses avoid engaging in deceptive or unfair practices.

In addition, such disclosures can help prevent physical and material harm to unwitting consumers who thought their repair was authorized by the manufacturer and would be performed properly. They will also prevent the erosion of trust between manufacturers and downstream customers that can result from improperly performed repairs by third parties that reflect adversely on the original manufacturer in the minds of consumers.

We think that the FTC should refrain from issuing a policy statement on Repair Restrictions Imposed by Manufacturers and Sellers. However, if the FTC is going to issue such a statement, it should include companion rules mandating clear and conspicuous notices of authorization and training that protect consumers and manufacturers from the harm that can result from negligent repairs done by third-party repairers.

The Problems with Adopting Major Policy Changes without Providing Adequate Opportunity for Meaningful Public Comment

In May 2020, Chair Khan and Commissioner Chopra published a law review article themselves arguing that FTC rules should be established through:

“a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy”

and that the agency should

“consider and address all submitted comments before issuing the final rule.”⁶

We agree. Such opportunities for public input and opportunities for FTC staff to speak about proposed and past decisions with the public help to ensure public trust in the Commission. As an agency designated to protect consumers, it’s critical to recognize that trust is a two-way street -- as Chair Khan and Commissioner Chopra suggested in their May 2020 article.

It is hard to square these assertions with the Commission’s recent behavior unless it is to be believed that public input is invaluable for the making of a rule, but not for decisions to fundamentally overhaul the rulemaking process itself. Public input is important not just for rulemaking, but for any major decision made by the FTC that substantially impacts its approach to regulation and enforcement.

This is the second open meeting held by the FTC since Commissioner Khan was appointed as the Chair shortly after her confirmation. The first open meeting was announced on June 24th and took place on July 1st. Comments were due on July 1st at 12:00PM and the meeting started on July 1st at 12:00PM. This means that the *public was given fewer than 8 days to consider* and respond to the FTC’s proposals.

Moreover, the public’s comments were due at the exact same time as the meeting commenced, where the FTC ultimately voted to adopt each of the proposals up for consideration. And all oral public comments were only heard *after* the Commission had voted. This would be like allowing the defense to plead its case only after the judge issued their ruling. These actions are such an abridgement of due process, fairness, and openness that it is sure to erode consumer trust in the FTC.

To describe this time period for public comment as inadequate would be an understatement and the FTC’s consideration of the public comments was clearly not meaningful given the Commission quite literally took no time to actually read or contemplate the comments. Even more concerning, the proposals adopted at this meeting were some of the most significant proposals that the FTC has adopted in decades. They involved rescinding a policy statement that tied the FTC’s enforcement principles to the lodestar of American antitrust analysis: consumer welfare. They also involved gutting the reasonable restrictions imposed on the FTC’s rulemaking procedures and removing requirements that ensured the public had a role to play in such a process.

⁶ Rohit Chopra and Lina M. Khan, *The case for “unfair methods of competition” rulemaking*, 87(2) University of Chicago Law Review 357, 368-69 (2020).

These are major changes that the FTC should have wanted to make only after receiving meaningful input from the public. In fact, these are changes that make the need for public comment all the more necessary, as they remove reasonable restraints on the FTC's broad and potentially devastating power. As Commissioner Wilson and Commission Phillips argue in one of their dissents to these decisions, "What the changes – adopted without public input – in fact do is fast-track regulation at the expense of public input, objectivity, and a full evidentiary record."⁷

Unfortunately, rather than changing course, the Commission provided *even less time for public comment* for its second open meeting that will occur on July 21st. The FTC announced its meeting on the 12th and provided that comments would be due on the 18th. This provides fewer than 7 days for public comment, two of which are over the weekend.

While we are grateful that the FTC decided to include at least some period between when the comments are due and when the voting will actually take place this time around, we are skeptical that three days is sufficient to meaningfully consider the significant amount of public commentary it receives on these important issues.

Going forward, we ask that the Commission provide adequate time for public comments and meaningfully consider such comments before adopting major policy changes that will impact the entire United States economy.

Conclusion

As always, we stand ready to work with the Commission to achieve beneficial outcomes that promote the interests of the United States and benefit American consumers and innovation. We appreciate your consideration of our views.

Sincerely,

Carl Szabo, Vice President & General Counsel
Chris Marchese, Counsel
Trace Mitchell, Policy Counsel

NetChoice

⁷ Federal Trade Commission, Dissenting Statement of Commissioners Christine S. Wilson and Noah Joshua Phillips Regarding the Commission Statement On the Adoption of Revised Section 18 Rulemaking Procedures (Jul. 9, 2021), <https://www.ftc.gov/public-statements/2021/07/dissenting-statement-commissioners-noah-joshua-phillips-christine-s-wilson>.

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 3:40 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 15:40 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Carl

Last Name: Szabo

Affiliation: NetChoice

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition

- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

We welcome the opportunity to provide the Federal Trade Commission with feedback about the important issues it will consider at its open meeting on July 21st, 2021. As discussed below, we ask that the FTC:

- Vote against rescinding the FTC's Policy Statement on Prior Approval and Prior Notice Provisions in Merger Cases;
- Carefully consider the trade-offs involved in any proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers; and
- Refrain from adopting major policy changes without providing adequate opportunity for meaningful public comment going forward.

We appreciate the Commission's consideration of our views, and welcome the opportunity to provide any additional information or answer any questions.

We further outline our concerns in our full-written statement.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/50>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 1:28 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 13:27 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Carolyn

Last Name: Forte

Affiliation: Good Housekeeping

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement: NJ

Submit written comment: On behalf of the manufacturers, trade associations, testing laboratories and consumer media, namely Good Housekeeping magazine, that make up the membership of the ASTM D13.62 Subcommittee on Labeling, we remain strongly committed to our previously expressed position that the FTC uphold and retain the Care Labeling Rule. It would be disservice to consumers to repeal it. They rely heavily on garment care labels before, during and after purchasing garments and by repealing the ruling, there is a risk that care labels could be completely eliminated. As an industry standards-making body, we are firmly committed to improving upon existing care label standards where required so the information is understandable and accessible to all, but we firmly urge the Commission not to repeal the current Care Label Ruling. Thank you.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/14>

[REDACTED]

From: Catherine Boland <[REDACTED]>
Sent: Sunday, July 18, 2021 3:20 PM
To: JulyPublicComments
Subject: AASA Comments for July 21 Public Meeting
Attachments: AASA letter to FTC open meeting july 21 2021 final.pdf

Attached, please find comments submitted on behalf of the Automotive Aftermarket Suppliers Association.

Thanks you,
Catherine

Catherine Boland
Vice President, Legislative Affairs | Motor & Equipment Manufacturers Association
We've moved! [REDACTED]



July 16, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
Washington, D.C. 20580

Re: FTC Open Commission Meeting – July 21, 2021

Dear Chair Khan,

The Automotive Aftermarket Suppliers Association (AASA) appreciates the opportunity to present comments to the Federal Trade Commission (FTC) in advance of the open meeting scheduled on July 21, 2021.

AASA is a division of the Motor & Equipment Manufacturers Association that represents aftermarket suppliers, which manufacture motor vehicle parts, components, and technologies for use in the vehicle aftermarket industries. Aftermarket suppliers ensure that quality parts and service choices are available to the drivers of the 281 million vehicles on our nation's roads. Suppliers are the foundation of a vibrant aftermarket industry, which employs over 4 million Americans across manufacturers, motor vehicle repair facilities, and distribution and service providers. Furthermore, the independent aftermarket currently services over 70 percent of motor vehicle repairs in the United States.

AASA has applauded the findings and recommendations of the recent report "Nixing the Fix: An FTC Report to Congress on Repair Restrictions." As an industry, AASA is committed to ensuring that aftermarket repair services for vehicles remain a viable option for consumers.

The Nixing the Fix report highlights the challenges consumers face when seeking alternative third-party repair services for their vehicles and other goods they own. As the report clearly finds, the restrictions facing consumers are broad and increasing as vehicle technology continues to advance. Independent aftermarket repair services must remain an option for consumers seeking vehicle repair and maintenance. The aftermarket is and can continue to be a trusted partner in the repair and maintenance of consumers' motor vehicles. This includes the protection of vehicles from cybersecurity threats.


AASA is prepared to work with the Commission on specific steps and requirements that should be pursued in regulatory and enforcement actions. We urge the FTC to adopt a policy statement that will focus on consumer education and marketing oversight and will ensure that all motor vehicle owners, including commercial vehicle owners, are protected by the Magnusson Moss Warranty Act (MMWA).

In light of Congressional interest in the report and its recommendations, we also **urge the FTC to consider what specific additional statutory authority is needed** to ensure that consumers can continue to choose where and how to seek vehicle repair, maintenance and service as vehicles become more technically advanced. Legislation is necessary to ensure that the FTC's authority remains current as vehicle technology continues to evolve. Such guidance will assist Congress as it deliberates on legislation to further enhance consumer protections.

AASA member companies, many of them suppliers of safety-critical components to the original equipment vehicle manufacturers, are committed to maintaining the safe and secure operations of vehicles. The aftermarket has a long history of safely servicing Americans' cars and trucks while protecting the vehicle's cybersecurity and the vehicle owner's privacy. These same companies also rely on and support strong intellectual property protections for both their own IPR and that of their vehicle manufacturer customers.

AASA is available to discuss the industry's needs with you and your staff and would like to reach a solution that is acceptable to all parties. Should you have questions or concerns, please contact Catherine Boland, MEMA vice president, legislative affairs at cboland@mema.org or 301-509-2791.

Sincerely,



Paul McCarthy
President

From: Chad Tokowicz <[REDACTED]>
Sent: Sunday, July 18, 2021 1:01 PM
To: JulyPublicComments
Subject: MRAA Right To Repair Comment
Attachments: MRAA Right-To-Repair_FTC Comment.pdf

Good Afternoon,

Please find attached Public Comment for the July 21st, 2021 Open Commission Meeting on the Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers.

Please confirm receipt of this Public Comment and let me know if you have any further questions.

Sincerely,

Chad Tokowicz

Government Relations Manager
Marine Retailers Association of the Americas
[REDACTED]



Join us for [Dealer Week](#) December 6-9, 2021 in Austin, TX



Marine Retailers Association of the Americas

8401 73rd Ave. N Suite 71, Minneapolis, MN 55428

Phone: 763-315-8043

July 18, 2021

Lina Khan, Chair
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson
Federal Trade Commission Office of the Secretary
600 Pennsylvania Avenue NW Suite CC-5610 (Annex D)
Washington, DC 20580

Re: *July 21 Open Commission Meeting - Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers.*

On behalf of the Marine Retailers Association of the Americas (MRAA), I would like to thank you for the opportunity to express our strong concern for the Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers.

The Marine Retailers Association of the Americas is the leading trade association of North American small businesses that sell and service new and pre-owned recreational boats and operate marinas, boatyards, and accessory stores. MRAA represents more than 1,300 individual member retail locations and conducts advocacy efforts on their behalf.

Recreational boating is not only a major pastime in the state of the United States, but it is also a significant economic driver, providing more than 691,148 jobs between nearly 35,277 businesses, and contributing \$170.3 billion to our nation's economy. Recreational boating is the leading economic contributor to the outdoor recreation industry in the United States, which makes up 2.1% of the nations GDP.

While we do not question the good intent of the proposed policy, we have concerns about how the broad language would affect our industry. If changed without serious consideration, "Right to Repair" would pose serious threats to the marine industry, and the consumers that enjoy our products. Proponents of the so-called "Right to Repair" movement want access to software, and specialized tools, and demand access to mechanical, electrical, safety, and emissions features that are incorporated into marine engine and marine electronic products. Granting consumers access to such information could result in modifications to the engine that would make them no-longer compliant with federal emissions and safety requirements.

We do not oppose a consumer's right to make repairs on their equipment, and in fact many of our members will work with their customers to sell the required parts and train them to do simple repairs themselves. We do however, oppose providing access to the complex inner code of the products our members sell due to concerns of safety, emissions, compliance, and product reliability. Providing this level of access to untrained individuals would negatively affect the products' compliance with federal safety, security, and emission standards. Motor engines can become a dangerous liability if modified incorrectly, and ultimately could potentially cause irreparable engine malfunction at sea, leaving users struggling to make it back to safe port, and put users and their families at risk of bodily harm.

Equipment manufacturers and dealerships have invested millions of dollars in educating and training their technicians, and obtaining certifications that qualify them to properly service their products. Manufacturers put their confidence in certified dealers and technicians to be able to maintain a given engine through its lifetime. With "Right to Repair", dealers, manufacturers, and consumers lose confidence in this system because it negatively impacts, longevity, emissions, and safety for today's boaters.



Marine Retailers Association of the Americas

8401 73rd Ave. N Suite 71, Minneapolis, MN 55428

Phone: 763-315-8043

For these reasons, MRAA opposes and respectfully asks you to protect the boating industry in the United States by voting against a new policy statement, or assure that there is an exemption for the boating industry. Please contact me at chad@mraa.com if you should have any questions.

Sincerely,

Chad Tokowicz

A handwritten signature in black ink, appearing to read "Chad Tokowicz", written over a thin horizontal line.

Government Relations Manager

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 19, 2021 12:58 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 19, 2021 - 00:57 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Cheryl

Last Name: Hoffman

Affiliation: Sports Coach

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Varsity Brands/Spirit is a monopoly with several lawsuits currently moving forward on this issue. HOWEVER, the monopoly is causing the cheer industry's 4.5MM+ cheerleaders to be without sexual abuse protection...Varsity is the only major player in the industry, has bought up most other competitors and just one of it's "fake national governing bodies"

insists coaches are background check to enter the warm up area at a competition....but they do not state they must (AS ALL OTHER SPORTS DO) all be background check to work with children. Cheer is slated to join the International Olympic Committee...and does not have the correct tax structure to join, nor is there a proper entity within the USA to join the US Olympic Committee.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/2>

From: cedcpdcpw@peruohc.com <[REDACTED]>
Sent: Thursday, July 15, 2021 3:09 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Don't repeal the Care Labeling Act

It would be a huge mistake to repeal the Care Labeling Act of 1984 as amended. Consumers depend on the label to know how to clean the garment. As a professional dry cleaner and wet cleaner, you be amazed at the number of consumers who bring me garments that someone has cut out the care label and they are not sure how it can be cleaned. While as a 56 year veteran of fabric care, yes I can try some tests to help determine, but only the manufacturer through proper selection of materials and trims can know how it should be cleaned.

Lets face it, the bulk of the garments are made out of this country and there is little to no control over any testing of fabric, etc. to determine a safe means to clean such. At least with the care labeling act, it ends up giving some recourse for the consumer when care labels are followed and there is a failure.

If the care label act is repealed consumers would be hurt.

I encourage NOT to repeal the Care Labeling Act.

Chris Birk
Certified Garment Care Professional
One Hour Cleaners
Peru, IN 46970

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 5:54 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 17:53 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Chris

Last Name: Cooper

Affiliation: RDO Equipment Co.

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

RDO Equipment Co., appreciates the opportunity to provide comment to the Federal Trade Commission ("FTC") in advance of the Commission's July 21, 2021, open meeting.

RDO is a 53-year-old, family-owned distributor of agriculture, construction, environmental, irrigation, positioning, and surveying equipment. Based in Fargo, North Dakota, we operate in nine states. Our locations tend to be in rural areas, where we provide well-paying jobs to more than 2700 employees from Ada, MN to Hermiston, OR to Watsonville, CA.

RDO is concerned with the FTC's plans to adopt a policy statement on July

21 supporting so-called "right to repair." In our view, right to repair mandates, as applied to our industry, are a solution in search of a problem because what is implied in this mandate is already being done.

We currently provide our customers, upon request, with diagnostic information, tools, parts, and other means to repair the equipment. However, mandating the right to repair could permit the public to have unfettered access to embedded coding in machinery necessary to meet government mandated safety and environmental standards, inviting tampering of these important functions and endangering equipment operators.

RDO invests significant resources in qualified technicians and training and developing their skill set to repair the equipment's sophisticated technology and safety features. We employ more than 1500 workers in our service and parts department, generating significant economic opportunities in rural and agricultural communities.

If the FTC requires unfettered access to the operating software on the products we sell, it will open the door for modification of government-mandated emissions controls, safety measures designed to protect operators and the public, and proprietary machine operation and performance controls. Customers of heavy machinery do not need this to repair their own equipment, nor are they demanding it. The only reason someone would want this type of access is to circumvent safety and emissions standards.

I wish to thank the FTC for fulfilling its mission to protect consumers, particularly regarding safety issues, and considering these comments.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/162>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 8:00 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 19:59 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Chuck
Last Name: DeLozier
Affiliation: Artist, Digital Rights Activist Full Email Address: [REDACTED]
Telephone: [REDACTED]

FTC-Related Topic:
- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Chairman Lina Khan, Thank you for the opportunity to comment directly to the Federal Trade Commissions Open Commission Meeting on the Right to Repair issues. I think one of the most important points to make about why the Right to Repair is so important to all Americans is the sustainability factor that will impact our country and planet for years to come. Another important consideration are the human factors in the unintended consequences from the lack of repairability we see too often in today's marketplace. Consider that more and more Americans in all income brackets are living in multi unit housing communities. Many of us that would like to repair and maintain the products that we purchase and own find it increasingly difficult to have the "permission" of space rented to do these activities. It could be working on your automobile, repairing a home appliance, or a home fixit project or your computer. We are often forced to rely on more expensive and less environmentally friendly options. This to me raises a question of what type of communities are we building for ourselves?
Repairing and maintaining what we own is important community building.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/58>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 6:48 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 06:48 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Dale
Last Name: Fronheiser
Affiliation: Pres
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Federal Trade Commission:

My name is Dale Fronheiser. My position is President with Passmore Service Center, an equipment dealership located in Bechtelsville, PA. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,

Dale Fronheiser, Pres
Passmore Service Center

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/2>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 7:56 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 07:55 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Dan

Last Name: Lefeld

Affiliation: Kenn-Feld Group

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: I the mind set of personal safety for the consumer.

Allowing consumers access to diagnostics and controllers will only open the door for activity that will make agriculture equipment unsafe to operate.

Once given the opportunity to access settings all settings will become available. There will be no way to keep track of what was changed. Everything from engine emissions to transmissions controllers will be at risk of being altered. The end result will be fatal to consumers using this equipment.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/10>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 4:57 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 16:56 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Dan

Last Name: Xie

Affiliation: Student Public Interest Research Groups Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Consumers should have the ability to fix their electronics, tractors, etc. just like they have the ability to fix their cars. Please protect consumers by writing stronger right to repair rules!

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/54>

[REDACTED]

From: Daniel Fisher <[REDACTED]>
Sent: Sunday, July 18, 2021 7:45 PM
To: JulyPublicComments
Subject: AED Comments in Advance of July 21 Open Meeting
Attachments: AED-FTCPolicyComments.pdf

To Whom It May Concern:

Attached please find written comments from Associated Equipment Distributors (AED) in advance of the FTC's open meeting on July 21.

Daniel B. Fisher
Vice President of Government & External Affairs
Associated Equipment Distributors
Washington, D.C.
[REDACTED]



Submitted via email to julypubliccomments@ftc.gov

July 18, 2021

The Honorable Lina Khan
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Joshua Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Rohit Chopra
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Christine S. Wilson
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: AED Comments on Proposed FTC Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear Chairwoman Khan and Commissioners Chopra, Phillips, Slaughter and Wilson:

Associated Equipment Distributors (AED) appreciates the opportunity to provide comment prior to the Federal Trade Commission's (FTC) consideration of a policy statement regarding repair restrictions by manufacturers and sellers at its July 21 public meeting.

AED is the trade association representing companies that sell, rent, service and manufacture construction, mining, farm, energy, forestry and industrial equipment. Its nearly 500 distributor members, which are predominantly small-medium-sized, family-owned businesses, have over 3,500 locations, employ 150,000 workers and account for more than \$60 billion of annual sales revenue in the United States and its territories. AED also has 350 non-distributor members, which include equipment manufacturers and industry service providers.

The equipment distributed by our member companies contains sophisticated technology with complex safety and emissions features. Consequently, AED members invest significant resources training and developing qualified technicians to service and repair the heavy equipment. These well-paying careers are located in communities across the country, including in rural areas and towns that have suffered economic distress.

AED is concerned with the FTC's plans to adopt a policy statement on July 21 supporting so-called "right to repair" initiatives and the possibility of subsequent regulations as contemplated by President Biden's recent executive order.

Unfortunately, a primary basis for applying right to repair policies to the equipment industry is based on a false narrative that customers are unable to fix their machinery. To the contrary, equipment manufacturers and distributors make available diagnostic tools, repair information and parts. However, consumers do not have the ability to modify the complex environmental and safety protections on the equipment, and for reasons outlined below, policymakers should refrain from mandating this type of unfettered access.

A broad right to repair mandate applied to the equipment industry will be detrimental to safety and environmental compliance. Indeed, given that customers are already able to repair their own equipment, the primary reason someone would want the ability to access and alter source code is to override emission controls and safety mechanisms to increase performance. This is not fixing equipment; this is modifying it.

The equipment industry has invested significant time and resources to meet the Environmental Protection Administration's (EPA) Tier 4 diesel emissions standards. These specifications, applicable to engines used in off-road equipment have resulted in a significant reduction in emissions. Unfortunately, right to repair threatens these gains as the public would have the ability to circumvent environmental protections on machinery to boost performance.

Furthermore, modern heavy equipment has numerous safety features to protect both equipment operators and the public, the latter who oftentimes are driving or walking past construction sites and other areas while machinery is in use. Granting access to override safety features poses undue risk on operators and bystanders in the vicinity while equipment is in use.


It is also important for policymakers to recognize a key difference between equipment sold by AED members and other products, such as consumer electronics. Heavy machinery has a significantly longer life cycle that may be jeopardized by granting unfettered access to source code. In fact, equipment will oftentimes be sold to a customer, traded-in when the customers purchase a new machine, and subsequently, either resold or rented. Modifications to equipment can jeopardize its durability, which in turn can also have a negative environmental impact as machinery may need to be discarded and is deemed unusable prematurely.

Because of the nature of the used equipment sales, rental, and trade-in markets, allowing for modification of safety and environmental features also would subject AED members to significant, unnecessary legal liability issues due to an end-user's ability to tamper with machinery source code.

In conclusion, end-users of machinery have the information and parts they need to repair and fix their equipment. The only reason for greater access contemplated by right to repair policies is to circumvent safety and emissions standards or to access proprietary intellectual property. AED urges the FTC to refrain from adopting a policy statement in favor of right to repair, recognizing that the equipment industry's customers do not need any additional resources to fix their machinery.

Thank you for consideration of our comments and please do not hesitate to reach out for further information should you or your staff need it.

Sincerely,

A handwritten signature in blue ink that reads "Daniel B. Fisher". The signature is written in a cursive, flowing style.

Daniel B. Fisher, Esq.
Vice President of Government & External Affairs

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 7:54 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 19:54 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Daniel

Last Name: Curtis

Affiliation: Automation Laboratory Technology Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

I work as an engineer with an independent service organization that has serviced specialized medical equipment for over 30 years. Over this period many manufacturers have slowly restricted spare parts access to owners of the equipment they have purchased. By restricting these parts and creating vendor lock-in, allowing manufacturers to charge outrageous amounts for repairs.

These repairs are often times a simple component needing replaced which many users of this equipment can replace.

Without access to spare parts to independent service organizations, there is no other option for these equipment user. This limits the choice of which service provider a consumer will user.

By monopolizing access to spare parts and service manuals, consumers are left to pay for excessive repairs from manufacturers without any competition to keep service prices in check.

Consumers should be given the right to repair their items and equipment, without manufacturers to monopolize and exploit access to spare parts thereby preventing vendor lock-in for equipment the consumer has invested in.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/54>

[REDACTED]

From: Dan Mustico <[REDACTED]>
Sent: Friday, July 16, 2021 4:40 PM
To: JulyPublicComments
Subject: OPEI comments - July 21 Open Meeting - Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers
Attachments: OPEI comments to FTC re R2R 20210721.pdf

Please see attached. Thank you in advance for the consideration.

Daniel J. Mustico
Vice President, Government & Market Affairs
Outdoor Power Equipment Institute, Inc.



Email Disclaimer:

Please be informed that this email and any materials attached herewith may contain confidential or legally privileged information that is intended solely for the use by its named recipient. If you have received this email in error, please notify us immediately by reply email and delete this email from your system. Any disclosure, use, copying, printing, distribution or reliance upon the contents of this email is strictly prohibited.

Outdoor Power Equipment Institute

Submitted via e-mail – julypubliccomments@ftc.gov

July 18, 2021

The Honorable Lina Khan
Chair (Commissioner)
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Joshua Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine S. Wilson
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Open Commission Meeting (July 21, 2021) – OPEI comments on Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear Chair Khan and Commissioners Phillips, Chopra, Slaughter, and Wilson:

The Outdoor Power Equipment Institute (“OPEI”) appreciates the opportunity to provide comment to the Federal Trade Commission (“FTC”) in advance of the Commission’s July 21, 2021, open meeting.

While OPEI and its members share FTC concerns about protecting consumers, we strongly oppose the Commission’s potential adoption of a policy statement and subsequent regulation in support of so-called “Right to Repair”, as recommended in President Biden’s recent Executive Order promoting competition in the American economy. The proposed regulation would neither benefit consumers nor enhance competition due to the significant detrimental impact such open ended “right to repair” rules would have on the safety of industry products and the environmental impact of allowing modification to statutorily required emission systems.

OPEI is an international trade association representing more than 100 manufacturers and their suppliers of gas and electric-powered outdoor power equipment (“OPE”), golf cars, and personal transport and utility vehicles. OPEI member products are ubiquitous in U.S. households and businesses, including equipment such as lawnmowers, garden tractors, grass trimmers, chain saws, snow throwers, generators, utility vehicles and other similarly powered lawn and garden and vehicle applications. The industry currently contributes approximately \$16 billion to U.S. GDP, domestically ships nearly 40 million products each year, estimates as many 250 million legacy products in service across the U.S., and sells these products through a diverse network of retail channels. Similarly, our members effectively service and repair industry products, as appropriate, through diverse and cost-effective channels, combining OEM, retailer, dealer, and other service-provider resources.



An FTC policy statement leading to new federal regulation on a “right to repair”, not unlike legislation introduced in various states and the current H.R. 4006 in Congress, would be grossly misplaced in our industry. Such an approach ignores the long history and continuous innovation our members focus on providing consumers with all the resources necessary to repair and service their equipment. Industry efforts ensure product performance while protecting consumers through the highest standards of safety and environmental protection. Focusing on this last point, and to highlight our biggest concern, are the risks such regulation would create to incentivize, allow, or inadvertently risk modification and/or tampering with product safety and/or emission controls.

Virtually all industry equipment manufactured today relies on electronics, embedded software, static and dynamic firmware, and other code for various functions including critically in this case product safety and emissions. These electronic and software-based features supplement the multiple layers of hardware implemented for the same protective goals. However, the role played by electronics, software and code in our members’ products is vastly different than in traditional consumer electronics products, like computers, phones, and laptops. In this area of primary concern, I would highlight the following:

- Improper modification of software or hardware risks making products non-compliant with applicable mandatory or voluntary consumer safety standards. In many cases these include voluntary safety standards promulgated domestically and internationally by OPEI as an accredited member of the American National Standards Institute. Members are also required to meet a mandatory standard for consumer pedestrian-controlled lawnmowers set by the U.S. Consumer Product Safety Commission (“CPSC”)¹, and more broadly OPEI and its members work cooperatively with the agency on voluntary standards defining key safety requirements. If a members’ product does not meet an applicable mandatory or voluntary consumer safety standard, the member may be subjected to regulatory action, oversight, or increased legal liability. This is just one reason that certain types of safety-related repairs should only be done by qualified repair personnel familiar with the product, its operations, and applicable standards designed to safeguard consumers themselves. Qualified personnel include the vast network of independent small businesses that already repair OPE in the current marketplace.
- While there are many examples of equipment and software that are safety-critical in the diverse array of products our members produce, the types of modifications of industry equipment safety controls most likely to undermine consumer safety are Operator Presence Controls (“OPC”). OPCs protect against operator and bystander injury by disabling powered components (e.g., lawn mower blades) when an operator is not actively controlling equipment. OPC is also an integral part of the mandatory requirements set by the referenced CPSC standard for walk-behind power lawn mowers, dependent on electronic functions and their proper repair. Additionally, all applicable machine controls, including those for product power & speed, direction, steering, and braking would also be at risk of modification if the FTC promotes an open-ended repair right.
- Increasingly, industry equipment is powered by lithium-ion batteries which are not amenable to any form of repair, regardless of information and tools available or the expertise of the person attempting repair. This was a topic which specifically and importantly received attention during the 2019 agency workshop and recent report to Congress.
- Where applicable, industry equipment is subject to and must be compliant with product air emission regulations, which is governed by the machine’s electronic/software controls. The potential new regulation(s) risk(s) potential product modifications, whether intentional or unintentional, which compromise air emissions and compliance with the law at both the state and federal level.

¹ CFR Part 1205 – Safety Standard for Walk-Behind Power Lawn Mowers

The list above is by no means an exhaustive list but is provided as a sampling of how “right to repair” regulation and/or legislation will immediately endanger both consumers and the environment. More generally we would like to provide comments on the broad scope of such potential regulation, and the potential negative consequences such action would have on consumers and on our members given our industry’s existing and effective approach to product repair.

Outdoor power equipment maintenance, diagnostic, and repair needs cannot be equated with other equipment and products such as consumer electronics. Therefore, broad scope regulation is impractical even within our own industry due to product diversity according to price, service life, retail channel, and serviceability. Many industry products have significant service lives where improper/faulty repair and/or modification can negatively impact product value which limits consumers’ ability to re-sell products. More generally, improper repair can void the product’s warranty and may in some cases infringe upon the OEM’s intellectual property protections and brand reputation. All these potential risks and even unintended consequences to both consumers and OEMs need to be given close consideration, in addition to our noted safety concerns.

Highlighting our industry’s existing (and effective) approach to product repair, I would again stress 1) our industry’s product diversity according to price, service life, retail channel, and serviceability, and 2) our industry’s long history of providing innovative means for equipment repair, including where applicable the provision of tools necessary for the proper diagnosis, maintenance, and repair of products.

OPEI members provide a wide range of resources, including manuals, product guides, product service trainings, diagnostics tools, and more, that enable consumers and third-party repair businesses to maintain, diagnose, and repair their products.

Put simply, there are no current barriers to purchaser or third-party repairs that would necessitate the drastic regulatory action to implement a mandatory “Right to Repair” on all products envisaged by the executive order. In short, our members make information and tools readily available to the public unless the use of such information and/or tools would put consumers or the environment at risk.

OPEI members stand by their products, and they are committed to providing resources to enable end-users or third parties to maintain, diagnose, and repair those products when necessary. FTC-mandated access to the software and coding embedded inside equipment would not bolster consumers’ rights to repair their own equipment—as noted, the existing resources currently available are fully sufficient to diagnose and fix problems that might arise. Rather, overbroad “Right to Repair” regulations would create a new right to *modify*, whether intentional or not, and would endanger consumers by allowing for modifications to safety and emission controls and causing the product to be out of compliance with safety and regulatory compliance requirements. This creates unacceptable liability to our members and will adversely affect competition.

If the FTC advances a new rule that requires manufacturers to allow access to products’ operating software, it will open the door for modification of safety measures and controls (set by both voluntary and/or government standards) designed to protect both operators and bystanders, and proprietary machine operation and performance controls. Commercial-users and consumers generally of industry equipment do not need this information to repair their own equipment: it can only be used to circumvent safety and emissions standards or to access proprietary intellectual property.

OPEI respectfully urges the FTC not to adopt a new policy statement in support of “Right to Repair” given the overwhelming evidence that consumers do not need any additional resources (and certainly not access to safety and emissions software) to perform repairs on equipment they own. The FTC can best protect consumers from dangerous and potentially unlawful modifications to equipment that bears the trusted

brand of OPEI members by not mandating a solution to a problem that does not exist, and which indeed could harm consumers as well as businesses.

Ultimately, the real threat to consumers, and our members, is not an inability to repair their equipment, but rather a cavalcade of state-by-state attempts to allow unnecessary and dangerous modifications to an array of products and equipment under the guise of “Right to Repair”. Instead of adopting new federal regulation(s), OPEI respectfully encourages the FTC to review this patchwork of state-based regulations which are unnecessary and counterproductive. If the FTC plans to move forward with a “Right to Repair” rulemaking, the Commission can preempt a 50-state patchwork by clarifying that the myriad resources currently available to consumers are sufficient to support their rights to repair equipment they own and that manufacturers should not be obligated to make public proprietary software that could not only undermine safety-critical operations but expose members to charges of violating safety and emissions standards.

In closing, I would like to invite Commissioners and their staff to engage with us in further dialogue to educate you about our concerns and the potential adverse impact to consumers that will result from over-broad action. We can certainly provide real-life examples of what can happen if a safety feature is overridden, or emissions controls are bypassed.

As options, we would welcome a meeting with interested Commissioners and/or staff whenever convenient, the scheduling of a member OEM site visit, or a visit to our industry trade show (GIE+EXPO, October 20-22 in Louisville) – all as a means of demonstrating/explaining industry equipment and repair and answering your questions.

If Commissioners or staff have questions, would like additional information, or would like to discuss a subsequent meeting including the recommended options, please contact Dan Mustico, OPEI’s Vice President of Government & Market Affairs at [REDACTED] or [REDACTED]. Thank you for the consideration of these comments.

Best regards,

A handwritten signature in black ink, appearing to read "Kris Kiser". The signature is fluid and cursive, with the first name "Kris" being more prominent than the last name "Kiser".

Kris Kiser
President & CEO

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 4:53 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 16:53 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Daniel

Last Name: Trimble

Affiliation: Collegiate Cyber Defense Club (Hack@UCF) Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: We, the Collegiate Cyber Defense Club also known as Hack@UCF, support our ally, the EFF, in their efforts to protect an individual's right to repair and the recommendations they make as it pertains to this committee's hearing. Specifically, that individuals should not be threatened with lawsuits for repairing or altering their own property, or for offering repair as a service to others. We support less restrictive end user agreements, the removal of DRM/TPM controls, and defend the fair use of repair manuals and diagnostic codes. The law should protect an end user's fundamental ownership rights; to repair, to use, or to modify their legally owned property.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/38>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 11:43 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 11:42 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: David

Last Name: Kleiber

Affiliation: Kleiber Tractor & Equipment Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement: Texas

Submit written comment:

Dear Federal Trade Commission:

My name is David Kleiber. My position is President and CEO with Kleiber Tractor & Equipment an equipment dealership located in La Grange, Texas. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment.

I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,

David Kleiber

Kleiber Tractor & Equipment

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/30>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 12, 2021 5:33 PM
To: JulyPublicComments<JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 12, 2021 - 17:33 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Dennis

Last Name: Hines

Affiliation: Handyman's Property Maintenance And Mover Llc Full Email Address: [REDACTED]

Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: I have been dealing with defrauding. A government approved merger with the FTC and DOJ. As of now I don't have a clue what is going on. no one will help me and I get some crazy message from my phone.

Says FTC block the merger: the federal register said it was approved. The certified mail. the affidavit. Now what is next.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/34>

From: Don Waterbury <[REDACTED]>
Sent: Thursday, July 15, 2021 11:58 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Comments to the July 21 FTC Open Commission Meeting

1. I support the Care Labeling Rule and would like to see it expanded to cover new processes of cleaning.
2. I support expanding ways to fix products that companies product so we do not have to add to the trash that is accumulating. Fixing items is the way to protect ourselves from polluting the environment.

Thank you,
Grandpa Don aka Don Waterbury



[REDACTED]

From: Phan, Tyler N <[REDACTED]>
Sent: Wednesday, July 21, 2021 1:12 PM
To: JulyPublicComments
Subject: Computer Issues, Email Comment

Dear FTC,

I am having severe computer issues that disallowed me to test my connection yesterday. Since I haven't been granted access, I would like to post my message to the FTC. It is as follows:

I am here to ask for the FTC to investigate anticompetitive practices conducted by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), which is the primary regulatory organization for licensure in the United States.

In the wake of anti-Asian sentiment in this country, policies and practices on behalf of the NCCAOM has disproportionately marginalized Asian Americans to practice acupuncture whereby more than 70% of practitioners are white and less than 15% are Asian American. This is mostly from their implementation of arbitrary standards that have not been audited since their inception. The first being the content which at its core based on an interpretation of the standardized medicine in China during the 1950s. Not only dated, but there is also no empirical evidence to substantiate this mode of acupuncture to have greater efficacy than any other acupuncture tradition.

Secondly, the NCCAOM's content only consist of less than 15% relating to safety, while the vast majority relates to arbitrary Chinese medical theories that have no clinical evidence to support its efficacy. This wouldn't be an issue if it weren't for a high number of graduates finishing with student debt from their education, which brings me to the third point, collusion.

Lastly, the NCCAOM has been actively working with schools in creating the standards for the profession that includes tuition costs. I want to address the issue of price fixing amongst the schools.

Thank you for your time.

Dr. Tyler Phan

Dr. Tyler Phan, Ph.D.

[REDACTED]
University of Pittsburgh
Department of Anthropology || Asian Studies Center
[REDACTED]

[REDACTED]

From: Pozza, Duane <[REDACTED]>
Sent: Friday, July 16, 2021 8:20 PM
To: JulyPublicComments
Subject: Comment for July 21, 2021 meeting
Attachments: CTA FTC July 21 meeting comment 7.16.21.pdf

Please see attached comment.

Regards,



Duane C. Pozza
Attorney at Law
[REDACTED]

Wiley Rein LLP • [REDACTED]
[REDACTED]

[Download V-Card](#) | wiley.law | [Bio](#)

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July 16, 2021

Federal Trade Commission
Washington, DC 20580

Dear Chairwoman Khan and Commissioners Chopra, Phillips, Slaughter, and Wilson:

The Consumer Technology Association (CTA) submits this comment in advance of the Commission's July 21, 2021 open meeting. CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES® – the most influential tech event in the world. CTA members operate in a competitive marketplace to produce innovative products that provide enormous benefits to consumers and power the economy.

CTA supports the Commission's move to schedule public Commission meetings for rulemaking and policy matters and to circulate an advance agenda so that the public can see what the agency is considering. However, CTA believes that all stakeholders would be better served with greater notice and transparency as to any rulemaking or policy proposals under consideration, particularly in the context of competition policy. Affording greater opportunity and time for public input can only help the Commission's deliberations on matters that may have great impact across the economy.

At the July 1, 2021 meeting, the Commission voted to rescind the 2015 "Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act."¹ The Commission announced that the proposal was being considered just a week before the meeting and the vote, giving very little time for public input – and certainly far less time than the Commission gives for comment even on routine matters.² More, the exact contours of that proposal – and others at the July 1 meeting that involved considerably more detail – were not circulated to the public in advance of the meeting. That timeline afforded time for very little public input on an extremely significant regulatory change.

We are concerned that the Policy Statement has been withdrawn with no replacement. As noted above, CTA's members range from small to very large businesses, operating in an extremely competitive marketplace. These businesses all work better to create innovative consumer products when there is

¹ See <https://www.ftc.gov/news-events/press-releases/2021/07/ftc-rescinds-2015-policy-limited-its-enforcement-ability-under>.

² Notably, the Commission set a 30-day comment period on the significant draft Vertical Merger Guidelines, which it later extended. See <https://www.ftc.gov/news-events/press-releases/2020/01/ftc-doj-announce-draft-vertical-merger-guidelines-public-comment>; <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-doj-extend-deadline-public-comments-draft-vertical-merger>.

greater regulatory certainty. Indeed, small businesses often bear the brunt of expensive and time-consuming compliance challenges when the law is not clear. That withdrawn statement noted, for example, that the Commission “will be guided by the public policy underlying the antitrust laws, namely, the promotion of consumer welfare,” and “the act or practice will be evaluated under a framework similar to the rule of reason.”³ It is not clear what standards will replace them, which creates significant uncertainty for business throughout the marketplace, ultimately raising compliance costs and deterring innovation.

CTA urges the Commission to provide much greater and more specific advance notice of rulemaking and policy proposals to be considered at the FTC’s public meetings and recommends at least 30 days notice. This will enable CTA and other stakeholders to provide more robust and detailed comments to inform the Commission’s approach.⁴ We strongly support transparency on competition policy and rulemaking matters and urge the Commission to adopt procedures that provide a better opportunity for meaningful public engagement.

Sincerely,

CONSUMER TECHNOLOGY ASSOCIATION

/s/ Michael Petricone

Michael Petricone

Sr. VP, Government and Regulatory Affairs

/s/ Rachel S. Nemeth

Rachel S. Nemeth

Senior Director, Regulatory Affairs

³ FTC, *Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act*, https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf.

⁴ In making this recommendation, we emphasize that enforcement matters would not be appropriate for public consideration, consist with longstanding Commission practice.

[REDACTED]

From: Ed Mierzwinski <[REDACTED]>
Sent: Wednesday, July 21, 2021 2:28 PM
To: JulyPublicComments
Subject: Mierzwinski-Comment to accompany my public one minute presentation today

Hello, highlights of my one minute presentation today:

- 1) As mentioned in a [recent NYTimes editorial](#), the old FTC's decades-long promotion of a weak "notice and optout" regime has fueled the 24-7 surveillance business model used by BigTech and drastically hindered development of a "privacy by default" Internet, as have its failed efforts to hold BigTech accountable.
- 2) There is pressure from powerful business interests to subject European citizens to a "Privacy Shield 2" that effectively tosses their robust privacy protections into a scrap heap and subjects them to the US wild west surveillance advertising model without the substantive rights guaranteed by GDPR.
- 3) The FTC must make a strong effort to reject the weak Privacy Shield negotiations.
- 4) The FTC instead must back passage of strong federal privacy and digital rights protections that both allow stronger state laws and allow consumers to enforce their rights against harms.
- 3) U.S. PIRG and a number of leading consumer and civil rights groups had issued a "Privacy and Digital Rights for All" platform and accompanying factsheets on key issues. Here is a link to the "[Privacy and Digital Rights for All](#)" platform and pages.

Please contact me with questions. I am confident that the new FTC can do better than the old FTC. I look forward to working with you.

--
Ed Mierzwinski
Senior Director, Federal Consumer Program, U.S. PIRG
[REDACTED]

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 8:01 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 20:01 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Eldon

Last Name: Stegall

Affiliation: Georgia Cybersecurity Education Society Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: As we enter a more connected age, the objects around us become increasingly more available to wireless network and software systems. Mobile phones are always-on, always-connected computers where we store our most private and meaningful information, from baby pictures to bank statements. Vehicles such as cars take us to public and private places. The right to repair is the right to secure those environments.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/62>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 5:10 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 17:09 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Emily

Last Name: Rusch

Affiliation: CALPIRG

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

<https://twitter.com/emilyrusch/status/1416134629078175744>

Submit written comment: I'm submitting comments in support of strong action by the FTC to enforce existing laws and adopt new policies to give consumers the ability to fix their own stuff more easily. Right to repair policies reduce waste and save consumers money.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/158>

[REDACTED]

From: gary granato <[REDACTED]>
Sent: Saturday, July 17, 2021 7:21 AM
To: JulyPublicComments
Cc: quality cleaners
Subject: Care label comment

Dear commissioners,

My company QUALITY CLEANERS has been in business 42 years. It is a routine part of our business to check the care label for cleaning instructions on almost every garment. Yes, there are some basic garments like 100% cotton khaki pants or jeans but sometimes even those, if they contain additional fibers, can cause a problem if the care instructions are not followed. Even when a care label is in a garment we very often ask for a signed release of responsibility to process that garment due to any embellishments that might be added to the garment like beads sequins or even extensive stain removal that goes beyond the limitation of the care label whether that's wet cleaning, dry cleaning or restoration services that we might offer. Very often households especially are submitted without care labels leather, suede, rugs also are very specialized and require explanation of risk and testing of the fabrics in a lot of cases. Care labels give the provider i.e. Drycleaner the tool to communicate to their customer what's involved what risk might be involved so that they are part of the process and it's ultimately their decision on how to proceed. Without care labels your opening up a whole area of litigation that's completely avoidable.

Since we are the last person that handled the items, the consumer blames us if damage occurs even when we follow the care label. I can't imagine how much worse it would be if there were no care instructions in the garment. There is no way we can know every dye, every trim, and every construction method for every garment. There are too many different components and too many application and construction methods that go into producing a garment. The only person that knows what goes into the construction of a garment is the manufacturer. The manufacturer is in the best position to know the best method of care for a garment. That decision should not be left up to the consumer or the cleaner. Neither the drycleaner nor the consumer should be expected to bear the financial burden of damaged garments due to an incorrectly, guessed care method.

Yours truly
GARY GRANATO
Quality Cleaners of Martin County, Inc.

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 4:42 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 16:42 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Gay
Last Name: Gordon-Byrne
Affiliation: The Repair Association
Full Email Address: [REDACTED]
Confirm Email Address: [REDACTED]
Telephone: [REDACTED]

FTC-Related Topic: Competition
Register to speak during meeting: No
Link to web video statement: NY
Submit written comment:

As a former panelist at the "Nixing the Fix" Workshop I endorse your findings entirely. It has been an enormous help to state legislators considering various "Right to Repair" efforts that the FTC has thoroughly investigated manufacturer claims of consumer harm and found "Scant Evidence" of any actual harm. I remain available at any time to help with your work. Regards, Gay.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/38>

[REDACTED]

From: Gina Vetere <[REDACTED]>
Sent: Sunday, July 18, 2021 7:42 PM
To: JulyPublicComments
Cc: Ben Golant
Subject: Written Comment for July Open Commission Meeting
Attachments: ESA Written Comment for FTC July 21 2021 Open Commission Meeting FINAL.pdf

To whom it may concern:

Attached is the Entertainment Software Association's (ESA) short written comment regarding right to repair, which we are submitting in advance of the FTC's July 21, 2021 Open Commission Meeting.

Please do not hesitate to reach out if you have any questions.

Sincerely,

Gina Vetere



Gina Vetere
Senior Vice President & General Counsel
[REDACTED]
Entertainment Software Association
601 Massachusetts Avenue NW | Suite 300W | Washington, DC 20001
www.theESA.com | www.gamegeneration.org





July 18, 2021

RE: ESA Written Comment Re: Right to Repair for FTC July 21, 2021 Open Commission Meeting

To Whom it May Concern:

The Entertainment Software Association¹ is pleased to submit these comments in connection with the Federal Trade Commission's ("FTC") consideration of a policy statement on the right to repair. As the FTC is aware, video game console makers, publishers, and copyright owners, rely on the content protection systems built into consoles to protect against sophisticated piracy efforts. We therefore appreciated the FTC's recognition in its report "Nixing the Fix: An FTC Report to Congress on Repair Restrictions" ("FTC Report" or "Report") that protecting intellectual property ("IP") rights benefits consumers and that any limitation on repair restrictions cannot be one-size-fits-all. Indeed, the Report makes a special effort to recognize that IP rights play a valuable role in encouraging and rewarding innovation, and that "any action taken by industry or regulators to enable independent repair should seek input from such entities [*i.e.*, the USPTO and the US Copyright Office] and other stakeholders and be mindful of existing law and policy supporting IP protection." For the reasons outlined below, we urge the FTC to ensure that its policy statement reinforces the importance of IP protection and that any repair mandate is not so broad as to undermine critical IP rights.

The Importance of Technological Protection Measures ("TPMs") to the Video Game Industry. Video games are protected under federal copyright law, including the anticircumvention provisions found in Section 1201 of title 17 of the U.S. code. Video game consoles employ TPMs to protect creative works and prevent illegal and unauthorized device modifications that could result in the ability to play pirated games.² Delivering consumers the best gameplay environment depends upon a trustworthy and secure delivery platform. Once a console's TPMs are disabled, two worrisome results can occur: (1) the game experience for players is diminished, sometimes dramatically, which could be seen as a flaw in the console or game, and (2) any number of illegally copied games from the internet could be played on the console. Piracy is of particular concern to smaller video game publishers who may be acutely affected by mass infringement and its impact on their livelihoods. To prevent compromising the integrity of consoles and to ensure that players have access to safe and enjoyable game experiences, console makers are committed to providing consumers with easy, reliable, and affordable repair service whenever repairs are necessary.

¹ The ESA serves as the voice and advocate for the U.S. video game industry. Its members are the innovators, creators, publishers and business leaders that are reimagining entertainment and transforming how we interact, learn, connect and play. The ESA works to expand and protect the dynamic marketplace for video games through innovative and engaging initiatives that showcase the positive impact of video games on people, culture and the economy. For more information on the ESA and its membership, please visit <https://www.theesa.com/about-esa/>.

² Recently, for example, "[t]hree members of an international criminal organization known as Team Xecuter were indicted on charges related to the development and sale of 'illegal devices that hacked popular video game consoles so they could be used to play unauthorized, or pirated, copies of video games,' according to a federal indictment filed in Seattle." Brooke Wolford, International hackers accused of pirating Xbox, Nintendo, PlayStation games, feds say, THE NEWS TRIBUNE (Oct. 2, 2020).

The U.S. Copyright Office Recognizes the Role of TPMs in Helping Protect Video Game Content. Section 1201 of the Copyright Act, as highlighted above, makes it illegal to bypass TPMs and to distribute tools to assist in that effort. This law ensures that copyrighted works remain secure. While Section 1201 makes it illegal to circumvent TPMs, Congress did create a regulatory safety valve when it authorized the Librarian of Congress (“Librarian”), based upon the recommendations of the Register of the U.S. Copyright Office, to codify temporary exemptions every three years that were supported by evidence collected in a rulemaking. In 2018, the Librarian granted exemptions to allow repair of motor vehicles, home appliances, and other categories of devices, but she specifically *excluded* video game consoles from the lot because of the vital role TPMs play in safeguarding games and the harms that could arise were third parties allowed to circumvent such protection measures. Unfortunately, those trafficking in circumvention devices continue to operate despite best efforts of the console makers, and the risks to the industry remain as they did in 2018. Consistent with the directives in the FTC Report, copyright law and policy, as well as the practical enforcement risks noted above, should be taken into account in any right to repair actions taken by regulators or others.

Repair Mandates Present a Unique Risk to the Video Game Industry. Given the video game industry’s strong concerns about piracy, as detailed above, granting unauthorized repair shops access to hardware along with tools and knowledge to modify TPMs would compromise the safeguards that protect *all* copyrighted content played on consoles. It would expose video game console makers – and the game developers and publishers who rely upon the secure media environment of game consoles – to content theft. Bad actors may attempt to modify (or “crack”) consoles to enable piracy and to sell their services to consumers both online and in physical storefronts. While most repair shops might not seek to use their repair methods for illegal purposes (such as the unauthorized removal of a device’s security features), publication of a console’s security roadmap could undermine the entire console ecosystem. Accordingly, a right to repair mandate that undermines the critical TPMs that safeguard games could have a rapid and severely detrimental impact to the video game industry and to consumers alike.

We therefore urge the FTC to acknowledge the importance of IP rights to the video game industry when considering repair restrictions. Thank you again for the opportunity to submit these short comments.

Sincerely,



Gina Vetere
Senior Vice President & General Counsel
Entertainment Software Association

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 7:56 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 19:55 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Gregg

Last Name: Ferry

Affiliation: Member of a threatened species Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

Why do we need to repair? It isn't just peak oil, it's "peak 100 elements crucial to modern life". All of these elements peak before 2050. China controls the market on the most important of them. It's long past time to make the best use of what we do have. When something ends up in the landfill, we have squandered our inheritance.

I would advise "Design For". Design for manufacturing, Design for reparability, for repurposing, for reusability, for recycling. We must learn how to do these. Our survival depends on it. Reparability is an important spoke of the cycle.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/58>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 8:22 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 08:21 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Gregory

Last Name: Scott

Affiliation: American Alliance for Vehicle Owners' Rights Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition

- Consumer Protection

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: Being prepared.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/14>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 12, 2021 2:15 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 12, 2021 - 14:14 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Helen
Last Name: Demarest
Affiliation: Consumer of MOBE
Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: FTC Operations
Register to speak during meeting: No
Link to web video statement: NV

Submit written comment: I am inquiring why we have not had a resolution in the MOBE CASE. I filed the complaint 2 years ago and all i hear is you are still calculating . No restitution to the claimants have been made and all we see is the balance collected decrease due to fees. I need my money back and this has gone on long enough. Quit giving the deals and options to Matt Lloyd and his Team and give us the money back that was taken from us!! Also accountant fees are also draining the account because it is taking so long!
FINISH IT ASAP AND REFUND OUR MONEY!!!

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/6>

[REDACTED]

From: Ian Musselman <[REDACTED]>
Sent: Wednesday, July 21, 2021 3:05 PM
To: JulyPublicComments
Subject: Repair Restrictions

LKQ Corporation thanks the Commission for its investigation into competition in repair aftermarkets, especially in the auto-parts sector where LKQ has worked to bring meaningful cost savings to consumers. According to the Auto Care Association, Americans spend approximately \$419 billion annually on vehicle repair and maintenance, making the aftermarket one of the larger sectors of our economy. The cost of replacement auto-parts accounts for a significant and increasing amount of the lifecycle cost of car ownership. In recent years, car manufacturers have used various tactics to exercise market power in aftermarkets for car parts, resulting in higher costs to consumers. While car manufacturers compete on price in the market for new cars, that competition does not discipline the car manufacturers' market power in aftermarkets because consumers lack transparency into aftermarket auto-parts pricing and competition to make an informed choice based on lifecycle costs. This exploitation of consumers is deceptive and may violate the antitrust laws. LKQ commends the Commission on its unanimous vote today that enforces regulation around the repair of products, including those of car manufacturer practices in these repair aftermarkets.

Ian P. Musselman
Senior Vice President, Government Relations
LKQ Corporation
[REDACTED]



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 6:13 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 18:13 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Jeffrey

Last Name: DiVincent

Affiliation: Individual

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

For the past decade, I have been "jailbreaking" my personal devices whenever I can. For many, jailbreaking may seem as a middle-school fad that they grew out of, but for me, it became a passion and ultimately drove a long-term interest in cybersecurity and development. However, it is only legal because of an exception to the Digital Millennium Copyright Act, because tampering with software is seen as piracy in the eyes of the law, no matter the intent.

However, without such exception, Apple would be legally allowed to persecute security researchers, resulting in our iPhones being less secure. Imagine a world where the checkra1n bootrom exploit was discovered and used as a zero-day, but was completely unknown to Apple.

As another case study, say a device you own is broken. Maybe it's a broken SD card slot, or a ribbon cable that is loose. You should have the right to fix it yourself, whether it's to save money on repair costs for a trivial fix or because it's no longer supported by its manufacturer.

In my eyes, an individual's right to tinker with their hardware (and software) is important. We do not need to force companies to open-source their work to allow this, nor force manufacturers to ship phones with root shells. Rather, it's about allowing the curious to take apart something, break it, and learn on their own behalf.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/42>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 4:36 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 16:35 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Jenn
Last Name: Engstrom
Affiliation: California Public Interest Research Group [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Competition
Register to speak during meeting: No
Link to web video statement:
<https://drive.google.com/drive/folders/15mir09KfgojNbbROLXh-BX54O-piuiQc>
Submit written comment:
My name is Jenn Engstrom and I'm the State Director for CALPIRG, a California consumer group.

I want to thank the FTC for your attention to repair restrictions and encourage you protect consumers by removing manufacturer restrictions on third party and do-it-yourself repair of devices and equipment.

Consumers, small businesses, farmers, medical professionals and more rely on important equipment every day and should have access to the parts, tools, and service information they need to repair them.

That's why it's important that we address equipment manufacturer repair monopolies.

More repair choices will protect the environment by cutting down on the amount of new electronics we make and old stuff we toss. More choices will also help save money and cut down-time waiting for the manufacturer's technician, which is especially important for farmers on tight planting or harvesting schedules

Right to Repair rules will help consumers and small businesses, and I thank you for taking action.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/146>

[REDACTED]

From: Joani Woelfel <[REDACTED]>
Sent: Sunday, July 18, 2021 8:07 PM
To: JulyPublicComments
Subject: FTC Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers
Attachments: FWEDA July 21, 2021 FTC Comment.pdf
Importance: High

Hello,

Please see attached comments for FTC Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers.

Best Regards,

Joani Woelfel
President & CEO



[REDACTED]

D: [REDACTED] | P: [REDACTED]
www.fweda.com | [REDACTED]

A United Voice Protecting & Promoting the Interests of Our Members



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Joani Woelfel
President & CEO
2020 Research Park Dr., Suite 160
Davis, CA 95618
P: 530.564.7125 | 800.576.8850



Representing agricultural, industrial, material handling, hardware, lumber, outdoor power and rental equipment dealers in Arizona, California, Colorado, Hawaii, Nevada, Utah and Wyoming

July 18, 2021

Transmitted via email to: julypubliccomments@ftc.gov

The Honorable Lina Khan
Chair (Commissioner)
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Joshua Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Christine S. Wilson
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Open Commission Meeting, July 21, 2021
FWEDA comments on Proposed Policy Statement for Repair Restrictions Imposed by
Manufacturers and Sellers

Honorable Chair Khan and Commissioners Phillips, Chopra, Slaughter and Wilson,

Far West Equipment Dealers Association (FWEDA) thanks the Commission for the opportunity provided by the Federal Trade Commission's open meeting invitation to comment on a proposed policy statement on "repair restrictions imposed by manufacturers and sellers" following [the Commission's "Nixing the Fix" report](#) and President Biden's executive order intended to promote competition among American businesses.

While FWEDA and its members concur with the FTC on protecting consumers, we strongly oppose the potential adoption of a "right-to-repair" policy statement and any related regulation as it would not benefit consumers nor would it foster competition.

FWEDA represents agricultural, industrial, material handling, outdoor power and rental equipment dealers in Arizona, California, Colorado, Hawaii, Nevada, Utah and Wyoming. These equipment dealership locations comprise businesses that provide quality jobs and enhance a healthy economy.

Qualified technicians employed by our dealers invest many years in training and developing their skillset to keep pace with the growing demands of intricate technology and safety features in today's modern equipment industry. Dealerships also make a considerable investment in technicians by providing tools and training. This [specialized workforce](#) improves the economic circumstances for individuals and their families, and significantly improves the well-being of our communities.

The label "right-to-repair" as used in the context of its advocates, is a misnomer. End users have the right to repair their equipment. This debate requires clarity between two similar but very distinct issues: access to diagnostic tools and repair information, and access to software code in machinery or in a device. The equipment industry [supports a consumer's "right-to-repair" their products](#), however, we do not support legislation or regulations [granting a right to modify equipment](#).

"Right-to-repair" advocates have been clear they want to do just that: "Farmers can't change engine settings, can't retrofit old equipment with new features, and can't modify their tractors to meet new environmental standards on their own," said Kyle Wiens, iFixit founder, in a 2018 *Wired* magazine article.

Unlimited access to modify software code — which controls safety and emissions standards — effectively "legalizes" tampering in violation of the [U.S. Environmental Protection Agency \(EPA\) Clear Air Act](#) and enables modifications to engine horsepower that pose serious safety threats to consumers.

The EPA increased its focus on illegal tampering and aftermarket defeat devices that violate the Clean Air Act (CAA) with its 2020 [National Compliance Initiative \(NCI\)](#), highlighting efforts to bring civil enforcement cases for tampering and defeat devices. Since 2017 nearly 50 of these cases addressed alleged violations by manufacturers, retailers and installers of aftermarket defeat devices. The EPA is also pursuing criminal enforcement of alleged crimes associated with illegal tampering and aftermarket defeat devices. The agency strengthened its position with an [EPA Tampering Policy](#) to enforce violations of the CAA from illegal tampering of vehicles and engines and aftermarket defeat devices.

[EPA Enforcement Policy Statement on Tampering and Aftermarket Defeat Devices, November 2020](#): The EPA typically does not take enforcement action for conduct that might be a violation of section 203(a)(3) of the Clean Air Act if the person engaging in the conduct has a documented "reasonable basis" to conclude that the conduct (or, where the conduct in question is the manufacturing or sale of a part or component, the installation and use of that part or component) does not and will not adversely affect emissions. This Policy Statement does not apply, however, to conduct affecting an OBD system, which may be subject to enforcement regardless of effect on emissions.

And in December 2020, [EPA issued an enforcement alert](#) reminder to all regulated entities that installing a defeat device or tampering with a motor vehicle or non-road equipment can be costly to their businesses and can subject them to enforcement and penalties. Dealers have been notified of enforcement actions.

Illegal tampering is a critical issue with potentially serious ramifications for dealers and end users in the debate over proposed “right-to-repair” bills, which have been introduced in 30 states over the past few years. To date not one has passed. At a hearing of the Colorado Assembly’s Business Affairs & Labor Committee in March, lawmakers voted 1-12 against the model “right-to-repair” bill being advanced in states across the country and at the federal level with [HR 4006](#). Besides the environmental and safety issues, they cited innovation, free market competition and interstate commerce concerns. When lawmakers fully understand the impacts of these laws, they’ve responded by not enacting them.

To the extent not already available, the equipment industry developed a [Statement of Principles](#) pledging to make available to end users the diagnostic and repair information, beginning with tractors and combines put into service on or after January 1, 2021. We’ve worked to fulfill this commitment without legislative or regulatory intervention.

Equipment manufacturers and dealers have a shared incentive with their customers to minimize downtime and maximize productivity. The industry has invested in cutting-edged innovations that incorporate the latest technology with training and support for the skilled technicians who service equipment. Laws and regulations would stifle this innovation.

This benchmark strikes a balance between giving farmers and ranchers the tools they need to be successful and preserving the integrity of the machinery dealers sell and service. Industry leaders have taken this pledge seriously and worked diligently to develop tools that empower end users to make decisions about maintaining and repairing their own equipment while acknowledging the critical role of safety, emissions controls, innovation and competition.

These solutions negate any need for end-user access to software code that can alter machinery performance and emissions systems and reduce liability for dealers who subsequently trade in modified equipment, and for resale owners who could unknowingly purchase modified equipment. In fulfilling our commitment, the equipment industry is addressing the core concerns of these legislative and regulatory proposals by taking a proactive approach to the needs of all end users, as well as trying to avoid bad regulations that would create significantly more problems than any positive influence it could have.

In closing FWEDA urges Commissioners to consider the equipment industry’s commitment to end users to support them in repairing their machinery and we ask that you avoid the potential negative impacts “right-to-repair” regulations could impose on innovation and consumers. We invite you to engage with us to review and discuss your concerns. We are available to provide demonstrations of the tools and resources available to end users to diagnose and repair their equipment. Please contact Joani Woelfel at 530.564.7125 or joani@fweda.com.

Sincerely,



Joani Woelfel

President & CEO

www.fweda.com | 

[REDACTED]

From: ASCDI-Joe Marion <[REDACTED]>
Sent: Wednesday, July 21, 2021 2:24 PM
To: JulyPublicComments
Subject: Written comments from Joe Marion-ASCDI from today's hearing

I am from ASCDI, an association of companies that recycle, resell and service tech equipment.

We've been waiting 25 years for today.

The right to repair and the right to resell are two sides of the same coin.

IBM, who was the dominant computer company in the 1950's, originally only rented its equipment, because they didn't want to compete with anyone reselling their used products.

In 1956, in response to an anti-trust action by the US Department of Justice (DOJ), IBM entered into a consent decree agreeing to sell its equipment AND provide the parts and wiring diagrams required to fix them! The result gave consumers choice, was good for the environment and fostered competition and innovation.

In 1996, IBM and the DOJ vacated the consent decree. Since then, most tech manufacturers have made it next to impossible for anyone to fix and resell their products by with-holding software, parts and warranties.

Thank you for your vote today.

Joe Marion
Association of Service, Communications, Data and ITAD providers
jmarion@ascdi.com
President
www.ascdi.com
[REDACTED]



[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 3:22 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 15:22 Submitted by anonymous user: [REDACTED]

First Name: Joshua

Last Name: Evans

Affiliation: Equipment Dealers Association Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

<https://equipmentdealersassociation.growthzoneapp.com/ap/CloudFile/Download/pVD3gJnL>

Submit written comment:

Chair Khan and Commissioners:

I respectfully submit the web link related to the aforementioned topic. I ask the submission be incorporated into the record.

Most respectfully,

Joshua R. Evans

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/46>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 9:24 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 21:23 Submitted by anonymous user: [REDACTED]

First Name: JOSUE
Last Name: TALAVERA
Affiliation: Unable to recollect
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: Yes
Link to web video statement:
Submit written comment:

Greetings,

When will a standardization be implemented to help regular users in particular the elderly and the unaware screen report and verify the authentication of a text message or a call? What we have now is not standardization with each carrier offering some or partial features to protect consumers. Donotcall.gov is a start but doesn't appear to hold the impending collapse of the scam damm.

I'd like to see tools or utilities to debunk/dedoak VOIP or SIP calls.

I in particular received a voicemail from an unknown party, when I spoke to my carrier it appears filing a daim with the FTC is the only way to qualm efforts of suspected stalkerware/adware malware potentially dropped by the scammers as they are protected more so than a consumer.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/170>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 4:47 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 16:47 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Justin
Last Name: Millman
Affiliation: Repair Preservation Group
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: Yes
Link to web video statement:
Submit written comment:
Hello,

I'm a member of the Repair Preservation Group, and the owner of a Company that repairs mobile devices for schools. Thank you for taking the time to do this. Every day we do not have rules regarding electronic repairs harms myself, my business, and my clients (educational organizations).

Regards,
Justin Millman

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/154>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 10:06 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 22:06 Submitted by anonymous user: [REDACTED]

First Name: Kevin

Last Name: Kenney

Affiliation: Right to Repair advocate

Full Email Address: d [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: I would like to briefly speak to the Commissioners about problems Farmers are having fixing their modern tractors.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/74>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 3:17 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 15:17 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Kim
Last Name: Rominger
Affiliation: Equipment Dealers Association Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Chair Khan and Commissioners,

My name is Kim Rominger, and the Equipment Dealers Association represents several thousand equipment dealers with nearly 300,000 employees. I agree with the safety and emissions points made by the Coalition Opposed to Illegal Tampering, but I want emphasize a simple point.

Customers and end-users have the right to repair their own equipment in the off-road sector. They do so through the dealer network already in place. The narrative being spun by so called "Right to Repair" advocates is misleading when it comes to our industry. These so called repair advocates have asked you to take on publicly traded manufacturers for rural farmers, but your policy will hurt those nearly 300,000 employees at local dealerships. Good paying technicians positions across rural America.

Today, a farmer can stop by or call his local dealer and pick up parts for his equipment. If the dealer doesn't have the part on hand, it is ordered. Nowhere in that chain of commerce is the customer forced into using the dealer's technician to put on the part because dealers are in the business of selling parts.

Across all industries, we have experienced supply chain issues. Until those are resolved, customers may experience delays. This is true for oil filters to more sophisticated electronics.

Further, I've heard much about end-users not being able to diagnose their equipment's errors. Our dealers purchase from OEMs diagnostic tools, and customers who wish to diagnose their equipment can purchase diagnostic tools. While a customer who wishes to purchase those diagnostic tools may do so, most prefer to use the dealer's expertise on that equipment.

I invite you to come to a trade show or better yet one of our local dealers. Allow us to better educate you on the opportunities for customer choice. Until then, I strongly encourage you to reconsider any policy statement for our industry.

Sincerely
Kim Rominger
President/CEO
Equipment Dealers Association

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/42>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 9:49 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 21:49 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Kimberly
Last Name: Romines
Affiliation: Under investigation IRS
Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: Yes
Link to web video statement: I want this party to start protecting me and my family Submit written comment: I am tired of being abused. On the internet.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/66>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 7:19 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 07:18 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Kyle

Last Name: Smith

Affiliation: Public

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: I am trying to find information on Gibraltar's infection rates. Currently the Official Twitter account for Her Majesty of Gibraltar (the gov'ts twitter I guess) is posted some worrisome stuff about reinfection among the vaccinated. Before I take that twitter account for its word I am looking for scientific journals and medical sources of information.

It's generally all being collected and distributed the normal way. However I did a custom date range search for the terms I was looking for and noticed an article from outside that range show up in the results. It was a CNN article and it uses a different web address, the first bit before the www has 'lite' there- i guess it's a different address so Duckduckgo pushes it in my date range although it is not. This is absolutely frustrating me and preventing me from getting accurate results. I'm doing my best to follow the Surgeon General's warning. I respected his speech I'm honestly trying my best to protect my community I have been since the beginning of this pandemic.

Before our state locked down I was trying to get my workplace to move outside and to start preparing better practices. I was a corpsman in the navy and I am worried about pandemics quite obviously. This consistent need to be hyper aware of phoniness in search engines is unreal. CNN needs to get a grip, honestly they're surely not the only ones with tricks like this. I'd take a screenshot but I'm sure you're familiar with it. I did share the proof though on twitter and facebook. It was objectively true that a trick is being used to cycle in old news when a user searches for new news. I'm thinking you all at the FTC are actually onto this, so i figured I'd let you know. Did Lina get a cape yet?

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/6>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 12, 2021 6:06 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 12, 2021 - 18:06 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Louis

Last Name: Rossmann

Affiliation: Repair Preservation Group

Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: ([REDACTED])

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: Yes

Link to web video statement: <https://youtu.be/qCFP9P7lM> Submit written comment: I explained the problem in my short 1 minute video statement, for more information on this issue, check out this document.

https://docs.google.com/document/d/1phQRQlguivA689roB4-LmGWbLNCaxA_I2zH2E1aHhxE/edit#heading=h.v5sd7beocaz

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/46>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 3:05 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 15:04 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Madaline

Last Name: Hawkins

Affiliation: Automotive Service Association Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: July 21, 2021, Open FTC Meeting; Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear Chair Khan,

The Automotive Service Association (ASA) is the largest and oldest independent automotive repair association in the U.S. ASA is writing in support of a new policy statement by the Federal Trade Commission (FTC) that addresses the issue of vehicle data access for vehicle owners and consumers.

The Automotive Service Association was pleased to see the issue of vehicle data access addressed in the May 2021 "Nixing the Fix" report and believes the issues sought, by the FTC, to be addressed in the report covered critical areas for automotive repair. For independent repair shops, having access to vehicle telematics data is becoming increasingly important as vehicles reach more technologically advanced levels. It is essential for third-party repair shops to have access to the vehicle data they need to effectively and safely repair the automobiles that are brought to their businesses by consumers. Independent repair shops repair approximately 80% of post-warranty vehicles.

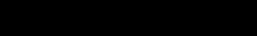
The Automotive Service Association has been involved in the "right to repair" issue for over 20 years. In the fall of 2002, ASA joined automakers in signing a voluntary agreement that assured non-emissions service information and training would be provided to independent repair shops in addition to the emissions service information required by the Clean Air Act Amendments of 1990 and subsequent U.S. Environmental Protection Agency regulations. ASA is concerned over the possibility of a fifty-state data access regulatory structure that would create a patchwork of rules. A fifty-state regulatory system for vehicle data access would increase risks to consumers by making it difficult to structure training for technicians, especially where multi-shop organizations cross state lines—resulting in a problem to run a small business as efficiently as possible with potential increased costs being passed on to the consumer.

To date, the automakers have not provided a path for independent automotive repair shops to access the data necessary to repair vehicles equipped with newer technologies. The establishment of a new policy statement by the FTC would be a significant step forward for the automotive repair industry. It would ensure that there is a cohesive federal policy that does not restrict the competitiveness of third-party repairers such as auto shops. The right legal framework should enable independent repair shops to access the vehicle-generated data that they need to safely and securely repair the vehicle. This framework would enable competitiveness within the industry and preserve the consumer's right to choose where they repair their vehicle.

With the changes in vehicle technologies, including those that are part of recent public policy proposals to convert the U.S. fleet to electric vehicles, this is an essential time to address the issue of vehicle data access. Historically, vehicle data has been accessed through a physical "on-board-diagnostic" (OBD-II) port. The vast majority of vehicles include this port to fulfill requirements of the Clean Air Act Amendments of 1990. However, with the advent of electric vehicles that have no emissions data, a growing number of automakers are transitioning to a wireless access model, which restricts the access of the consumer and third-party repair shops. Additionally, some vehicle manufacturers have considered a two-tiered port system, which would provide emissions data for free yet restrict other important vehicle data.

The Automotive Service Association wants to be a part of this policy process and looks forward to working with the FTC to find a solution that works for all sectors of the automobile industry, including independent repair shops.

The right of the consumer to choose where they repair their vehicles and thousands of small businesses across the U.S. to have access to the data to keep their shops open is too important to be left unaddressed by federal regulation.

If you have any questions, please do not hesitate to contact Bob Redding 

Thank you.

Sincerely,

Raymond A Fisher, III
President

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/22>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 10:29 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 10:28 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Mark

Last Name: Hennessey

Affiliation: Iowa-Nebraska Equipment Dealers Association Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: Mark Hennessey will be offering public comment on the "Nix the Fix" and Right to Repair.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/6>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission [REDACTED] >
Sent: Thursday, July 15, 2021 3:05 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 15:04 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Mark

Last Name: Witt

Affiliation: Drycleaning & Laundry Institute Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

Dear Commissioners,

This letter is in regards to the Care Labeling Rule that you are currently discussing.

I have been in the Dry Cleaning & Laundry business for 49 years. It is a routine part of our business to check the care label for cleaning instructions on almost every garment. Yes, there are some basic garments like 100% cotton khaki pants or jeans but sometimes even those, if they contain additional fibers, can cause a problem if the care instructions are not followed.

Since we are the last person that handled the items, the consumer blames us if damage occurs even when we follow the care label. I can't imagine how much worse it would be if there were no care instructions in the garment.

There is no way we can know every dye, every trim, and every construction method for every garment. There are too many different components and too many application and construction methods that go into producing a garment.

The only person that knows what goes into the construction of a garment is the manufacturer. The manufacturer is in the best position to know the best method of care for a garment. That decision should not be left up to the consumer or the cleaner. Neither the drycleaner nor the consumer should be expected to bear the financial burden of damaged garments due to an incorrectly, guessed care method.

Sincerely,

Mark Witt

Arcadia Dry Cleaning & Laundry, Inc.

Phoenix, AZ

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/26>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 10:05 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 10:05 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Mary
Last Name: Scalco
Affiliation: Drycleaning & Laundry Institute Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: Yes
Link to web video statement: MD
Submit written comment:
RE: Care Labeling Rule, 16 CFR part 423

Commissioners,

The Drycleaning & Laundry Institute (DLI) is pleased to respond to your request for comment regarding the Federal Trade Commission's Proposed Rulemaking, Care Labeling Rule, 16 CFR Part 423. These comments are submitted on behalf of the more than 6,000 U.S. fabricare specialists that are members of the Institute. The Drycleaning & Laundry Institute has been serving the fabricare industry for more than 110 years.

The Care Labeling Rule is invaluable to the fabricare industry. Today's garments are complex; comprised of many different components, trims, and dyestuffs. Without care labels to rely upon for appropriate instructions the potential for damage to garments increases. Consumers trust drycleaners to handle their clothes appropriately and, in turn, professional cleaners trust the manufacturers' care instructions for guidance so they can return garments undamaged.

If all garments were straightforward—only one type of fiber content, only one type of dye, only one construction method, there would be no need for the care label rule. But that is not the case. Only garment manufacturers have the knowledge of how their garments were constructed, what fabrics were used, what dyestuffs, what trims. The fabricare professional has no way of knowing this for each and every garment they receive and certainly consumers have no way of knowing.

The fabricare industry needs adequate care instructions so professional cleaners can return garments to consumers clean, without damage, and in a ready-to-wear condition. The care instructions are as vital as the fiber content label in providing necessary information to both consumers and fabricare professionals. Without adequate care instructions it becomes a guessing game and the potential for damaged garments rises. Who will be responsible for the cost of damaged garments? The professional cleaner cannot be held responsible because they guessed wrong, it will be the consumer who now has a damaged garment and who must now negotiate with retailers or garment manufacturers for restitution.

Additionally, some consumers only purchase home launderable garments because they do not want the added expense of professional care. How are they to make this purchasing decision? Yes, some manufacturers may put a care label on the garment as a marketing tool but if there are no requirements to ensure that label is correct, how is it a benefit? Again, the consumer is at a loss.

There is no easy way to deal with manufacturers, you must deal with the retailer who may or may not represent multiple clothing lines from multiple manufacturers.

There are no benefits to the professional fabricare specialists or to consumers if the care labeling rule is repealed. There is only the potential for more damaged garments.

Drycleaning & Laundry Institute

The results of this submission may be viewed at:

[REDACTED]

From: Matthew Larsgaard <[REDACTED]>
Sent: Tuesday, July 20, 2021 3:26 PM
To: JulyPublicComments
Subject: Repair Restrictions

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Proposed FTC Policy Statement on Repair Restrictions

To whom it may concern:

I'm writing on behalf of the Pioneer Equipment Dealers Association to provide written comments to the Federal Trade Commission ("FTC") in advance of the Commission's July 21 open meeting at which a proposed policy statement on repair restrictions is on the agenda for consideration.

The Pioneer Equipment Dealers Association is the trade *association* for approximately 350 *equipment* dealers across the Minnesota, North Dakota, and South Dakota. Our members are concerned with the FTC's plans to adopt a policy statement on July 21 supporting so-called "right to repair." In our view, right to repair mandates, as applied to our industry, are a solution in search of problem.

Equipment manufacturers and dealers have a shared incentive with their customers to minimize downtime and maximize productivity. The industry has invested in cutting-edged innovations that incorporate the latest technology, as well as training and support for the skilled technicians who service equipment. Equipment dealers also currently provide our customers, upon request, with diagnostic information, tools, parts and other means to repair the equipment.

Proponents of right to repair have advocated for overly-broad rules that will allow unfettered access to the software that governs on-board technology on equipment. Giving access to the source code will not only undermine manufacturers' innovation and intellectual property rights, it will risk allowing modifications that run afoul of safety and emissions requirements for the equipment. Modifications also create unknown liability issues for the individuals modifying the code, dealers who subsequently trade-in modified equipment for resale, as well as subsequent owners of modified equipment.

Our members' commitment to customer support is an appropriate solution that makes right to repair policies unnecessary. The only reason a consumer needs the ability to modify software on a piece of equipment is to tamper with emissions and safety protections to improve equipment performance, in violation of existing government standards and regulations. We urge the FTC to reject an overly broad policy statement on repair restrictions.

Thank you for consideration of these comments.

Kind regards,

Matthew C. Larsgaard, MBA

President/CEO

Pioneer Equipment Dealers Association



[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 1:29 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 13:29 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Matthew

Last Name: McDonald

Affiliation: Park Place Technologies

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment: What courses does the FTC have planned regarding President Biden's Executive Order asking the Chair of the FTC to curtail non-compete agreements? What guidance can you provide to companies at the moment who use non-competes to protect trade secrets?

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/14>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 1:07 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 13:06 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Michael
Last Name: Helle
Affiliation: Helle Farm Equipment
Full Email Address: [REDACTED]
Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement: Iowa
Submit written comment:
Dear Federal Trade Commission:

My name is Michael Helle. My position is Parts Manager with Helle Farm Equipment, Inc., an equipment dealership located in Dyersville, Iowa. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,
Michael G. Helle
Helle Farm Equipment, Inc.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/34>

[REDACTED]

From: Miles Chiotti <[REDACTED]>
Sent: Sunday, July 18, 2021 1:16 PM
To: JulyPublicComments
Subject: Deere & Company Comments - July 21 Open Meeting
Attachments: Deere & Company Comments - July 21 2021 Open Meeting.pdf

Please find attached written comments submitted by Cory Reed – President, Worldwide Agriculture & Turf Division, Production & Precision Ag, Regions 3 & 4 – on behalf of Deere & Company ahead of the Commission’s open meeting scheduled for Wednesday, July 21 at 12:00pm ET. Thank you, and please let me know if you have any questions.

Best regards,
Miles Chiotti

Miles A. Chiotti
Manager, Government Affairs

John Deere Public Affairs
Deere & Company
801 17th Street, NW
Washington, DC 20006
[REDACTED]

CONFIDENTIALITY. This electronic mail and any files transmitted with it may contain information proprietary to Deere & Company, or one of its subsidiaries or affiliates, and are intended solely for the use of the individual or entity to whom they are addressed, shall be maintained in confidence and not disclosed to third parties without the written consent of the sender. If you are not the intended recipient or the person responsible for delivering the electronic mail to the intended recipient, be advised that you have received this electronic mail in error and that any use, dissemination, forwarding, printing, or copying of this electronic mail is strictly prohibited. If you have received this electronic mail in error, please immediately notify the sender by return mail.

Public



Deere & Company World Headquarters
One John Deere Place, Moline, IL 61265 USA

Cory J. Reed
President, Worldwide Agriculture & Turf Division
Production & Precision Ag
Regions 3 & 4

18 July 2021

The Honorable Lina Khan
Chair
U.S. Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 202580

RE: Right to Repair and July 21 Open Commission Meeting

Dear Chair Khan:

On behalf of Deere & Company (“Deere”), I am pleased to submit the following comments in response to the Federal Trade Commission’s (“the Commission”) consideration of whether to issue a statement of policy on “repair restrictions.”

For 184 years, Deere has demonstrated its commitment to customers by providing high-quality equipment, technologies, and solutions that enhance productivity. This commitment includes fully supporting our customers’ right to maintain, diagnose, and repair their equipment and avoid unanticipated, unproductive, and costly downtime.

In the FTC’s May 2021 report (“report”) titled *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, the Commission noted that it intends to work to “ensure that consumers and independent repair shops have appropriate access to replacement parts, instructions, and diagnostic software.” Through our extensive offerings of repair materials, diagnostic tools, and parts, Deere is already meeting this goal.

In fact, Deere customers and independent service organizations (“ISO”) today can acquire service parts, operating and repair manuals, product guides, service demonstrations, fleet management information, on-board diagnostics, and electronic field diagnostic tools from a vast network of over 2000 authorized John Deere dealers.

The Commission’s *Nixing the Fix* report also acknowledges the wide disparity among categories of capital goods and consumer products and devices that could be affected by new policy in this area. The report concluded that it is “unlikely that there is a one-size-fits-all approach that will adequately address this issue.” Deere agrees with the Commission. The enormous variety of manufactured consumer and capital goods, their diverse uses and applications, the extent of intellectual property incorporated, the variety of distribution and service models in place, and the range of potential risks associated with use and misuse, all support a deliberate policy approach that accounts for these product-specific considerations.

Deere urges the Commission to consider the following critical points as it contemplates whether to issue a new right to repair policy statement:

Repair vs. Software Modification

While Deere supports its customers’ right to repair their equipment, Deere does not support the right to modify the embedded software code in machines. Allowing access to embedded software code – the “right to modify” – would create significant environmental and safety risks to operators and bystanders, through illegal tampering and unauthorized hacking of safety controls, engine performance, and emissions controls required for Clean Air Act (“CAA”) compliance. Moreover, access to software for purposes of reprogramming is needed in less than two

percent of all repairs. It is also important to note that technology continues to evolve such that software reprogramming, when required, can increasingly be done remotely. This alleviates the need for an authorized technician to manually perform the reprogramming in person.

Clean Air Act Emissions Controls

Section 203(a)(3) of the CAA and Section 1068.101(b) of Title 40, Code of Federal Regulations prohibit tampering with the emissions controls that non-road equipment manufacturers are required to install on their products. In a December, 2020 enforcement alert, the Environmental Protection Agency (“EPA”) noted how disabling or removing emissions controls from vehicles harms air quality and presents a threat to public health.¹ This is particularly concerning in light of a 2019 survey of 770 equipment dealers across the United States that found that 33 percent of dealers had observed unauthorized modifications of equipment brought into their dealership for service in the previous 24 months.² Of those, 45 percent responded that the modifications they observed included those that removed, impaired, or disabled EPA-mandated emissions controls. In addition to the environmental and safety concerns that such modifications present, dealers can also be held liable for CAA violations if the emissions tampering is not recognized and reversed.

Intellectual Property Interests

The FTC’s report notes in footnote 18 that manufacturers’ intellectual property considerations were outside the scope of that report and therefore were not addressed. Yet Congress, through the Digital Millennium Copyright Act and amendments, has recognized these important rights and has tasked the U.S. Copyright Office with defining the circumstances in which exceptions to the prohibition on accessing software code embedded in equipment would apply. The Copyright Office, through its triennial review process, regularly considers petitions from the public to expand or limit this exception. The Copyright Office regulations have balanced these varied interests by consistently holding that the exception should extend only to “lawful” modifications that do not undermine federal emissions controls, jeopardize operator safety, or infringe upon legitimate intellectual property rights.³ An unfettered right to modify the embedded software code in equipment would disrupt this balance and encourage the unlawful circumvention of long-established copyright and intellectual property protections.

Safety

Software modification also has significant implications for equipment operator and bystander safety. Authorized John Deere dealers are contractually required to ensure that all machines sold or repaired are done so with the highest level of safeguarding for the end user and public. Requiring equipment manufacturers to provide unfettered access to embedded software code would enable and encourage modification of software in a way that bypasses certain safety protocols, while also potentially creating unsafe equipment as a byproduct. This is particularly problematic because such modifications can be untraceable, and in some cases, irreparable. In any case, they would be detectable only after injury or harm has occurred. It is not an overstatement to say that multi-ton construction and agricultural equipment pose far higher safety risks to users and bystanders than does a mobile phone or other consumer device.

Service Parts

Through Deere’s extensive network of more than 2,000 dealer locations across the United States, customers and ISOs already have access to service parts so they can conduct the vast majority of repairs they may choose to undertake on their own. Equipment owners and ISOs today can purchase Deere service parts directly from John Deere dealers, as can any retail customer. In fact, Deere dealers today sell more parts through the retail parts counter than through their service bays. In addition, customers and ISOs may purchase home maintenance kits and other maintenance parts directly from Deere through the online John Deere Store.

¹ *Aftermarket Defeat Devices and Tampering are Illegal and Undermine Vehicle Emissions Controls*, EPA Office of Enforcement and Compliance Assurance, December 2020

² *Modifications to Safety and Emissions Features in Off-Road Equipment*, Equipment Dealers Association, April 2019

³ §201.40(b)(9) of Title 37, Code of Federal Regulations

Conclusion

As the FTC considers policies to ensure the rights of owners and ISOs to repair heavy equipment, the Commission must recognize the substantial public and private interests already addressed in federal law that may be affected. Any contemplated changes to FTC policy should be subject to rigorous and transparent public review and comment that reflects all these interests. And any new policy must recognize the critical distinction between repair and modification. Deere opposes a right to modify embedded software code. However, we support our customers' right to repair their own equipment, and we work every day to provide the tools, materials, and guidance that allow our customers to reduce downtime and increase productivity.

Sincerely,

A handwritten signature in black ink, appearing to read "C. J. Reed". The signature is written in a cursive, slightly slanted style.

Cory J. Reed
President, Worldwide Agriculture & Turf Division
Production & Precision Ag
Regions 3 & 4

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 4:41 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 16:40 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Nathan

Last Name: Proctor

Affiliation: U.S. PIRG

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

https://drive.google.com/file/d/1Q_M4xWshsUKgYh4K7bx2GwUcjUj2lk/view?usp=sharing

Submit written comment:

Dear Chairwoman Khan, Commissioner Chopra, Commissioner Slaughter, Commissioner Phillips, and Commissioner Wilson,

U.S. PIRG along with our allies across the broader repair movement are thrilled about the progress the Federal Trade Commission has made on its Nixing the Fix investigation into repair restrictions in multiple industries.

We applaud the commission's thorough and unanimously-approved Nixing the Fix report.

We eagerly await next steps from the agency to protect consumers and repair competitor from deceptive or anticompetitive behavior in repair markets. We believe the best thing for the FTC to do would be to signal to manufacturers quickly that certain behaviors are unacceptable, and so we support the plan to update the policy guidance documents. I look forward to the content of that policy guidance.

We also believe the FTC can take enforcement action right now which will hasten shifts away from restrictive behaviors. As a reminder, I delivered 15,000 signatures in April to support a range of enforcement and rulemaking actions, along with Repair.org and iFixit. Among those requests are, specifically, to:

- Enforce the law against companies who use illegal tying arrangements to force consumers to purchase connected repair services.
- Enforce the law against companies who violate the Magnuson Moss Warranty Act by voiding warranties when a consumer fixes something themselves or uses third-party parts or repair services.
- Enforce the law against companies who refuse to sell replacement parts, diagnostic and repair tools, or service information to independent repair providers.

Thank you very much for the opportunity to provide comment.

Nathan Proctor.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/150>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 3:55 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 15:55 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Nora

Last Name: Nealis

Affiliation: National Cleaners Association New York NY Full Email Address: [REDACTED] Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: FTC Operations

Register to speak during meeting: Yes

Link to web video statement: New York

Submit written comment:

i would like to Comment on Care Labels.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/46>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 8:45 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 20:45 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Patrick
Last Name: Dwyer
Affiliation: Keesler AFB Medical Center
Full Email Address: [REDACTED]
Confirm Email Address: [REDACTED]
Telephone: [REDACTED]

FTC-Related Topic:
- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No
Link to web video statement:

Submit written comment: Please realize getting the correct medication(s) the quickest way possible is sometimes required. Cost savings for the Insurance carrier should not be the determining factor. Whether prescription directions, physical condition and/or required storage conditions will cost a life. May be your own child, parent or sibling that needed medication quickly and in acceptable condition. Insurance companies year after year achieve record profits. How much more profit is needed? You know that being restricted to getting medication through an overworked, understaffed and underfunded (Not funded by Federal Tax) US Postal Service makes this the FTC responsibility to serve the public good. Not Drug manufacturers' deep pockets.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/70>

[REDACTED]

From: Patrick Finnegan <[REDACTED]>
Sent: Sunday, July 18, 2021 5:47 PM
To: JulyPublicComments
Subject: NAMIC Public Comments to July 2021 Meeting
Attachments: NAMIC Comments July 2021 FTC Open Meeting.pdf

To whom it may concern,

I am writing in connection to the July 21, 2021 Open Commission Meeting to provide the attached comments from the National Association of Mutual Insurance Companies. Thank you for holding the meeting and for submitting these comments for consideration.

Sincerely,

Patrick Finnegan
Federal Affairs Director

[REDACTED]

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave N.W.
Washington DC 20580

Dear Chair Khan,

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments to the July 21 open meeting of the Commission to examine the Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers that follows the Commission's "Nixing the Fix" report. We are encouraged that the Commission voted unanimously in May 2021 to send a report on repair restrictions to Congress that found that "there is scant evidence to support manufactures' justifications for repair restrictions." NAMIC has been a leader in advocating for consumer choice in automobile parts and repairs for many years and we welcome the opportunity to provide comments to the Commission regarding this important matter.

The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market.

Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

Purchasing an automobile is one of the most significant investments that Americans make. Ensuring that consumers are free to make informed decisions about how their vehicles are repaired following a crash is key to ensuring that the costs of automobile ownership do not become prohibitive. To ensure a competitive market, consumers must have unfettered access to information, including any information offered by their insurance company, and have the right to choose whether to repair their vehicles using non-original equipment manufacturer parts.

In recent years, certain segments of the auto repair industry have aggressively pursued legislation at the state and federal level that would impair the ability of consumers to make informed decisions about how and where to have their vehicles repaired by reducing competition and ultimately leading to significantly increased repair costs. Because of this NAMIC is increasingly concerned over the attempt by auto manufacturers to exclusively control the repair business through design patents on parts, repair restrictions, and complete restrictions on automobile-generated data. Insurance companies play an important role in fostering competition because they have the knowledge and data necessary to properly analyze a claim based on the fact-specific and act-sensitive nature of repairs in order to return properly repaired vehicles to consumers in the



most timely and cost-efficient manner possible

NAMIC supports policies that allow insurance companies to inform their customers about options such as direct repair programs (DRPs) with certified auto repair shops. NAMIC opposes legislation that would restrict what an insurance company can tell its customers following an automobile accident. NAMIC also supports both state and federal legislation that would allow competition in the auto parts market, such as the recently introduced SMART Act (H.R. 3664) which prevents auto manufacturers from limiting competition through the abuse of auto part design patents.

As an industry that has extensive experience with automobile repair, we look forward to working with the Commission on this important issue. Thank you for your consideration and we would welcome the opportunity to discuss further.

Sincerely,

Jonathan Bergner
Vice President, Public Policy and Federal Affairs
National Association of Mutual Insurance Companies

From: Patrick Dwyer <[REDACTED]>
Sent: Sunday, July 18, 2021 9:24 PM
To: Secretary; JulyPublicComments
Subject: Stop Forcing Mail-Order Pharmacy as the Only Option of Coverage. May be your own child, parent or sibling that needed medication quickly and in acceptable condition. Insurance companies year after year achieve record profits. How much more profit is needed

Dear Sir, and/or Ma'am(secretary@ftc.gov , julypubliccomments@ftc.gov , antitrust@ftc.gov

Please realize getting the correct medication(s) the quickest way possible is sometimes required. Cost savings for the Insurance carrier should not be the determining factor. Whether prescription directions, physical condition and/or required storage conditions will cost a life. May be your own child, parent or sibling that needed medication quickly and in acceptable condition. Insurance companies year after year achieve record profits. How much more profit is needed? You know that being restricted to getting medication through an overworked, understaffed and underfunded (Not funded by Federal Tax) US Postal Service makes this the FTC responsibility to serve the public good, Not Drug manufacturers' deep pockets. <https://www.ftc.gov/speaker-registration-and-public-comment-submission-form-open-commission-meeting-7-21-21>

Dear Sir, and/or Ma'am(secretary@ftc.gov , julypubliccomments@ftc.gov , antitrust@ftc.gov

Please realize getting the correct medication(s) the quickest way possible is sometimes required. Cost savings for the Insurance carrier should not be the determining factor. Whether prescription directions, physical condition and/or required storage conditions will cost a life. May be your own child, parent or sibling that needed medication quickly and in acceptable condition. Insurance companies year after year achieve record profits. How much more profit is needed? You know that being restricted to getting medication through an overworked, understaffed and underfunded (Not funded by Federal Tax) US Postal Service makes this the FTC responsibility to serve the public good, Not Drug manufacturers' deep pockets. <https://www.ftc.gov/speaker-registration-and-public-comment-submission-form-open-commission-meeting-7-21-21>

Insurance companies have merged with pharmacy benefit managers that own mail order or retail pharmacies. This is why many patients find themselves forced to an insurance-owned or pharmacy benefit manager-owned pharmacy. For example, Cigna merged with Express Scripts. Aetna merged with CVS Caremark,

CVS and CVS Specialty Pharmacy. United Healthcare merged with Optum RX. The reviews for many of these pharmacies are 1-star on several sites. Patients deserve better in America and your voice could be the change that we need to save lives. I do know 3 of the people who commented about pharmacy benefit managers (PBMs) during the last session. One knew about the public comment session from this petition! Please fulfill your duties and save us.

Recently, we were mandated or forced to only use mail-order pharmacy in order to receive coverage for his life-saving medications. The package arrived in only a bag on a hot day without an ice pack. I now know that the hot non-temperature controlled enclosed delivery truck and mailboxes can reach temperatures up to 120-170 degrees. His labs elevated again afterward. "Why would they do that?" I contacted the manufacturer, who performs the testing, who informed me that both of my son's medications should be discarded and considered less potent once stored above 86 degrees as higher temperatures and freezing could both result in lower potency.

I contacted the mail-order pharmacy who refused to replace or take back the medication. They said the law & USP Pharmacopoeia allows them to ship up to 104 degrees, although the manufacturer states it is not proven safe at these temperatures. However, I have received communication from USP Pharmacopoeia who writes guidelines for storage, and they also said that the mail order pharmacy should follow the manufacturer's guidelines of 59-86 degrees for storage. Again, the trucks reach up to 170 degrees which is much hotter than 104.

I contacted the FDA, who states that the mail order pharmacy should be using the manufacturer's guidelines that have been proven safe. Since the mail-order pharmacies are regulated loosely by the State Board of Pharmacy, not the FDA, there was nothing that the FDA could do. I made over 30 calls to the insurance company begging for them to please let us pick my son's medications up at the local pharmacy at which they are filled. My son's physician wrote an appeal and his transplant team has stated that they have tried to voice their concerns about this issue with their pediatric/child patients and no one is listening! The insurance company still denied the doctor's appeal for us to pick up my son's medications in the safest way. It was not until the Media became involved that the insurance company budged. I have united with many other pharmacists, physicians, patients, mothers and fathers, and caregivers who feel the same way. Helpless. Mail-order of prescription drugs should be a choice, not the only option of coverage.

Mail-order pharmacies may appear to save money, but when my son ended up in the hospital after taking medications that could have been compromised by having lower potency, the cost of the rejection was thousands of dollars. If his liver would have fully failed, the cost of his liver transplant for just 5 days (he was

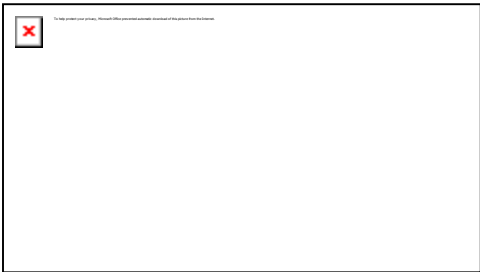
in the hospital for 5 weeks) was over \$1,000,000. The lax regulation and oversight may save money on prescription drug plans but may come at an increased cost to the health plan itself. Also, keep in mind the endless waste of medications that automatically are sent regardless of whether or not patients need them.

Also, people with chronic, complex conditions, should always have the option of face to face interaction with a pharmacist who knows their complex needs and medical history. The pharmacist and patient relationships are crucial to the successful outcome of the patient's overall health. Taking this away is harmful to patients and be more costly to our already stressed healthcare system. Only allowing mail-order pharmacy for coverage is unethical and irresponsible. I share stories on my social media sites every day of patients who are suffering from a lack of choice.

We need your help to make mandatory mail-order an option, not a mandate. Thank you

Sincerely,

Patrick Michael Dwyer [REDACTED].



[Petition · Stop Forcing Mail-Order Pharmacy as the Only Option of Coverage · Change.org](#)

Patients' lives depend on choice. **Since starting the petition, I have realized that there are many issues other than temperatures with forced mail-order pharmacy. Mail-order pharmacy is very loosely regulated. There are life-threatening delays, lack of face-to-face relationships with pharmacists for people with chronic conditions, and rapid closures of our independent pharmacies; although, a re

www.change.org

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Wednesday, July 14, 2021 4:58 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 16:58 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Paul
Last Name: Roberts
Affiliation: Securepairs.org
Full Email Address: [REDACTED]
Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: Yes
Link to web video statement:
Submit written comment:

My organization, Securepairs (securepairs.org) is a not for profit group of more than 200 of the country's top information security experts. Our members include leading executives, academics, security researchers and information security professionals. We formed in 2019 to address an urgent need: legislators and policymakers like yourselves were being misled on matters of cyber security and desperately needed a voice of reason to talk to them about cyber risk and repair.

To be more specific: the FTC, like other public bodies, has been told by manufacturers and industry lobbyists that a right to repair digital device creates cyber security risks that will lead to hacking, data theft and other undesirable outcomes. Manufacturers argue that requiring them to make available to their customers the same schematic diagrams, information and diagnostic tools that they already supply to their authorized repair partners is a security risk that is not worth taking.

Let me be blunt: these claims are simply not true. How do I know? Let me state the obvious: because we have no federal or state level "right to repair" electronics today. What we do have is an epidemic of cyber attacks and compromises of connected Internet of Things devices. In 2016, for example, we witnessed "Mirai," the first botnet - or malicious network - made up of Internet of Things devices like webcams, digital video recorders and home routers. Since then, Internet of Things botnets have gone from a novelty to an epidemic and attacks on IoT devices are now among the top threats facing businesses large and small. The connected devices that make up Mirai and other IoT botnets are not compromised because cyber criminals read their way through service manuals, pored over schematic diagrams or game diagnostic codes and tools.

So how are they hacked? It's easy. Home electronics, smart home devices, appliances, even machinery ship with software that contains easily exploitable software vulnerabilities or that are insecure by default: shipped with the digital equivalent of unlocked or unlockable doors that malicious actors can step through. Consider the survey conducted in 2019 by the Cyber Independent Test Lab (CTL). It evaluated 6,000 firmware versions released by vendors like ASUS, D-link, Linksys, and NETGEAR between 2003 to 2018. During that 15 years period, the researchers found NO EVIDENCE that any security improvements had been made by any of the 18 vendors they studied. As the lead researcher Sarah Zatzko told me in an interview: "It's like they're not even trying." Industry representatives who will argue that the opposite is true: that the security of the software that runs their devices and the integrity of their customers data is their top priority. I am here to tell you that, based on their actions, there simply is not any evidence that those claims are true.

Let me close by touching on the larger issues beyond cyber security. Namely: that the ability of individuals to service, repair and maintain their own property is a core right of ownership that has been recognized in U.S. law and common law for centuries. Those calling for enforcement of the right to repair recognize that basic, consumer and private property rights are in desperate need for an update for a digital age, as manufacturers seek to turn hundreds of millions of owners into tenants of their own technology.

In a world that is increasingly populated by Internet-connected, software powered objects - the so-called "Internet of Things" - a digital right to repair is a vital tool that will extend the life of electronic devices, ensure their safety, security and integrity. In the process, it will make homes, businesses, schools, cities and towns across the Bay State more secure and less vulnerable to cyber attacks and other malicious behavior.

Finally, in this time of increasing wealth inequality and concentrations of market power by large technology firms, a digital right to repair ensures that the spoils of the coming Internet of Things are distributed equally to consumers, communities and small businessmen and women. The right to repair you are considering today is a rare spectacle: an

issue that is simultaneously pro-competition, pro-consumer and pro-environment. I urge the FTC to vote to strengthen enforcement of pro-consumer and pro-competition laws and to engage in new rule-making to strengthen existing protections of the right to repair.

Sincerely,

Paul F. Roberts
Founder, Securepairs.org

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/42>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 6:01 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 18:01 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Peni
Last Name: Wood
Affiliation: Vaquero Cleaners, Laredo, TX Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: FTC Operations
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Commissioners,

The Care Label Rule is essential to professional garment care. Since garment designers and manufacturers are the only people who know what types of fabrics are used in the garments they construct and sell, it is incumbent upon them to share safe handling instructions. Without a care label my employees will not be able to guarantee safe handling of items that customers bring to my business.

I am often asked about safe handling for items that lack care labels. This means my customers won't be able to care for their garments at home without these important instructions. The rule gives us a guide to follow when we handle items and recourse for action when something goes wrong. Please don't repeal this very important rule.

Sincerely,
Peni Wood, Vaquero Cleaners

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/58>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 6:25 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 18:24 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Peter
Last Name: Sinsheimer
Affiliation: AQUA Wet Clean
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic:
- Competition
- Consumer Protection
- FTC Operations
Register to speak during meeting: Yes
Link to web video statement:
Submit written comment:

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/54>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 10:08 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 10:07 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: PHILLIP
Last Name: BERGREN
Affiliation: KEN BERGREN, INC
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Federal Trade Commission:

My name is Phillip Bergren. My position is vice president/co-owner of Ken Bergren, Inc., an equipment dealership located in Williamsport, PA. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,

Phillip Bergren
Ken Bergren, Inc.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/22>

[REDACTED]

From: Randall David Marks <[REDACTED]>
Sent: Tuesday, July 20, 2021 9:52 PM
To: JulyPublicComments
Subject: Written Testimony
Attachments: Birth Certif.Randall David Marks.pdf

I signed up to testify orally at the hearing. Here is additional written testimony. I submitted it with my request to testify and ask that the Commission use this version.

Social Media Customer Service Rule

Below is a Petition asking the Commission to issue a proposed rule requiring large social media companies to provide in-person customer service.

Naked Horizontal Restraints Rule

In addition, the Commission should issue a notice of proposed rule-making that would determine the need for a Trade Regulation Rule that would (1) ban naked or near-naked horizontal price and output restraints and market division agreements and (2) outline specific actions by individuals in furtherance of such agreements that would subject such persons to individual liability. Such a rule would deter clearly unlawful conduct by making violators subject to civil penalties and simplifying and reducing the cost of Commission investigations.

Confronting Perjury and Obstruction of Justice

Finally, the Commission consider enacting a policy encouraging, and specifying the circumstances under which Commission staff should make referrals to the Department of Justice of individuals and firms that lie to the staff or otherwise obstruct Commission investigations. The Commission should also open discussions with the Department of Justice to create a Memorandum of Understanding with regard to Commission referrals of possible perjury and obstruction of justice. These actions would uphold the rule of law and reduce the costs and increase the quality of Commission investigations by giving targets and third parties incentives to provide complete and truthful information.

Thank you for “listening” and for working for consumers,

Randy Marks
Retired FTC attorney (June 1980-January 2014)

Randall David Marks
[REDACTED]

Petition for a Social Media Customer Service Rule

The FTC should issue a notice of proposed rule-making that would determine the need for a Trade Regulation Rule that would require Facebook and other social media companies with market power (i.e., with a certain number of subscribers) to (1) acknowledge major customer service complaints within 72 hours and (2) provide a substantive response within 30 days.

The rule should define:

- “Major customer service complaints” broadly to include problems accessing accounts, harassment by other users, removal of postings and comments, closing down of groups of pages, payment issues, advertising issues, and anything that otherwise affects access to content.
- “Substantive response” to mean, if the problem cannot be solved by the social media company, either explicit steps to fix the problem, with a way to contact a customer service person if the steps do not work, or “an explanation of why the company cannot fix the problem.”

Law Violation

Such a rule would ban a practice — non-responsiveness — that is unfair under the FTC Act. 16 USC §45(n). The Act provides that an act or practice is unfair where it

- causes or is likely to cause substantial injury to consumers;
- cannot be reasonably avoided by consumers; and
- is not outweighed by countervailing benefits to consumers or to competition.

Substantial Consumer Injury

The failure to provide customer service is likely to cause substantial injury because consumers have trusted their data to social media companies and, when they cannot access that data, they may lose it forever. In addition, Facebook and other social media firms regularly delete content for violating “community standards” and that inhibits communication among users and organizations that use Facebook and other social media to advocate for causes. Nothing in the rule should prohibit the companies from enforcing their standards; all that would be required is that they answer questions and fix errors.

Because the rule would be limited to social media companies with a specified number of users, only large social media companies would be impacted. Because of network effects, which the companies themselves encourage because they profit from being large and essential, consumers suffer injury when they cannot use these social media companies.

Non-Avoidability

Because only the social media companies have access to user data, consumers have no recourse to obtain their data from anywhere else. Moreover, because of the above network effects, there aren’t viable alternatives to the large social media companies.

No Countervailing Benefits

There are no benefits to consumers from the lack of responsiveness. Indeed, the only reasons to oppose this rule is that it is overly costly and burdensome (and thus impose indirect costs on consumers) or the lack.

—Indirect Costs: Social media companies are profitable (indeed, Facebook is among the most valuable companies in the world) and they make their profits by essentially selling access to their users. In addition, they are among the most innovative companies in the world and thus should be able to figure out how to comply cost-effectively. Indeed, many other companies with large numbers of customers — such as banks, insurers, utilities — have figured out a way to provide far better customer service.

—Lack of Necessity: The Commission should, as part of its rule-making proceeding, investigate the extent to which social media users are satisfied or dissatisfied with customer service of their social media providers. When I posted about my plight, two people contacted me and said they had never gotten access to their Facebook accounts. And a former FTC BCP manager told me that the problem is widespread. I’m sure the FTC could document that.

Evidence of Harm

Below is an example of the efforts to which I made and the lack of Facebook responsiveness.

My Facebook was hacked on 6/2 and I have been trying since then to recover the account. I've made multiple attempts to use its recovery function have failed: including having trusted friends verify me at least twice and submitting driver's license and birth certificate with this last desperate email. I've gotten more than 100 automatically generated emails but nothing helped. (I can provide the emails.)

I wrote the email below to every Facebook address I could find (see below); only a few bounced back. But no human being from Facebook responded.

Finally, on July 1, a month after I lost access, I received an email from Facebook that actually worked. To be honest, however, given all the previous emails that Facebook generated, I had no confidence it would work and, had it not, I feel confident I'd never had been able to access my account.

From: Randall David Marks <[REDACTED]>

Subject: HELP

Date: June 4, 2020 at 5:39:20 PM EDT

To: [REDACTED]

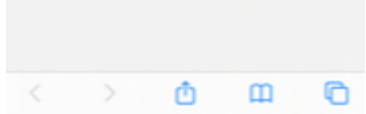
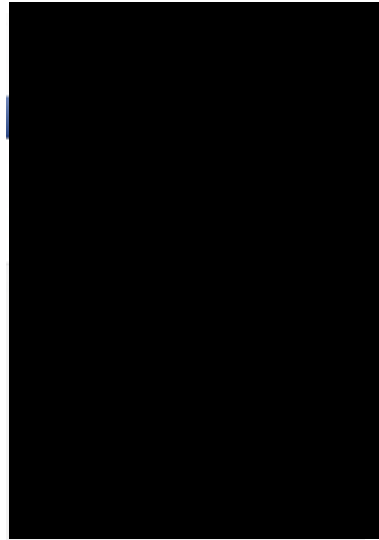
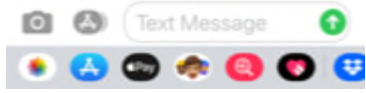
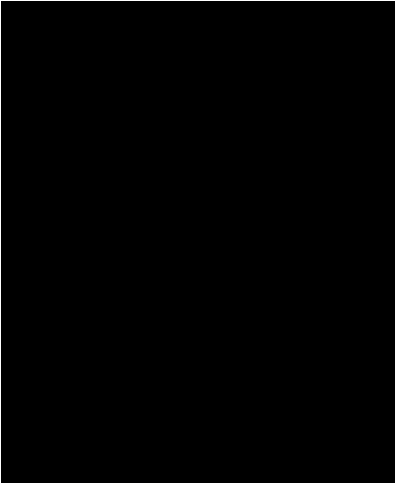
I am sorry to use all these email addresses. I'm feeling pretty frustrated.

My account ([REDACTED]) was hacked on Tuesday night from a computer in Canada. Ever since, my husband ([REDACTED]), his cousin in the Philippines, and I have been trying to recover my account. We've tried the online tools numerous times and gotten about 60 emails from Facebook (see attached screenshots), but not one has helped. I got one text message to my phone, [REDACTED], but the link isn't working (see attached screen shots) I'm also attaching my birth certificate. I understand that my husband had his cousin remove the email addresses so the only contact would be by cell, but they are still in your system. I have gotten one text message, but it didn't work (see attached).

Please forward to a human being who can help.

Thanks

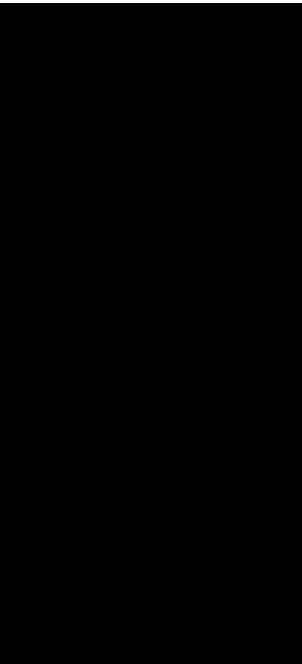
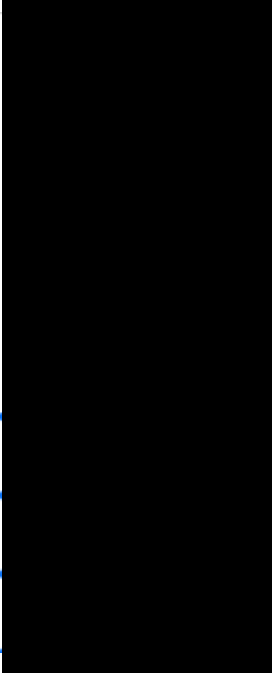
Randall David Marks
[REDACTED]

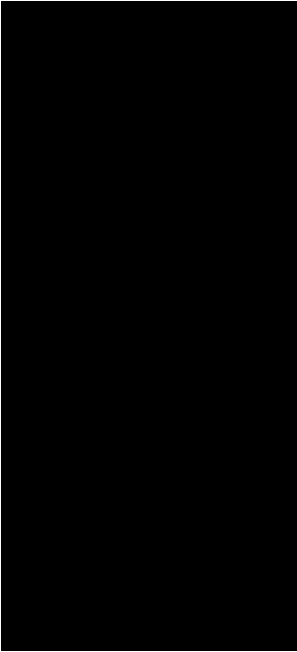


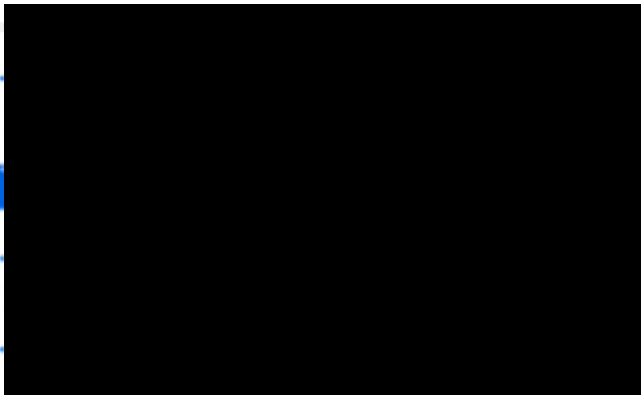
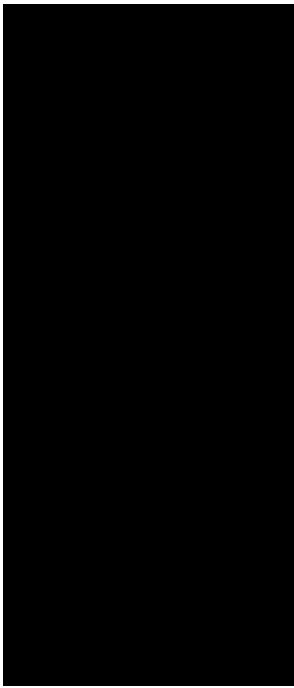
d had his cousin remove the email addresses so the only contact would be by cell, but they are still in your system. I have gotten one text message, but it didn't work (see attached).

Please forward to a human being who can help.

Thanks







Randall David Marks



From: "Facebook" <[redacted]>
Subject: Facebook password reset
Date: June 4, 2020 at 5:02:13 PM EDT
To: Randy Marks <[redacted]>
Reply-To: noreply <[redacted]>

Hi Randy, Your Facebook password was reset on Friday, June 5, 2020 at 5:02 AM (UTC+08). Operating system: [redacted] Browser: [redacted]
[redacted] Estimated location: [redacted]
[redacted] US If you did this, you can safely disregard this email. If you didn't do this, please secure your account . Thanks, The Facebook Security Team



Facebook

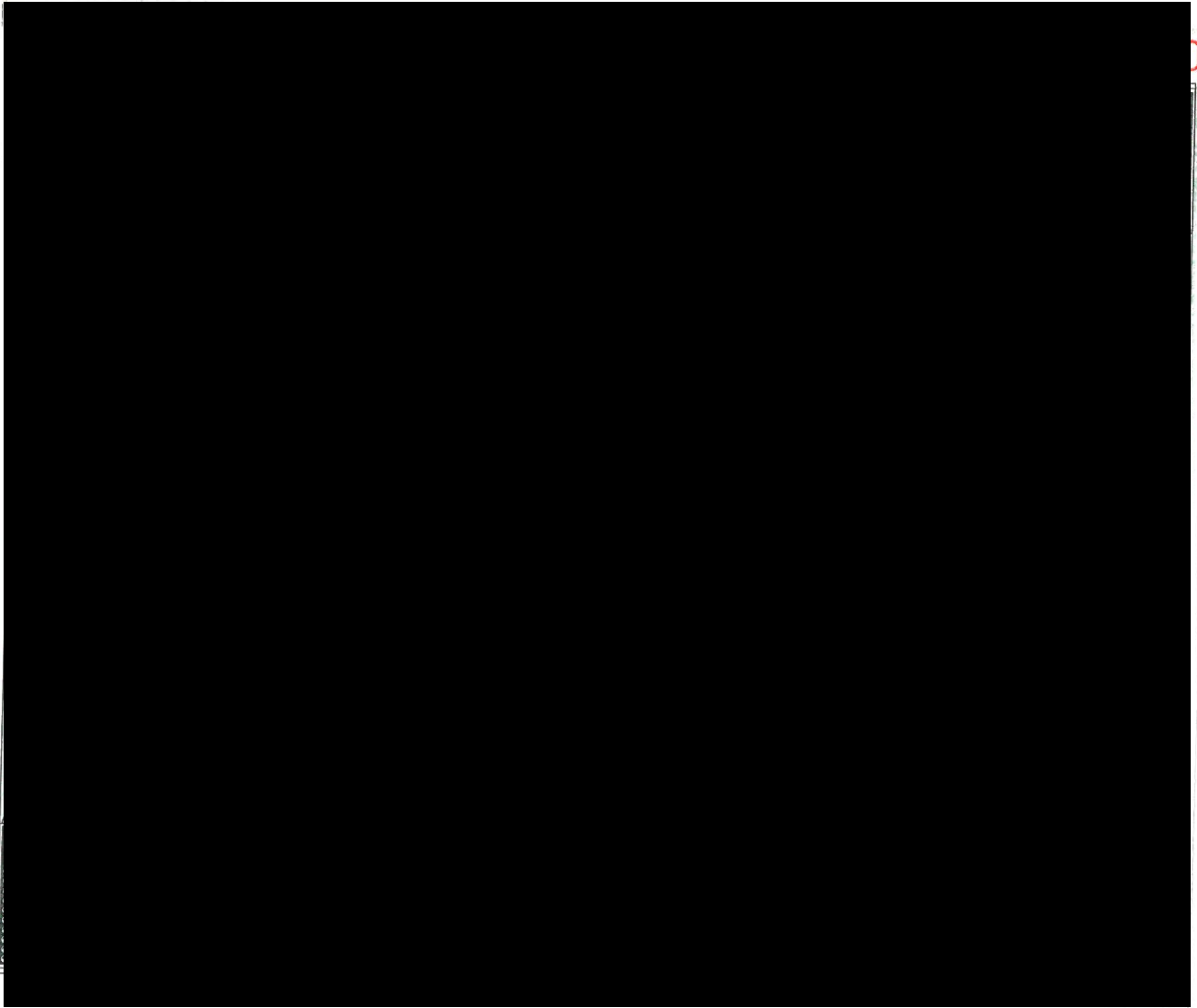


Hi Randy,
Your Facebook password was reset on Friday, June 5, 2020 at 5:02 AM (UTC+08).
Operating system: [redacted]
Browser: [redacted]
IP address: [redacted]
Estimated location: [redacted] US
If you did this, you can safely disregard this email.
If you didn't do this, please secure your account.
Thanks,
The Facebook Security Team

This message was sent to [REDACTED] at your request.

Facebook, Inc., Attention: Community Support, [REDACTED]

To help keep your account secure, please don't forward this email. [Learn More](#)



[REDACTED]

From: Randy Peterson <[REDACTED]>
Sent: Thursday, July 15, 2021 4:58 PM
To: JulyPublicComments
Subject: Public Comments on Care Labeling Rule
Attachments: Letter to FTC- Care Labels 001.jpg

To whom it may concern;

Please find attached a letter from Peterson Cleaners that comments on the proposed care label rule.

Randy Peterson, President
Peterson Cleaners



July 15, 2021

Dear Commissioners,

Our family has been in business 60 years. It is a routine part of our business to check the care label for cleaning instructions on almost every garment. I realize that there are some basic garments like 100% Cotton khaki pants or jeans but sometimes even those, if they contain additional trim or tricky dyes, can cause a problem if the care instructions are not followed.

Since we are the last person that handles the items, the consumer will hold us liable if damage occurs even if we followed the care label. I cannot begin to imagine how much worse it would be if there were no care instructions to direct us on how to process the garment. Even with all our years of experience, there is no way to know every dye, every trim and every construction method for every garment. The only people that know the construction of a garment is the manufacturer. The manufacturer is in the best position to advise as to the best method of care for a garment. That decision, in no way, should be left up to the consumer or the cleaner. Neither the drycleaner nor the consumer should be expected to bear the financial responsibility of damaged garments due to an incorrectly, guessed care method.

I would therefore appeal to your obligation of protection of necessary trade practices in care labeling whereas both the drycleaner and consumer can make the proper decisions on caring for and processing garments.

Sincerely,

Randy Peterson, President, Peterson Cleaners, Bartow, Florida

530 E. Summerlin St. 810 N. Broadway Ave.
Bartow, FL 33830 Bartow, FL 33830

24 S. First St.
Lake Wales, FL 33853



[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 10:34 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 10:33 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Randy
Last Name: Wenninger
Affiliation: Kenn-Feld Group
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Federal Trade Commission:

My name is Randy Wenninger. My position is Ag Sales Manager with Kenn-Feld Group, a John Deere dealer located in Van Wert, Ohio. The Equipment Dealers Association made me aware of your vote on a policy statement related to agricultural, off-road, and power equipment.

Our industry supports and encourages our customers to repair their own equipment. I've included a link to my website where you will find DIY service. Through my dealership, customers can purchase diagnostic tools, parts, and equipment, which my manufacturer makes available for purchase.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require my manufacturer to turn over protected safety and emissions tools and software. Doing that will hurt the environment and jeopardize federally mandated safety features.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,

Randy Wenninger, Kenn-Feld Group
www.kennfeldgroup.com/precision-ag/resources/

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/26>

[REDACTED]

From: Passmore, Robert <[REDACTED]>
Sent: Sunday, July 18, 2021 2:16 PM
To: JulyPublicComments
Cc: Henry, Ann; Hageli, Alex
Subject: APCIA Comments for July 21, 2021 Open Meeting
Attachments: APCIA Comment FTC 7-21-21 Final.pdf

Importance: High

Attached please find comments from the American Property Casualty Insurance Association for the upcoming open meeting of the Federal Trade Commission.

They have also been submitted via electronic form.

Thank you and please let us know if there are questions about our comments, or if we can be of any assistance to the commission.

Robert C. Passmore, CPCU
Vice President, Auto & Claims Policy
APCIA- American Property Casualty Insurance Association

[REDACTED]



July 18, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Public Comment: July 21, 2021, Open Meeting

Dear Ms. Kahn,

In the recent report entitled “Nixing the Fix: An FTC Report to Congress”, the Federal Trade Commission highlights several concerns related to repair restrictions imposed by car manufacturers that have long been shared by auto insurers, particularly as pertains competition for replacement parts, and the ability of a consumer to use a repair facility of their own choosing. The American Property Casualty Insurance Association (APCIA) would like to express our appreciation to the commission for its findings, and for offers our support and these comments as the commission considers issuing a new policy statement on repair restrictions imposed by manufacturers and sellers.

APCIA is the primary national trade association for home, auto, and business insurers. APCIA members represent all sizes, structures, and regions-protecting families, communities, and businesses in the U.S. and across the globe. APCIA’s primary mission is to promote and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. Together, APCIA members write 52 percent of the automobile insurance in the United States, therefore our members are particularly interested in preserving competition in the market for auto repairs and replacement parts and share many of the concerns raised in the report.

Of particular interest to insurers are attempts to limit competition through the enforcement of design patents and issuing statements that leave the impression that using a part other than the vehicle manufacturer’s brand will negatively affect the warranty persists, and not just with consumers. We find many state body shop owners, legislators and regulators are under this false impression as well, even though the law is clear and has been reinforced in guidance from the commission on several occasion.

Also noted in the report are concerns expressed by the auto repair and aftermarket parts industries that vehicle manufacturers only make certain replacement parts, repair manuals or diagnostic information available to affiliated repair facilities. Auto insurers share the concern that these practices limit competition and consumer choice.

However, addressing access to repair data only addresses a portion of the larger issue of access to vehicle generated data. In addition to repair facilities, auto insurers need access to this kind of data for telematics or “usage based” auto insurance, as well as claims investigations. Access to vehicle data is growing importance, as the driving function becomes more automated, through the development of advanced driver assistance systems (ADAS) and automated driving systems. APCIA supports enactment of federal policies by agencies such as the FTC that safeguard the ability of vehicle owners to control access to vehicle-generated data on a real-time, secure, and competitive basis to third parties, such as auto insurers.

If you, your fellow commissioners, or your staff members have questions about our comments, or if APCIA can be of any other assistance, we are happy to do so. You may contact me [REDACTED]

Sincerely

A handwritten signature in black ink, appearing to read 'Rob Passmore', written in a cursive style.

Robert Passmore

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 2:08 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 14:08 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Robert
Last Name: Passmore
Affiliation: American Property Casualty Insurance Association Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Competition
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
July 18, 2021

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Ms. Kahn,

In the recent report entitled "Nixing the Fix: An FTC Report to Congress", the Federal Trade Commission highlights several concerns related to repair restrictions imposed by car manufacturers that have long been shared by auto insurers, particularly as pertains competition for replacement parts, and the ability of a consumer to use a repair facility of their own choosing. The American Property Casualty Insurance Association (APCIA) would like to express our appreciation to the commission for its findings, and for offers our support and these comments as the commission considers issuing a new policy statement on repair restrictions imposed by manufacturers and sellers.

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If you, your fellow commissioners, or your staff members have questions about our comments, or if APCIA can be of any other assistance, we are happy to do so. You may contact me [REDACTED]

Sincerely

Robert Passmore

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/18>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <n [REDACTED] >
Sent: Friday, July 16, 2021 12:20 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 12:20 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Rory

Last Name: Pickens

Affiliation: Electronic Frontier Foundation Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Restrictions on repair by manufacturers only serves to limit competition, user choice, and innovation. I agree with the findings of the Nixing the Fix workshop that manufacturers' justifications for these restrictions simply do not hold up to scrutiny. It is incredibly important for the FTC to issue a new policy statement backing these findings.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/18>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 10:33 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 22:32 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Ryan

Last Name: Carroll

Affiliation: Telecom Sales

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: There is so much that is infuriating in the realm of competition policy and consumer protection in this country that it's difficult to know where to start. I think first and foremost, mergers in the pharmaceutical industry leading to drastically increased consumer prices (i.e., price gouging). Not only is this unethical and literally causing people to die, it violates anti-monopoly rules that should be enforced. FTC, please do your job!

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/78>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 19, 2021 1:04 AM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 19, 2021 - 01:04 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: Sam
Last Name: Neff
Affiliation: Citizen
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Competition
Register to speak during meeting: No
Link to web video statement:

Submit written comment: Chair Khan, thank you for taking broad steps to reinvigorate competition in this country as an end goal for businesses to create the highest quality products in the world. In particular, your steps against monopoly power through enhanced control over mergers and acquisitions are a critical first component. THANK YOU for REINSTATING PRIOR APPROVAL AND PRIOR NOTICE RULES! This is a critical step in eliminating bad-faith merger attempts and allowing the agency to focus on real work rather than squashing distractions.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/6>

[REDACTED]

From: Sara Collins <[REDACTED]>
Sent: Wednesday, July 21, 2021 12:58 PM
To: JulyPublicComments
Cc: Charlotte Slaiman
Subject: Charlotte Slaiman's Public Comment
Attachments: A New Section 5 Policy Statement Can Help the FTC Defend Competition_Opinion Article.pdf

Hello,

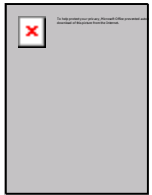
Today Charlotte will be speaking to the Commission about a new Competition Policy Statement. She will be referencing a [blog](#) she wrote with Steven Salop about this very topic. I wanted to make sure you had access to that piece of writing in case it was of interest to the commissioners or their staff.

Please find attached a PDF version of that same blog post.

Thank you,

Sara Collins

--



Sara Collins
Policy Counsel



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A New Section 5 Policy Statement Can Help the FTC Defend Competition

Public Knowledge Just now · 7 min read

By: Steven C. Salop, Professor of Economics and Law, Georgetown University Law Center; and Charlotte Slaiman, Public Knowledge Competition Policy Director

We generally agree with the Federal Trade Commission's decision to rescind its 2015 Section 5 Policy Statement. Just as the Department of Justice and Federal Trade Commission Merger Guidelines are regularly updated on the basis of agency experience, legal and economic developments, so should this type of policy statement. Rescinding the old statement is particularly relevant in light of the growing recognition of the hurdles preventing effective antitrust enforcement.

Calls for reform have not come solely from Neo-Brandeisian commentators (including both FTC Chair, Lina Khan, and Tim Wu, now a member of the National Economic Council). The need for reform and a varied set of proposals has also been expressed by economics-oriented commentators, including this group of former Justice Department enforcers, Jonathan Baker and Herbert Hovenkamp, among others. Chair Khan in her statement suggested that the Commission would next consider replacing the Policy Statement with a new statement explaining how they plan to use Section 5 to increase

competition. We think this would be a valuable way to show parties and courts what is coming. This comment provides several suggestions that would be useful to consider and possibly include in the revised Section 5 Policy Statement. It should not be taken as an exhaustive list; there certainly may be other approaches to a revised statement that could also be effective.

A revised Policy Statement should make it clear that Section 5 is not identical to the Sherman and Clayton Act and that conduct can be challenged as an unfair method of competition under Section 5 even if it would not violate these other antitrust laws. In fact, even the original 2015 Policy Statement explicitly made this point. But the distinction between Section 5 and these other statutes is often ignored or suppressed by commentators who object to more vigorous antitrust enforcement by the FTC. Eventually, the FTC's cases and rules under Section 5 will likely face the scrutiny of the courts. At that time, it may be particularly helpful to have a clear Policy Statement of how the FTC is interpreting Section 5. This can help maximize the impact the FTC can have, while assuaging concerns of detractors who say there is no limiting principle.

The 2015 Statement specifically declares that the Commission will apply the “rule of reason.” Chair Khan suggested that the current implementation of the rule of reason sets too high a bar on plaintiffs generally and makes it hard to bring actions against incipient conduct, such as squashing potential or nascent competitors before they can grow into full-fledged competitive threats. In particular, we would apply this concern specifically to the three-step implementation of the rule of reason commonly used in Sherman Act cases. Since the Policy Statement also explained that Section 5 is *broader than* the Sherman Act, there is room for reform here. Although going further might be possible, much could be achieved without needing to reject the rule of reason methodology, instead changing only its implementation. It is clear that the rule of reason methodology is broader than this single implementation, as examined in an article by Mark Popofsky. For example, the “quick look” can be seen as another implementation of the rule of reason. And implementations such as per se analysis or the Brooke Group prongs can be described as specialized implementations of the rule of reason.

We share the concerns that Sherman and Clayton Act antitrust rules often set too high a bar on plaintiffs. Antitrust has placed too little weight on false negatives (i.e., erroneous acquittals and over-deterrence), relative to the weight placed on false positives (i.e.,

erroneous convictions and under-deterrence), based on outdated and erroneous Chicago-School assumptions, as explained, for example, by [Jonathan Baker](#) and a recent article co-authored by [Steve Salop and Andrew Gavil](#). Moreover, the increasing use of [quantitative evidence](#) improperly increases the relative burden on plaintiffs in mergers and elsewhere. Common statistical tests of significance are focused on avoiding false positives and place no weight on avoiding false negatives. A revised Policy Statement can make the point that the weight placed on the risk of false negatives should be increased and that this can lead to a different burden of proof placed on the Commission.

A revised Policy Statement should also clarify the policy goals the FTC will work towards in its application of Section 5. The seemingly simple policy goal of promoting “consumer welfare” has become confused and improperly limiting, so at a minimum, further discussion of the term would be needed beyond what was contained in the 2015 Statement. Robert Bork famously (and either confusedly or deceptively) used the term “consumer welfare” to mean “aggregate economic welfare,” and some commentators and courts still misuse the terms in this way. The term is better taken to mean [“true” consumer welfare](#), that is, consumer surplus. However, unqualified application of the term “consumer welfare” would seem to exclude the welfare of workers or other input suppliers who are injured by anticompetitive conduct. In order to make clear that such harms should be considered, it would be helpful to expand the term “consumer welfare” to “counterparty welfare” instead. But, even this leaves room for courts and would-be scofflaws to discount important harms, so further clarification in the revised Statement would be very valuable.

Another commonly stated policy goal is the promotion of the [“competitive process.”](#) The goal of using this term is to indicate that harm to one competitor is insufficient; there must be broader harm to the whole competitive process. But in the context of a Section 5 Policy Statement, this term also may sow confusion or be misused to require too high a showing from worthy plaintiffs. For example, it likely would be unwise to allow this use of the term “competitive process” to permit a cartel of sellers to fix high prices and then attempt to justify the high prices on the grounds that higher margins would lead to more innovation or non-price competition. If the agency were to use this term, it would again be useful to explain in more detail how it’s intended to be interpreted, and how it would deal with tricky edge cases such as this.

The reference to “output restrictions” being *the* touchstone of anticompetitive conduct should not be continued in a revised statement, or, at the very least, needs to be clarified. It is clear that there can be consumer welfare harm even if there is no reduction in output. The case of perfectly inelastic consumer demand is one long recognized example. In negotiation markets, consumer wealth can also be extracted by sellers who gain bargaining leverage without reducing output. The same concepts apply exactly to reductions in worker welfare in labor markets. As another example, William Comanor long ago explained how a large number of consumers can be harmed by restraints that benefit a small number of “marginal” consumers, despite the fact that those benefits may lead to increased output, with the result being lower overall consumer welfare. John Newman has explained how this fallacy of equating output and welfare can also arise from deceptive advertising or restraints that create prisoners’ dilemmas by externalizing costs. For example, by providing user rewards that lead to higher merchandise prices, credit cards subject users to such a prisoner’s dilemma that increases demand and leads to excessive credit card output.

Some might argue that any expansion of the meaning of “unfair methods of competition” to extend Section 5 beyond the Sherman Act will lead to the protection of so-called “inferior competitors.” But, this type of argument erroneously assumes that entry by less efficient competitors will not benefit consumers or the competitive process. In fact, entry into a monopoly market will reduce prices, and likely provide other competitive benefits, even if the entrant’s costs exceed the monopolist’s costs, as long as its costs are less than the monopoly price. Moreover, the less efficient entrant today may become the more efficient competitor tomorrow. Finally, competitors may also be injured customers (e.g., if a vertical merger facilitates coordination by input suppliers). Again, this issue requires further analysis and clarification.

We now turn to some specific suggestions for several legal and economic competition issues that might be contained in a revised Section 5 Policy Statement that follows from these principles.

We favor Section 5’s rule of reason methodology placing a substantial burden on defendants to show that their benefits outweigh consumer harms, not simply that some benefits can be “identified.” The defendant should not be permitted to rebut evidence of probable harm simply by reciting some magic words like “free rider” or

“complementarity.” In the case of exclusionary conduct, Andrew Gavil and Professor Salop have further suggested that the plaintiff’s evidentiary burden should be *probable* anticompetitive effects, not *actual* anticompetitive effects; that the plaintiff’s evidentiary burden should not require quantification; that direct proof of market power or anticompetitive effects should obviate the need for circumstantial proof; that the plaintiff’s burden should be lower when the defendant has substantial market power; that the plaintiff’s initial evidentiary burden should be reduced to reflect the possible absence of a valid efficiency justification; that the defendant should not be able to meet its burden of production to show cognizable efficiency benefits based on purely categorical justifications; and that the defendant’s justifications should be subjected to a less restrictive alternative standard.

In the case of mergers, we suggest the adoption of anticompetitive presumptions with a high rebuttal burden for acquisitions of potential or nascent competitors by dominant firms, as have others. Professor Salop and several co-authors have also suggested anticompetitive presumptions for certain vertical mergers, with a higher rebuttal burden placed on the defendant. In addition, it should not be necessary for the agencies to establish competitive harm with quantitative evidence.

We hope that the Commission will consider these proposals to create a distinct role for Section 5 that goes beyond the Sherman and Clayton Acts while still remaining focused on competitive effects. Changes like the ones listed here have the ability to considerably tip the scales in the direction of greater enforcement and competitive benefits. We look forward to seeing a revised statement and working with the Commission as appropriate in their effort to reclaim Section 5 unfair methods of competition authority.

Antitrust Federal Trade Commission Competition Policy Competition Technology Policy

[REDACTED]

From: Levine, Sarah (OAG) <[REDACTED]>
Sent: Sunday, July 18, 2021 4:13 PM
To: JulyPublicComments
Cc: Lake, Graham (OAG); Konopka, Kathleen (OAG); Durst, Arthur (OAG); CatherineJackson-Contact
Subject: Comment from D.C. Office of the Attorney General re: July 21 Open Commission Meeting
Attachments: 2021.07.18 DC OAG Comment to FTC.pdf

To whom it may concern,

Please accept the attached comment from Karl Racine and the D.C. Office of the Attorney General in regards to the upcoming July 21 Open Commission Meeting. Thank you very much.

Sincerely,
Sarah Levine

Sarah Michael Levine
Workers' Rights and Antifraud Section
Public Advocacy Division
Office of the Attorney General for the District of Columbia

[REDACTED]

Federal Trade Commission Open Meeting

Public Comments of Karl Racine, Attorney General for the District of Columbia, on Labor Issues in Antitrust

July 21, 2021

Introduction

Thank you for the opportunity to submit this Comment in connection with the FTC’s July 21, 2021 Open Commission Meeting. This Comment offers the perspective of an Attorney General’s office on several labor issues that affect workers in the District and across the country, and on how antitrust law and the FTC’s enforcement authority can be wielded to help workers and promote fair competition.

My office previously led a multistate coalition of Attorneys General in submitting a comment to the Commission relating to its hearing on “Competition and Consumer Protection in the 21st Century” in July 2019.¹ Similarly, my office led a multistate coalition of Attorneys General in submitting a comment relating to the January 9, 2020 “Workshop on Non-Compete Clauses in the Workplace.”² In both of those comments, we expressed that restrictive labor clauses like non-compete clauses, non-solicitation clauses, and no-poach agreements limit worker mobility and earnings in our jurisdictions. We requested that the FTC use its enforcement authority to curtail the use of these anticompetitive contracts. This Comment reiterates that message and explains how events of the past two years have made it even more critical to timely address these issues.

Importance of Antitrust Law to Workers

Protecting the rights of District workers is one of the top priorities of my office. Towards this end, we routinely challenge employers who harm workers by misclassifying employees as independent contractors, stealing wages, and failing to comply with safety mandates. Beyond ensuring that workers are safe and paid what they are owed, my office believes that maintaining a competitive labor market is an essential component of any effort to protect workers and improve their conditions, which is why my office has also challenged companies using abusive non-compete agreements. We have been successful in striking those provisions from hundreds of District

¹ See Public Comments of 18 State Attorneys General on Labor Issues in Antitrust in Response to the Federal Trade Commission’s Public Hearings on Competition and Consumer Protection in the 21st Century (July 15, 2019), <https://attorneysgeneral.org/wp-content/uploads/2019/07/2019.07.15-Comments-re-Non-Compete-Clauses-in-Labor-Contracts.pdf>.

² See Public Comments of 19 State Attorneys General in Response to the Federal Trade Commission’s Workshop on Non-Compete Clauses in the Workplace (Jan. 9, 2020), <https://oag.dc.gov/sites/default/files/2020-03/FTC-Comment-Letter-Non-Compete-Clauses-Workplace.pdf>.

workers' employment contracts. Competition in the labor market improves worker experiences because employers compete through salaries, workplace conditions, and benefits like health insurance and childcare. On the flipside, anticompetitive behavior in labor markets leads to the three "evils" that animate every antitrust inquiry: anticompetitive prices, lower quantities, and/or lower quality. These conditions undermine workers' ability to advocate for and obtain fair wages and treatment.

Beyond our interest in protecting workers, like all offices of Attorneys General we also have a strong interest in the competitiveness of the market. It is one of the duties of my office to ensure that public revenue, like tax revenue, is the product of competitive markets and is not depressed by anticompetitive conduct. For these reasons and more, part of the work of my office is to ensure that the District economy can prosper, free from anticompetitive restraints.

This is a uniquely difficult time for workers across the country. Broadly speaking, workers have suffered a decline in relative income over the past seventy years, due to a confluence of globalization, technological change, de-unionization, and more.³ Much more recently, amid this unfortunate trend, the COVID-19 pandemic has made matters worse for many workers, as some employers and even industries have closed their doors. Many workers faced unprecedented challenges in the workplace and at home, often balancing personal safety and caretaking responsibilities against the need to secure a paycheck to put food on the table.

In light of this uniquely challenging historical moment for workers, the FTC should revisit how antitrust law should be applied in the labor context. Specifically, the FTC should consider using its existing enforcement authority to stop the use of restrictive contracts like non-competes, non-solicitation clauses, and no-poach agreements, which limit workers' choices and earnings. Such an intervention is essential to enable our workers and markets to thrive.

A. Non-compete clauses and non-solicitation clauses

A non-compete clause prohibits workers from pursuing employment similar to their current role, working for another employer who competes against their current employer, or operating their own business. While non-compete clauses vary in terms of time period and geographic scope, all non-competes limit employees' job opportunities. Non-solicitation clauses are a subset of non-competes, in which an employer and worker agree that if the worker leaves the company, she will not solicit any workers from the company. These clauses can be used to similar ends as non-competes when former employers seek to enjoin a worker from taking a position with a new competitor. These types of contracts are ripe for increased scrutiny as unfair restraints on trade.

³ *Labor Share of Output Has Declined Since 1947*, BUR. OF LABOR STATISTICS (March 7, 2017), <https://www.bls.gov/opub/ted/2017/labor-share-of-output-has-declined-since-1947.htm>.

While non-compete clauses are sometimes referred to as non-compete “agreements,” I avoid that terminology here, in recognition of the reality that many workers lack meaningful power and opportunity to bargain over the terms of their employment. As such, many non-competes are unilaterally imposed by employers onto their workers.⁴

Non-compete clauses negatively affect all workers. Searching for new jobs is always time-consuming and costly, but non-competes artificially restrict worker earnings by limiting their mobility and choices.⁵ This is especially true for industries in which there are a limited number of employers in a given area. When workers are subject to non-competes, their ability to bargain for better wages is also reduced because they cannot work for a competitor of their former job or, in some cases, leave to start their own business. Empirical research has repeatedly borne this out: non-competes depress the mobility and wages of all types and wage-levels of workers, even high-skill and high-wage employees.⁶

Non-competes are especially harmful to middle- and low-wage workers, who lack the bargaining power to negotiate the terms of their employment.⁷ In the context of low wage workers, these restrictive contracts often serve no legitimate business purpose, like protecting trade secrets. Rather, these kinds of restrictive provisions only serve to reduce churn and costs for the employer, while limiting choices and earnings for low-paid workers, who already face economic insecurity and high rates of on-the-job mistreatment.⁸ For these reasons, preserving job choices for low-wage workers is all the more important.

⁴ After all, 30 to 40 percent of employees who are confronted with a non-compete are only asked to sign it after accepting a job, often on the first day of work. Evan Starr, J.J. Prescott, & Norman D. Bishara, *Noncompetes in the U.S. Labor Force*, (U. Mich. L. & Econ. Research Paper No. 18-013, 2019), <https://ssrn.com/abstract=2625714>.

⁵ For a discussion of search frictions, see Ioana Marinescu & Eric A. Posner, *Why Has Antitrust Law Failed Workers?* 105 CORNELL L. REV. 1343, 1349-50 (2020).

⁶ See, e.g., Matt Marx and Lah Fleming, *Non-Compete Agreements: Barriers to Entry ... and Exit?*, in INNOVATION POLICY AND THE ECONOMY, 12 (2012), <https://www.nber.org/chapters/c12452.pdf>; Natarajan Balasubramanian et al, *Locked In? The Enforceability of Covenants Not to Compete and the Careers of High-Tech Workers*, U.S. CENSUS BUREAU CENTER FOR ECONOMIC STUDIES (2019), <https://www2.census.gov/ces/wp/2017/CES-WP-17-09.pdf>; Antitrust and Economic Opportunity: Competition in Labor Markets: Hearing Before the H. Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary, 116h Cong. 1 (2019) (statement of Professor Evan Starr, University of Maryland Robert H. Smith School of Business).

⁷ Alexander J.S. Colvin & Heidi Shierholz, *Noncompete Agreements*, ECON. POL’Y INST. (Dec. 10, 2019), <https://www.epi.org/publication/noncompete-agreements/>; also see Statement of Randolph Chen before the Committee on Labor and Workforce Development, Public Hearing on Bill 23-0494, the “Ban on Non-Compete Agreements Amendment Act of 2019,” <https://oag.dc.gov/release/testimony-ban-non-compete-agreements-amendment-act>.

⁸ Elizabeth Kristen, Blanca Banuelos, and Daniela Urban, *Workplace Violence and Harassment of Low-Wage Workers*, 36 BERKELEY J. EMP. & LAB. L. 1 (2015).

More broadly, non-competes disproportionately harm otherwise vulnerable and underrepresented groups of workers. As one study put it, while “[r]estricting exit and voice harms all workers . . . its harm to women and minorities is disproportionately greater.”⁹ Non-competes and similar anticompetitive labor clauses disproportionately affect women workers because this group tends to have less geographic mobility and is less likely to negotiate the terms of their employment.¹⁰ This phenomenon is particularly concerning given the reality that non-competes can tether workers to discriminatory or hostile work environments.

Beyond causing harm to workers, non-competes also harm competition by depriving businesses, who were not a party to the non-competes, the opportunity to hire available qualified workers.¹¹ Non-competes further harm overall innovation in a market: the results of one study suggest that an increase in non-compete enforceability discourages workers from leaving to start or join small new firms.¹² Unsurprisingly, the same study found that greater enforceability of non-competes reduces the formation of new firms by 12%.¹³

Despite these documented harms, the use of non-compete clauses is growing.¹⁴ Almost 20% of American workers are subject to non-competes, 12% of whom are in low-skill and low-wage jobs that do not involve trade secrets.¹⁵ Non-compete clauses are increasingly used not just for traditional workers but for students or entry-level workers in internships.¹⁶ In most states, non-compete clauses are not statutorily prohibited and are enforceable as long as they protect a legitimate business interest like trade secrets, and they are reasonably limited in time and geographic scope. This rising incidence of non-competes is unsurprising given their low cost to employers: after all, non-competes can chill worker choices even when their employers do not enforce them through litigation.

⁹ Orly Lobel, *Exit, Voice & Innovation: How Human Capital Policy Impacts Equality (& How Inequality Hurts Growth)*, 57 HOUS. L. REV. 781 (2020).

¹⁰ Orly Lobel, *Noncompetes, Human Capital Policy & Regional Competition*, 45 J. Corp. L. 931 (2019-2020).

¹¹ MATT MARX, REFORMING NON-COMPETES TO SUPPORT WORKERS (2018), https://www.brookings.edu/wpcontent/uploads/2018/02/es_2272018_reforming_noncompetes_support_workers_marx_policy_proposal.pdf

¹² See Jessica Jeffers, *The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship*, Social Science Research Network (July 5, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3040393; see also Matthew Yglesias, *The Case for Banning Non-Competes*, SLOW BORING (July 16, 2021), <https://www.slowboring.com/p/the-case-for-banning-non-competes>.

¹³ *Id.*

¹⁴ Colvin & Shierholz, *supra* note 7.

¹⁵ Starr, Prescott, & Bishara, *supra* note 4.

¹⁶ Harriet Torry, *Interns' Job Prospects Constrained by Noncompete Agreements*, WALL ST. J. (June 29, 2019), <https://www.wsj.com/articles/interns-job-prospects-constrained-by-noncompete-agreements-1156180060>.

In recognition of the harms of non-competes, the Council of the District of Columbia recently passed a law that bans the use of non-compete clauses for most workers in the District.¹⁷ Under the ban, employers may not ask their workers to sign a contract with a non-compete clause and employers cannot enforce any such clauses against their workers in the future. (Banning non-competes entirely, as opposed to merely rendering them unenforceable, is key because even unenforceable non-competes can deter workers from seeking other employment.¹⁸) The new law strikes an intelligent balance between the interests of workers and businesses: it does not ban businesses from entering into agreements with employees that prevent the employee from disclosing the employer’s confidential or proprietary information, like trade secrets or client lists. It merely ends the unfair and arbitrary practice of preventing workers from seeking other employment, or additional employment, in the absence of a specific and legitimate business purpose. This legislation is an important step towards protecting District workers.

B. Non-horizontal or intra-franchise “no-poach” agreements

No-poach agreements involve agreements between companies to not solicit or hire each other’s employees. When competitors agree to not hire each other’s employees in a horizontal agreement—in what are sometimes called “naked no-poach” or “no-hire” agreements—this conduct is *per se* illegal under antitrust law and enforcement is relatively straightforward. However, non-horizontal no-poach agreements present trickier problems for enforcers and workers, and related litigation has produced different analytical frameworks. For example, some no-poach agreements can exist between a franchisor and a franchisee, whereby the franchisee agrees not to hire employees of other franchisees.¹⁹ In this intra-franchise context, workers do not even have a nominal say in the agreement. Some state enforcers and courts have viewed these agreements as subject to *per se* review, while others have argued they should be analyzed using a “quick look” rule-of-reason standard. Such agreements are sometimes, but not always, considered a hub and spoke conspiracy under antitrust law.²⁰

One thing is clear: Like non-competes, no poach-agreements—regardless of their form and the relevant antitrust law—restrict competition for labor and thereby suppress wages. And like non-

¹⁷ D.C. Law 23-209. Ban on Non-Compete Agreements Amendment Act of 2020, <https://code.dccouncil.us/dc/council/laws/23-209.html>.

¹⁸ Compare the District’s new legislation to the California law, which bars the *enforcement* of non-competes. CAL. BUS. & PROF. CODE § 16600. Notwithstanding this law, nearly 20% of workers in California are subject to a non-compete clause. Starr, Prescott & Norman, *supra* note 4 at 16.

¹⁹ Alan B. Krueger & Orley Ashenfelter, *Theory and Evidence on Employer Collusion in the Franchise Sector* 4 (Nat’l Bureau Econ. Research, Working Paper No. 24831, 2018) (including several examples of contract language used between franchisors and franchisees that restrict the employment mobility of employees).

²⁰ Comment to the Fed. Trade Comm’n, Justice Catalyst, Towards Justice, & Eric Posner (Dec. 14, 2018), https://www.ftc.gov/system/files/documents/public_comments/2018/12/ftc-2018-0088-d-0016-163103.pdf.

competes, this is especially true as it regards low-wage workers and other vulnerable categories of workers. The District and other states have recently discovered that no-poach agreements are pervasive in the franchise context among low-wage workers,²¹ which has led to a series of enforcement actions.²²

Recommendations

The increasing ubiquity of non-competes, non-solicitation clauses, and no-poach agreements is alarming. These contracts reduce worker options and therefore depress wages and slow innovation. When employers insulate themselves from competition, workers and consumers pay the price. As many scholars have noted, these forms of restrictive labor contracts do not exist in a vacuum; rather they occur amid a growing landscape of tools that employers can use to constrain workers' exit opportunities and voice like nondisclosure agreements, innovation assignment clauses, non-disparagement agreements, mandatory arbitration, and other secrecy policies.²³ While further economic research regarding non-competes, non-solicitation clauses, and no-poach agreements would be beneficial, the effects of these restrictive contracts on the wages and mobility of workers, and particularly the most vulnerable workers, merit swift action.

In light of this, the FTC should use its Section 5 rulemaking and enforcement authority to stop the abusive use of non-competes, non-solicitation clauses, and no-poach agreements.²⁴ Through a rulemaking, the FTC should declare worker non-compete clauses to be an unfair method of competition and classify them as *per se* illegal under the FTC Act. Similar to the recent legislation in the District, the FTC should prohibit employers from asking their workers to sign such clauses, as opposed to merely rendering any such clauses unenforceable in court. Further, the FTC should use its authority to ban intra-franchise no-poach agreements. Similar rules should be applied to non-solicitation clauses that function as non-competes or no-poach agreements. Such rules would yield multiple benefits. Amid confusion about the state of antitrust law, particularly regarding no-poach agreements, market participants would benefit from clarity and notice about what the law is. This in turn would also ensure predictable enforcement. And of course, workers would reap the benefit of choice and exit opportunity.

²¹ *Id.* (“We find that 58 percent of major franchise chains include ‘noncompetitive clauses’ in their franchise contract that restrict the recruitment and hiring of workers currently employed (and in some cases extending for a period after employment) by other units affiliated with the franchisor.”).

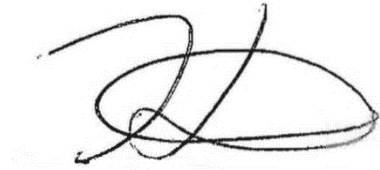
²² See e.g., Rach Abrams, *7 Fast Food Chains to End ‘No Poach’ Deals the Lock Down Low-Wage Workers*, N.Y. TIMES (July 13, 2018), <https://www.nytimes.com/2018/07/12/business/fast-food-wages-no-poach-deal.html>.

²³ Orly Lobel, *supra* note 9.

²⁴ See Open Markets Inst. et al., *Petition for Rulemaking to Prohibit Worker Non-Compete Clauses* (Fed. Trade Comm’n, 2019), <https://openmarketsinstitute.org/wp-content/uploads/2019/03/Petition-for-Rulemaking-to-ProhibitWorker-Non-Compete-Clauses.pdf>.

I thank the FTC for providing the opportunity to submit this Comment and contribute to the Commission's review of evolving antitrust issues. I look forward to continuing to collaborate with the FTC on antitrust and labor issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'K. Racine', written in a cursive style.

Karl A. Racine
Attorney General for the District of Columbia

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 4:17 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 16:16 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Scott
Last Name: Eisenhauer
Affiliation: P&K Equipment, Inc.
Full Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:
Dear Federal Trade Commission:

My name is Scott Eisenhauer, and I am the General Manager/CEO of P&K Equipment, Inc., a John Deere Agricultural Equipment dealership with locations throughout Oklahoma and Arkansas. Through communications from Western Equipment Dealer's Association and The Equipment Dealers Association, of which we are members, I wanted to pass along some thoughts regarding your vote on a policy statement related to agricultural, off-road, and power equipment and Right to Repair.

Our industry supports and encourages our customers to repair their own equipment and enacting of regulations around this so called "Right to Repair" certainly has some unintended consequences surrounding the agricultural equipment that we sell and service. We do support the customer's right to repair their own equipment, if they choose to do so. John Deere and P&K Equipment offer numerous technical publications, repair manuals, parts manuals/lookups, diagnostic information (including on-board diagnostics), and many other tools and training opportunities necessary for customers to diagnose and repair their equipment. It is in all of our best interests to assist our customers with a broad range of maintenance and repair options to reduce any downtime, thus maximizing efficiency.

While we support our customer's right to repair their own equipment, we do not want end-users to have the right to modify or tamper with the equipment. I am concerned your policy statement, meant to govern electronics, will unintentionally require our manufacturer to turn over protected safety and emissions tools and software. Modification of machines by customer could cause detrimental environmental impacts around emissions, as well as jeopardizing federally mandated safety features. Safety is always top priority in our industry and tampering with electronics on our equipment could cause safety issues.

I ask that your policy statement not include agricultural, off-road, and outdoor power equipment.

Sincerely,
Scott Eisenhauer

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/34>

From: Federal Trade Commission via Federal Trade Commission [REDACTED]
Sent: Wednesday, July 14, 2021 9:54 AM
To: JulyPublicComments<JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Wednesday, July 14, 2021 - 09:53 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Scott

Last Name: Root

Affiliation: I am "obviously" a member of the community.

Full Email Address: [REDACTED] Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Enforce the Robinson-Patman Act. I do realize that the FTC is working hard to foster consumer protection but how can any organization protect their own integrity in the eyes of the larger community if they don't enforce passed legislation that is still valid.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/2>

From: Federal Trade Commission via Federal Trade Commission [REDACTED] >
Sent: Tuesday, July 13, 2021 6:37 PM
To: JulyPublicComments <JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Tuesday, July 13, 2021 - 18:37 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Secretary

Last Name: General

Affiliation: United Nations

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Please get rid of non-competes. They prevent skilled workers from landing good jobs (and earning fair income) after terminating their previous employment

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/22>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 3:20 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 15:19 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Shelley
Last Name: Clair
Affiliation: DU
Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]
Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment:

Dear Commissioners,
I am the owner of a 69 year old family run business. I have been owner operator for 15 years, . It is a routine part of our business to check EVERY care label for cleaning instructions. If the care label is missing we will only proceed at the customer's risk.

Did you know if a garment contains a metal fiber it can wrinkle, and we are unable to get the wrinkles out if cleaned incorrectly. Some times we can't tell there is a metal component. I've had seams that were glued. Again, if we had cleaned the garment incorrectly all of the seams would have come undone and the garment would have fallen apart. Manufacturers are always changing what they do and there is no way for us to keep up with these changes if there is no label. I can only imagine what would happen if they aren't held accountable for a faulty garment.

We sometimes see labels where the manufacturer tries to absolve itself of responsibility by putting a "spot clean only" on the care label. However, they will still indicate what the fabric is, so we are able to proceed with some information and confidence.

Since we are the last person that handled the items, the consumer blames us if damage occurs even when we follow the care label. I can't imagine how much worse it would be if there were no care instructions in the garment.
There is no way we can know every dye, every trim, and every construction method for every garment. There are too many different components and too many application and construction methods that go into producing a garment.
The only person that knows what goes into the construction of a garment is the manufacturer. The manufacturer is in the best position to know the best method of care for a garment. That decision should not be left up to the consumer or the cleaner. Neither the drycleaner nor the consumer should be expected to bear the financial burden of damaged garments due to an incorrectly, guessed care method.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/34>

From: Stephen Brady [REDACTED]

Sent: Thursday, July 15, 2021 2:16 PM

To: JulyPublicComments <JulyPublicComments@ftc.gov>

Subject: Auto body repair being offshored and consumers being forced to buy new vehicles by insurance companies!

Commissioners,

I have been in the auto body repair for over 40 years and never thought I would see my work out sourced to other countries with lower wages and safety practices. I recently attended a **Co Part** auction where most of the late modeled vehicles that had been declared salvaged by insurance companies were selling for over 50% of their pre accident value to foreign buyers.

Billions of dollars of repairable vehicles are being declared total losses unnecessarily, forcing consumers to buy new cars, offshoring valuable work and causing a huge loss in sales tax and new and used parts revenue. There is also an environmental cost of unneeded storage and shipping.

Strict rules need to be established preventing insurance companies from salvaging vehicles unless the estimated repairs exceed 75% of their value. Any vehicle under seven years old that sells for over 50% of its pre-accident value at auction should be declared repairable and rebuild able and be given a clean title when repaired and safety checked and returned to the used car market.

Thank you,

Stephen Brady (Auto Body instructor) City College San Francisco

Sent from [Mail](#) for Windows 10

[REDACTED]

From: NADHERNY Steven (CNH Industrial) <[REDACTED]>
Sent: Saturday, July 17, 2021 8:17 AM
To: JulyPublicComments
Subject: CNH Industrial Written Statement for the Record
Attachments: CNH Industrial Right to Repair FTC July 21 Comments.pdf

Attached please find CNH Industrial's comments for the July 21, 2021 Open Commission Meeting.

Please let me know if you have any questions.

Thanks.



Steven T. Nadherny
Vice President, Government Affairs

CNH Industrial

[REDACTED]



Brad Crews *President, North America*

Via julypubliccomments@ftc.gov

July 16, 2021

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Suite CC-5610 (Annex B)
Washington, DC 20580

Re: July 21, 2021 Open Commission Meeting

Dear Commissioners:

CNH Industrial appreciates the opportunity to comment in response to the Federal Trade Commission's ("FTC" or "Commission") July 21, 2021 Open Commission Meeting regarding the "Nixing the Fix" report.

CNH Industrial is a global leader in the capital goods sector with over 175 years of industrial experience, a wide range of products, and a worldwide presence. Each of the CNH Industrial brands is a major international force in its specific industrial sector: Case IH, New Holland Agriculture for tractors and agricultural machinery; Case and New Holland Construction for earth moving equipment; and FPT Industrial for engines and transmissions. In the U.S., CNH Industrial has 9 manufacturing plants, 11 research and development centers, 7 Parts Depots and a workforce of more than 7,000 people – along with our 1,600 independently owned dealers (many which are small businesses) and over 1,700 suppliers across the country.

When it comes to "Right-to-Repair," CNH Industrial, our dealers, and our customers have a shared desire to minimize downtime and maximize productivity, which is why our brands and our dealers have worked diligently to create a service and repair information program that provides diagnostic tools, service manuals, information, and support for repairs and maintenance. We support lawful, safe, compliant, and effective service and repair of these highly complex machines.

CNH Industrial supports an owner's right-to-repair but does not support a path to operating software access and modification.

The distinction between our products and consumer goods (such as personal computers and cell phones) should be clear. Heavy-duty, off-road farm and construction equipment brings wholly distinct concerns related to emissions, safety, and liability issues. Advocates of farm equipment "Right to Repair" rulemaking appear to be seeking access to the software that governs on-board technology that goes well beyond the act of diagnosis and repair of farm equipment. **Rules that provide a pathway to access operating software that controls equipment operations, EPA mandated emissions control, embedded OSHA directed operator and by-stander safety measures, and machine performance do not address the function of repair, they open the door to modification.**



Modification of heavy-duty equipment operating software is, in many cases, illegal, unsafe, and a factor in undue liability exposure. Accordingly, the public policy implications of providing broad access to operating software extend beyond the product manufacturer-customer relationship and could have significant negative impacts upon customer/by-stander safety as well as environmental regulations designed to reduce the effects of climate change.

In the FTC's "Nixing the Fix" report," a 2016 Nebraska Right-to-Repair hearing held by the Nebraska Legislature's Committee on Judiciary was referenced. However, much has changed in the five years that have passed since that hearing and the release of the "Nixing the Fix" report. We urge the FTC to get an accurate view of current status of the marketplace prior to adopting any policy statements and/or issuing a new policy statement.

Currently, there are agreements in-place that guide right-to-repair in the US auto marketplace and the US on-road commercial vehicle marketplace. As noted in the FTC's "Nixing the Fix" report, the auto MOU is often cited by advocates as a "model" for self-regulation. **The "Nixing the Fix" report; however, erroneously points out the "no other industry has worked to open repair through a self-regulatory framework."** This observation is clearly incorrect:

Driven by the industry's leading brands, the farm equipment industry has successfully worked to open repair through self-regulation in many of the same ways as the auto industry.

Following an industry commitment made public in 2018, our brands and dealers voluntarily committed to providing customers the tools and information needed to properly, safely, and legally diagnose and repair their own equipment. As announced in 2020 and implemented in early 2021, our brands make available to consumers and independent, non- OEM affiliated repair providers, via purchase and subscription, the following repair information and repair diagnostic tools (marketing materials are attached):

- The same diagnostic software utilized by our authorized dealers;
- The same diagnostic code outputs utilized by our authorized dealers;
- The same technical documents (parts, schematic, technical, set-up and adjustment) utilized by our authorized dealers;
- The same special tools utilized by our authorized dealers; and,
- The same diagnostic computer hardware and data link utilized by our authorized dealers.

Our brands and dealers have significant investment in OEM service parts inventories and the capital in-place to support expedient delivery processes, application expertise and demand requirements. Our brands and our dealers also do not prohibit the use of non-OEM service parts. As reported in the 2016 Nebraska right to repair hearing, there are over 300 companies in the U.S. that provide non-OEM service parts to the farm equipment industry. Again, our brands and dealers provide world-class service parts support to customers and independent repair providers alike and our commitment to customer "up-time" is well documented.



It is also important to note, that the CNH Industrial brands do not sell directly to the public. All Parts, Service and Equipment sales are sold through an authorized **independent** Dealer channel. Our dealers have certified technicians, dedicated works shops and tools to ensure all service is done safely and correctly. Our Dealers are small business owners and entrepreneurs who employ 10's of 1,000's workers with high paying jobs across rural America. About 50% of the Service Parts sold by our Dealers today are sold directly to Farmers. Our customers have always been given the opportunity to service, maintain and repair their own equipment.

We ask the FTC to take into account the past actions and steps CNH Industrial and our dealers have taken to support owners choice in the repair of their equipment and strongly urge the Commission to examine the risks associated with a pathway to operating software access. Any modifications of current law and regulations will affect emissions, product and user safety and should not be taken lightly.

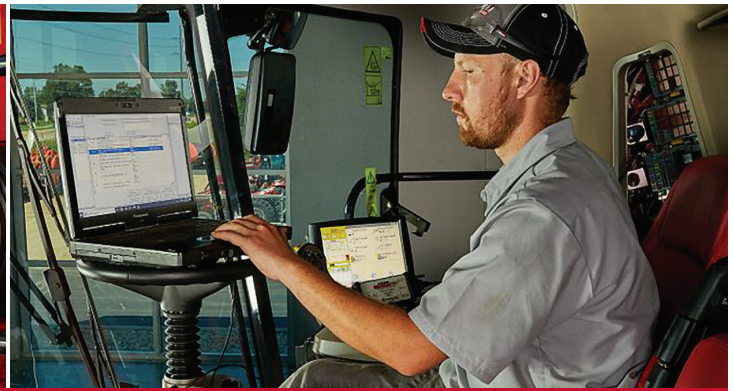
We appreciate the opportunity to provide these comments, and we encourage you to contact us should you wish to discuss any part of this submission. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Brad Crews". The signature is written in a cursive style with a long, sweeping underline.

Brad Crews
President, North America

Attachments



CASE IH SERVICE AND REPAIR INFORMATION

At Case IH, we understand the importance of having the ability to service and maintain your own machinery. We are pleased to offer you access to the diagnostic software, repair information and special service tools you need to successfully work on and maintain your Case IH equipment. Your local Case IH Dealer is ready to assist you in selecting the tools and manual documentation you need.

PRODUCT GUIDES AND TRAINING

Training materials and product guides for Case IH equipment are available to customers via www.my.caseih.com. Select “Knowledge Base” from top menu to access.

FLEET MANAGEMENT INFORMATION

Case IH provides a comprehensive fleet management tool for connected vehicles to customers via AFS Connect. To access go to www.my.caseih.com then click on “AFS Connect” in the upper right toolbox menu.

ON-BOARD DIAGNOSTICS

Machine issues are identified by a specific Diagnostic Trouble Code (DTC) that can be accessed through the machine display or dash. Many machines allow for the basic description of the DTC to be viewed and advanced vehicles allow parameters and signals to be monitored related to the DTC.

SERVICE AND REPAIR MANUALS

Operator manuals and installation instructions for equipment registered with us are available to you via www.my.caseih.com. Interactive electronic versions of the service and repair manuals are available through our Customer EST subscription. Paper copies of service, repair and operator manuals are available through www.mycnhistore.com. To access, select your brand and then click the “Equipment Manuals” link at the bottom of the site.

PARTS CATALOGS

An online parts catalog is available to customers via www.mycnhistore.com. To access, select the appropriate brand image based on your equipment to begin your search.

Interested parties can contact their local Case IH dealer for more information on these resources. All tools/resources outlined are currently available in the marketplace to customers and end users, and will continue to be available in the future.

DIAGNOSTIC AND REPAIR TOOLS

You can purchase the mechanical tools required to perform tests, or to disassemble and reassemble equipment, through your local dealer. Mechanical tools are referenced in the service and repair manuals by part number and can be purchased using that number. If you have any questions, contact your dealer.

ELECTRONIC DIAGNOSTIC TOOL (EST)

We are pleased to now offer a customer version of our EST. The Customer EST operates on a PC with Windows 10 (64-Bit) Operating System. This provides you the ability to connect to your Case IH equipment via a protocol adapter to the equipment’s CAN network.

Diagnostic functions the Customer EST provides:

- Controller status/version retrieval
- Parameter monitoring
- Fault code retrieval and clearing
- Electronic version of service manuals
 - Electrical and hydraulic schematics
 - Fault code descriptions and repair process
 - Disassembly and reassembly instructions

A subscription to the Customer EST can be purchased from your local Case IH Servicing Dealer.

**Dealer training and installation fees may apply.
For questions regarding the Customer EST or other service and repair information, visit your local Case IH Dealer.**

PM-21029 3/2021 Replaces: None

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NEW HOLLAND SERVICE AND REPAIR INFORMATION

New Holland understands that you work under tight time frames and unpredictable circumstances. Being able to repair and service your own machinery is important, and we are pleased to offer you the ability to do it successfully. Your local New Holland Dealer is ready to assist you in selecting the diagnostic software, special service tools and manual documentation you need to successfully work on your equipment.

FLEET MANAGEMENT INFORMATION

New Holland provides a comprehensive fleet management tool for connected vehicles to customers via MyPLM™ Connect. To access, go to my.newholland.com then click on “MYPLMCONNECT” in the upper right toolbox menu.

ON-BOARD DIAGNOSTICS

Machine issues are identified by a specific Diagnostic Trouble Code (DTC) that can be accessed through the machine display or dash. Many machines allow for the basic description of the DTC to be viewed on the vehicle display as well as view signals or parameters related to that DTC.

SERVICE AND REPAIR MANUALS

Operator manuals and installation instructions are available for equipment registered on my.newholland.com. Interactive electronic versions of the service and repair manuals are available through our Customer EST subscription. Paper copies of service, repair and operator manuals are available through www.mycnhistore.com. To access, select your brand and then click the “Equipment Manuals” link at the bottom of the site.

PARTS CATALOGS

An online parts catalog is available to customers via www.mycnhistore.com. To access, select the appropriate brand image based on your equipment to begin your search.

Interested parties can contact their local New Holland dealer for more information on these resources. All tools/resources outlined are currently available in the marketplace to customers and end users – and will continue to be available in the future.

DIAGNOSTIC AND REPAIR TOOLS

You can purchase the mechanical tools required to perform tests, or to disassemble and reassemble equipment, through your local dealer. Mechanical tools are referenced in the service and repair manuals by part number and can be purchased using that number. If you have any questions, contact your dealer.

ELECTRONIC DIAGNOSTIC TOOL (EST)

We are pleased to now offer a customer version of our EST. The Customer EST operates on a PC with Windows 10 (64-Bit) Operating System. This provides you the ability to connect to your New Holland equipment via a protocol adapter to the equipment’s CAN network.

Diagnostic functions the Customer EST provides:

- Controller status/version retrieval
- Parameter monitoring
- Fault code retrieval and clearing
- Electronic version of service manuals
 - Electrical and hydraulic schematics
 - Fault code descriptions and repair process
 - Disassembly and reassembly instructions

A subscription to the Customer EST can be purchased from a local authorized New Holland Dealer.

Dealer training and installation fees may apply. For questions regarding the Customer EST or other service and repair information, visit your local New Holland Dealer.

PM-21030 2/2021 Replaces: None

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CASE CONSTRUCTION EQUIPMENT SERVICE AND REPAIR INFORMATION

As equipment technology evolves, new diagnostic tools are needed to successfully maintain your machinery. CASE Construction Equipment is pleased to offer you the diagnostic software, special service tools and repair manual documentation needed to repair and maintain your own CASE equipment. Your local CASE dealer is ready to help you select everything you need to service and maintain your equipment.

FLEET MANAGEMENT INFORMATION

CASE provides a comprehensive fleet management tool for connected vehicles to customers via CASE SiteWatch. To access, go to www.casesitewatch.com or visit your local CASE dealer to get set up with your own account.

ON-BOARD DIAGNOSTICS

Machine issues are identified by a specific Diagnostic Trouble Code (DTC) that can be accessed through the machine display or dash. Many machines allow for the basic description of the DTC to be viewed and advanced vehicles allow parameters and signals to be monitored related to the DTC.

SERVICE AND REPAIR MANUALS

Interactive electronic versions of the service and repair manuals are available through our Customer EST subscription. Paper copies of service, repair and operator manuals are available through www.mycnhistore.com. To access, select your brand and then click the "Equipment Manuals" link at the bottom of the site.

PARTS CATALOGS

An online parts catalog is available to customers via www.mycnhistore.com. To access, select the appropriate brand image based on your equipment to begin your search.

Interested parties can contact their local CASE dealer for more information on these resources. All tools/resources outlined are currently available in the marketplace to customers and end users – and will continue to be available in the future.

DIAGNOSTIC AND REPAIR TOOLS

You can purchase the mechanical tools required to perform tests, or to disassemble and reassemble equipment, through your local dealer. Mechanical tools are referenced in the service and repair manuals by part number and can be purchased using that number. If you have any questions, contact your dealer.

ELECTRONIC DIAGNOSTIC TOOL (EST)

We are pleased to now offer a customer version of our EST. The Customer EST operates on a PC with Windows 10 (64-Bit) Operating System. This provides you the ability to connect to your CASE equipment via a protocol adapter to the equipment's CAN network.

Diagnostic functions the Customer EST provides:

- Controller status/version retrieval
- Parameter monitoring
- Fault code retrieval and clearing
- Electronic version of service manuals
 - Electrical and hydraulic schematics
 - Fault code descriptions and repair process
 - Disassembly and reassembly instructions

A subscription to the Customer EST can be purchased from your local CASE dealer.

Dealer training and installation fees may apply. For questions regarding the Customer EST or other service and repair information, visit your local CASE dealer.

PM-21031 3/2021 Replaces: None

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[REDACTED]

From: Tim Wentz <[REDACTED]>
Sent: Sunday, July 18, 2021 5:04 PM
To: JulyPublicComments
Subject: Open Commission Meeting (July 21, 2021) – Northeast Equipment Dealers Association, INC. (NEDA) comments on Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers
Attachments: FTC statement July 2021.docx

JULY 21, 2021

The Honorable Lina Khan
Chair (Commissioner) Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW 600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Noah Joshua Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW 600
Washington, DC 20580

The Honorable Rohit Chopra
Commissioner
U.S. Federal Trade Commission 600 Pennsylvania Avenue, NW Washington, DC 20580 Washington, DC 20580

The Honorable Rebecca Kelly Slaughter Commissioner
U.S. Federal Trade Commission
NW 600 Pennsylvania Avenue, NW
Washington, DC 20580 Washington, DC 20580

The Honorable Christine S. Wilson Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Open Commission Meeting (July 21, 2021) – Northeast Equipment Dealers Association, INC. (NEDA) comments on Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear, Chair Khan, Commissioners Phillips, Chorpra, Slaughter, and Wilson
The Northeast Equipment Dealers Association, INC. (NEDA) appreciates the opportunity to provide comment to the Federal Trade Commission (“FTC”) in advance of the Commission’s July 21, 2021, open meeting.

My Name is Timothy Wentz, I am the Field Director for the Northeast Equipment Dealers Association, INC. Our association represents roughly 450 outdoor power, agricultural and construction equipment dealers located in Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont and Maine.

While NEDA and our dealer members share FTC concerns about protecting consumers, we strongly oppose the Commission’s potential adoption of a policy statement and subsequent regulation in support of so-called “Right to Repair”, as recommended in President Biden’s recent Executive Order. To be clear, our members fully support a customer’s ability to effect repair of “their” equipment on their own accord or via an independent third party. What we can’t support, is a customer or third party’s ability to modify! During my dealer visits, more often than not, I have had to wait while a parts person, service manager or lead technician walks one of their customers through the diagnostics and/or repair on the phone before talking to them about our apprenticeship program, or other association business. Keeping customers and their equipment up and running is our dealer’s top priority!

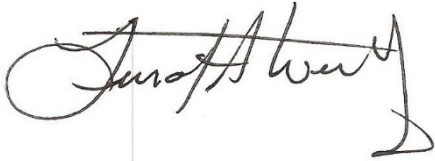
It is my professional opinion that the proposed regulation would neither benefit consumers nor enhance competition. More especially, as I understand the proposed policy statement, it’s adoption could very well result in significant though unintended consequences to the public, our dealers and other industries focused on supporting construction, consumers, agriculture, golf and turf, forestry, horticulture, and landscape professionals. More specifically, such open ended “right-to-repair” rules would have detrimental effect on used equipment values, safety (to our service technicians and staff), the environment (defeating emissions and safety

devises), second and third level customers, used equipment values (a significant portion of our dealers and their customers assets are invested in equipment). If the market can't trust that the "machine" is what it "appears" and hasn't been modified to operate outside of the manufacturer's design parameters, it's reasonable to expect a significant decline in used equipment "trade" value. Overbroad "Right to Repair" regulations would create a new right to modify, whether intentional or not, and would endanger consumers by allowing for modifications to safety and emission controls and causing the product to be out of compliance with safety and regulatory compliance requirements. All in all, I believe the proposed rules and policy would create an unacceptable liability to our members, the public, and will adversely affect competition, the equipment marketplace and economic stability.

If Commissioners or staff have questions, would like additional information, or would like to discuss a subsequent meeting, please contact me @ [REDACTED] or phone [REDACTED].

Thank you for the consideration of these comments.

Most respectfully yours,

A handwritten signature in black ink, appearing to read "Sarah Alway". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Field Director
The Northeast Equipment Dealers Association, Inc.
128 Metropolitan Park Drive
Liverpool, NY 13088
www.ne-equip.com

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Monday, July 12, 2021 7:08 PM
To: JulyPublicComments<JulyPublicComments@ftc.gov>
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Monday, July 12, 2021 - 19:07 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Timothy

Last Name: Young

Affiliation: just an average citizen, no affiliations to anyone else Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

The question of right to repair affects everyone across the board. From farmers and their farm equipment, to doctors and the medical devices, to the average everyday consumer. The infringement in the ability of us to repair our products has helped lead to the trend of forced obsolescence we have been seeing in recent years, driving up the cost of businesses and consumers alike while resulting in shoddier, less reliable, and shorter-lived products.

It also cuts to the fundamental question of do we own what we buy? Is it the right of these companies to effectively lock buyers into doing business exclusively with the seller for the rest of the product's life span while claiming that they know better than us. That it is for the "greater good" of the product to remove the consumers choice in the matter. To that I say no.

It is the right of a owner to choose how property under their ownership is treated and repaired.

Towards that end I see right to repair legislation as a bipartisan issue. One that would see lower operating costs for farmers and businesses, a reduction on the reliance of overseas manufacturing, a strong job market here in America for repair specialists, and protection of our planet by reducing the amount of scrap being sent to our landfills.

I implore you to support legislation that gives the right to repair back to the people.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/50>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Friday, July 16, 2021 6:23 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Friday, July 16, 2021 - 18:22 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Toby

Last Name: Mixson

Affiliation: Myself

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: Yes

Link to web video statement: Texas

Submit written comment: Adobe has stolen art i own and its not right i wanna see the ftc acuttly hold them accountable for this its stealing copyrighted art ita not right its illegal and they getting away with cause billions of dollars

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/166>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 3:08 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 15:07 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Tony

Last Name: Leger

Affiliation: Automation Laboratory Technology Full Email Address: tony@altservice.com Confirm Email Address: tony@altservice.com

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

As an Independent Service Organization established in 1990, I have received consistent resistance to obtaining replacement parts. Only a few manufacturers comply with the precedents set forth in the Sherman Anti-trust Act and the Kodak case. The main tactics we have documented over the last 20 years include diversion, exclusion and straight refusal. These manufacturer practices prevent us from competing for the service work. I have been told by Clients that they would not have access to this technology if it were not for my company making the service affordable. We have the knowledge, training and experience to perform these service functions when given the same access to parts and service documentation. Please consider guidelines which improve the rules put forth in the Sherman Act and the Kodak case giving fair and equal access to replacement parts.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/38>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Saturday, July 17, 2021 10:05 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Saturday, July 17, 2021 - 22:04 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Tyler

Last Name: Phan

Affiliation: University of Pittsburgh, Goldman Institute for Social Research Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

Dear FTC,

I am here to bring attention to anti-competitive practices and risks to the American consumer on behalf of the National Certification Commission of Acupuncture and Oriental Medicine (NCCAOM). For nearly three decades, the NCCAOM has been the sole certification association for acupuncture licensure in the United States. Their Subject Matter Experts (SMEs) nor exam content has ever been vetted by a third-party organization. The exam content is solely based on the interpretations of arbitrary Chinese medicine theory that was developed in the late-1950s during the Cultural Revolution and has shown to have no empirical evidence to support it. Practitioners of any other traditions are out of luck and either resort to compulsory acupuncture school enrollment or to practice without a license. What's alarming is that less than 10% of information tested on the exam relates to consumer protection/safety and the mandatory criteria to sit for the exam is at least three years of education at an acupuncture school, with a fraction of the curriculum relating to patient safety. The actions of the NCCAOM has led various Asian American practitioners to be marginalized because they are tested on curriculum that does not reflect their traditional practices and/or because of the exam's use of esoteric language that does not reflect culturally specific acupuncture practices. This has caused many practitioners to practice without a license as well as licensed practitioners to practice without a sense of patient safety, a risk to any consumer of acupuncture and Chinese medicine. I'm asking for the FTC to investigate the NCCAOM of their anti-competitive practices and serve as a risk to the general public in terms of safety and misleading students to go in substantial amounts of debt due to a lack of gainful employment.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/62>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Thursday, July 15, 2021 3:08 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Thursday, July 15, 2021 - 15:07 Submitted by anonymous user: [REDACTED]
Submitted values are:

First Name: vicky
Last Name: maisel
Affiliation: cowboy cleaners
Full Email Address: [REDACTED]
Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement: TX

Submit written comment: I am writing about the garment care label law. It is vitally important to not just dry cleaners, such as myself, but to consumers. Can you imagine spending thousands of dollars on your wardrobe and not know how to clean any of it? With out accurate care labels that is exactly what every consumer will have to deal with. Care labels on each garment tell me, as the cleaning professional, and the average consumer how to properly maintain their dothing. Without them many consumers may find themselves ruining hundreds or thousands of dollars of their dothing simply because they improperly cleaned these items. Aside from your home and automobile, a persons wardrobe is one of their biggest expenses. A care label is vital to the protection of these consumers to be able to properly care for their dothing. I strongly believe the Care Label Law protects not just cleaning professionals but consumers. It allows consumers to purchase items that they know they can maintain and protects their investment in their wardrobe.

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/30>

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 12:15 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 12:15 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Victor
Last Name: Dimello
Affiliation: Consumer
Full Email Address: [REDACTED]
Confirm Email Address: [REDACTED]
Telephone: [REDACTED]
FTC-Related Topic: Consumer Protection
Register to speak during meeting: No
Link to web video statement:
Submit written comment: I support the results from the Nix the Fix workshop

The results of this submission may be viewed at:
<https://www.ftc.gov/node/1591350/submission/10>

[REDACTED]

From: Walter Alcorn <[REDACTED]>
Sent: Sunday, July 18, 2021 7:42 PM
To: JulyPublicComments
Cc: Michael Petricone; Dan Moyer; Pozza, Duane
Subject: CTA comments on Repair agenda item July 21 FTC meeting
Attachments: CTA Repair comments for July 21 FTC Meeting submitted July 18 2021.pdf

See attached. Thank you!

Walter Alcorn
Vice President, Environmental Affairs and Industry Sustainability
Consumer Technology Association

[REDACTED]

WAlcorn@CTA.tech
www.CTA.tech
www.GreenerGadgets.org

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July 18, 2021

Federal Trade Commission
Washington, DC 20580

Dear Chairwoman Khan and Commissioners Chopra, Phillips, Slaughter, and Wilson:

The Consumer Technology Association (CTA®) submits this comment in advance of the Commission's July 21, 2021 meeting. CTA is North America's largest technology trade association. Our members are the world's leading innovators – from startups to global brands – helping support more than 18 million American jobs. CTA owns and produces CES® – the most influential tech event in the world.

CTA would like to address the Commission's consideration of a "Proposed Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers," at the July 21 meeting. At this date, we are not aware of what the proposed policy statement may include, and therefore we address our comments to the Commission's work on consumer device repair issues on a more general level moving forward. We have closely reviewed the FTC's "Nixing the Fix" report, and while we disagree with many of the report's conclusions – and provided our views in connection with 2019 workshop – we are focused on how to collaboratively address the FTC's concerns as an industry.¹

Consumer technology devices have been essential and integral in everyday life during the pandemic, keeping us productive, educated, entertained, and healthy. Manufacturers are committed to keeping consumers safe when using these devices while ensuring opportunities for repair. Manufacturers in the industry recognize the importance of these devices to consumers and in avoiding unnecessary waste, and as a result many have established extensive networks of authorized repair and independent manufacturer-affiliated facilities and services with multiple options for consumers, including walk-in and mail-in options. The conditions for participating in these networks are appropriately and reasonably set by manufacturers who face potential legal liability and reputational injury if repairs are unsafe.

Customers can be sure that a manufacturer's affiliated repair network will conduct repairs using properly trained and vetted professionals that have the necessary skills to safely and reliably repair products to manufacturer specifications and standards with manufacturer-quality parts. Manufacturers have collaborated with stakeholders from all facets of the repair ecosystem to develop a series of independently managed industry standards that are open to

¹ FTC, Nixing the Fix: An FTC Report to Congress on Repair Restrictions (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf ("Report").

all technicians and repair providers (e.g., CTIA Wireless Industry Service Excellence program). Together, these changes advance consumer protections such as safety, as many devices are complex and could create risks if not repaired properly. Additionally, manufacturer-affiliated repair networks help to ensure customer privacy and data security by contractually limiting personnel access to view, store or use customer data for any purpose other than repairing the customer's product. As noted in CTA's July 16, 2019 comments on the "Nixing the Fix" workshop, FTC staff recommend that manufacturers "retain service providers that are capable of maintaining reasonable security and provide reasonable oversight for these service providers" and to monitor products throughout their life cycle.² Manufacturer-affiliated repair networks are one way manufacturers have addressed this recommendation.

At the same time, the repair market is rapidly evolving, including since 2019 when the FTC initially requested comments in connection with the workshop. This evolution toward providing more repair options is good for consumers, good for manufacturers in expanding repair networks, and good for the environment. The consumer technology industry has significantly expanded repair options over the past few years—as just one example, greenergadgets.org lists a wide range of repair options provided by device manufacturers. The "Nixing The Fix" report, while it does not contain an empirical analysis of the availability of consumer repair options, has also helped manufacturers identify areas on which they can more closely focus efforts to expand consumer choices for repair.

Our industry is committed to a collaborative approach to repair issues, and looks forward to working with repair businesses, advocates, and the FTC on approaches that provide consumers repair options while protecting consumer safety and privacy, and accounting for intellectual property rights and other important interests. A collaborative process would help manufacturers and repair providers close the gap in perspectives on how to enable safe and reliable device repair, for the ultimate benefit of consumers and the environment. A more extensive discussion of stakeholder interests could help identify how different views can be resolved.

In our view, collaborative approaches are preferable to an extensive rulemaking process, which faces a number of hurdles and complications, as discussed in the FTC's report.³ In particular, collaboration would avoid questions about FTC statutory authority to promulgate certain regulations regarding repair. It would allow more effective resolution of important issues like protection of intellectual property rights, which the report recognizes is an outstanding concern when dealing with consumer repair issues.⁴ Manufacturers have intellectual property considerations when sharing proprietary software and tools and we would like to ensure that this is considered as part of the collaborative process. More, in an industry where innovation and product cycles are as short as 12- to 18-months, the FTC

² See Fed. Trade Comm'n, *Internet of Things: Privacy & Security in a Connected World*, FTC Staff Report at iii, 30-31 (Jan. 2015), <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf>.

³ Report 44-45.

⁴ *Id.* at 6, 26, 53-54.

should allow the consumer technology industry and the repair industry to evolve and innovate as technology and markets change.

The consumer technology industry enthusiastically supports consumer choice and is open to exploring additional means to expand access to safe and secure repair. We urge the Commission to take a measured and collaborative approach to dealing with repair issues, in light of the changing marketplace and the opportunity for a collaborative effort to be more effective. We look forward to working together and serving as a resource for the Commission in this area.

Sincerely,

/s/ Michael Petricone
SVP, Government and Regulatory Affairs
Consumer Technology Association

/s/ Walter Alcorn
VP, Environmental Affairs & Industry Sustainability
Consumer Technology Association

[REDACTED]

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>
Sent: Sunday, July 18, 2021 7:21 PM
To: JulyPublicComments
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for July 21, 2021 Open Commission Meeting

Submitted on Sunday, July 18, 2021 - 19:21 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Yasmin

Last Name: Cohen

Affiliation: None

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement: CO

Submit written comment: Consumers should not be forced to use mail order pharmacies unless the medication can be kept at an appropriate temperature during transportation. Medications should not sit on a hot truck all day and then be delivered as their efficacy may be compromised.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/50>