

March 16, 2022

Chairman Jerry Nadler
House Judiciary Committee
2132 Rayburn House Office Building
Washington, DC 20515

Ranking Member Jim Jordan
House Judiciary Committee
2056 Rayburn House Office Building
Washington, DC 20515

Chairman David Cicilline
Subcommittee on Antitrust, Commercial,
and Administrative Law
2233 Rayburn House Office Building
Washington, DC 20515

Ranking Member Ken Buck
Subcommittee on Antitrust, Commercial,
and Administrative Law
2455 Rayburn House Office Building
Washington, DC 20515

Chairman Hank Johnson
Subcommittee on Courts, Intellectual
Property, and the Internet
2240 Rayburn House Office Building
Washington, DC 20515

Ranking Member Darrell Issa
Subcommittee on Courts, Intellectual
Property, and the Internet
2300 Rayburn House Office Building
Washington, DC 20515

Re: Request for Hearing on the Right to Repair

Dear Chairman Nadler and Ranking Member Jordan,

The undersigned organizations ask that you schedule a hearing to examine the consumer's right to repair software-enabled devices, such as smartphones, home appliances, automobiles, and farm equipment. People from all walks of life and political ideologies believe that repairing your smartphone or your tractor should be possible and affordable.¹² While there are a few bills in Congress today addressing the right to repair, The Freedom to Repair Act (H.R. 6566) is bipartisan legislation on this issue and is currently referred to the House Judiciary Committee. Committee Members, Representatives Mondaire Jones and Victoria Spartz introduced this legislation to grant consumers the right to repair their devices.

Companies that make products from tablets to tractors are using an oversight in copyright law to deny us the right to repair our own devices or take them to local small businesses. 17 U.S.C. § 1201 (known as "Section 1201") is designed to protect copyrighted works from piracy and

¹ The Editorial Board, "It's Your Iphone. Why Can't You Fix It Yourself?," The New York Times, April 6, 2019, <https://www.nytimes.com/2019/04/06/opinion/sunday/right-to-repair-elizabeth-warren-antitrust.html>.

² Kevin O'Reilly, "Opinion | It Shouldn't Cost the Farm to Fix a Tractor," The Wall Street Journal, March 23, 2021, <https://www.wsj.com/articles/it-shouldnt-cost-the-farm-to-fix-a-tractor-11616537863>.

makes it a crime to bypass a digital lock set up to protect copyrighted content like music, video games, or movies. But some manufacturers have exploited that provision to lock consumers into their own expensive, inaccessible repair services by locking repair functions, too. In its 2017 Section 1201 Study, the Copyright Office concluded that unlocking or circumventing copyright protection for the purpose of repair should not be considered infringing behavior.³ The Office's eighth triennial proceeding drew the same conclusion.⁴ In addition, in response to a question for record submitted for the May 5th, 2021 Oversight Hearing of the U.S. Copyright Office, Shira Perlmutter, Register of Copyrights and Director, U.S. Copyright Office, recommended that Congress create "a permanent statutory exemption for repair of software-enabled devices."

The Right to Repair is more than a copyright issue, it is a competition issue. In the unanimous, bipartisan Nixing the Fix report, the Federal Trade Commission concluded that "there is scant evidence to support manufacturers' justifications for repair restrictions." In the same report, the FTC said, "there may be some specific circumstances where the Commission could address repair restrictions as violations of antitrust law."⁵ These repair restrictions have recently been cited as a cause for concern in the recently announced Microsoft-Activision merger.⁶ Big Tech often restricts repair options for consumers, lobbying at all levels of government to prevent the right to repair because it threatens their ability to charge more for repairs or even use limitations on repair to push the sale of new products to consumers. As the industry becomes more and more consolidated, and Big Tech companies become more powerful, we expect repairs to become more complicated, expensive, and monopolized.

The Copyright Office, farmers, small business owners, environmentalists, and consumers agree: the right to repair what we own is critical for competition, job creation, consumer protection, and the environment. It is time for Congress to act. We respectfully request you schedule a hearing on the right to repair as soon as possible.

Sincerely,

Gay Gordon-Byrne
Executive Director, The Repair Association
North River, NY

³ U.S. Copyright Office, "Section 1201 of Title 17 Study," Section 1201 Study, June 22, 2017, <https://www.copyright.gov/policy/1201>.

⁴ U.S. Copyright Office, Section 1201 Rulemaking: Eighth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention (October 2021). https://cdn.loc.gov/copyright/1201/2021/2021_Section_1201_Registers_Recommendation.pdf.

⁵ "Nixing the Fix: An FTC Report to Congress on Repair Restrictions," Nixing the Fix: An FTC Report to Congress on Repair Restrictions § (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.

⁶ Bryan Koenig, "Groups Raise 'Red Flags' on Microsoft \$69B Activision Play," Law360, March 1, 2022, <https://www.law360.com/articles/1469445/groups-raise-red-flags-on-microsoft-69b-activision-play>.

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