

UNITED STATES OF AMERICA
Federal Trade Commission
Washington, DC 20580



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August 19, 2022

VIA ELECTRONIC MAIL

The Honorable Patricia Fahy
New York State Assembly
LOB 424
Albany, NY 12248

Re: New York's Digital Fair Repair Act

Dear Assemblymember Fahy:

We write this letter as the heads of the FTC's Bureau of Consumer Protection and its Office of Policy Planning, the FTC office that provides advocacy and submits filings supporting competition and consumer protection principles to state legislatures, regulatory boards, and officials.

Congratulations on the recent passage of New York's Digital Fair Repair Act (the "Digital Fair Repair Act" or "Act"), which will soon be presented to Governor Hochul. The resounding bipartisan support for the Digital Fair Repair Act (passing 145 to 1 in the Assembly and 49 to 14 in the Senate) reflects the widespread understanding that consumers need more choices when it comes to fixing the products they own and that small, independent repair businesses need access to parts, diagnostic tools and repair instructions in order to provide repair services. It also underscores the New York state legislature's commitment to ensuring that consumers have those choices and that small businesses can compete against manufacturers. As the first state legislature to pass a general digital right to repair law, New York has taken a significant step in advancing these important goals.

In May 2021, the Federal Trade Commission (the “Commission”) issued its Nixing the Fix Report to Congress.¹ The report, which was issued unanimously by the bipartisan Commission, found that many manufacturers restrict independent repair and repair by consumers through:

- Product designs that complicate or prevent repair;
- Unavailability of parts and repair information;
- Designs that make independent repairs less safe;
- Policies or statements that steer consumers to manufacturer repair networks;
- Application of patent rights and enforcement of trademarks;
- Disparagement of non-OEM parts and independent repair;
- Software locks and firmware updates; or
- End User License Agreements.

The Commission’s report also observed that the burden of repair restrictions may fall more heavily on communities of color and lower-income communities. Many Black-owned small businesses are in the repair and maintenance industries, and difficulties facing small businesses can disproportionately affect small businesses owned by people of color. Repair restrictions for some products—such as smartphones—also may place a greater financial burden on communities of color and lower-income Americans. As noted in the report, Pew Research found that Black and Hispanic Americans are about twice as likely as white Americans to have smartphones but no broadband access at home. Similarly, lower-income Americans are more likely to be smartphone-dependent. This smartphone dependency makes repair restrictions on smartphones more likely to affect these communities adversely.

Manufacturers explain that these repair restrictions often arise from their desire to protect intellectual property rights and prevent injuries and other negative consequences resulting from improper repairs. The Commission’s report found that there is scant evidence to support manufacturers’ justifications for repair restrictions, including their claims that opening repairs to owners and independent repair shops would pose safety issues and that open repair markets would introduce cybersecurity issues that would compromise consumer data.

The passage of the Digital Fair Repair Act is an important milestone, as the Act promises to expand repair markets significantly. If enacted, New York consumers will have the ability to fix some products themselves or to use independent repair shops. For many consumers, these expanded repair options will enable them to extend the useful lives of their products, thereby driving down the cost of ownership and reducing the amount of e-waste generated. Furthermore, the Digital Fair Repair Act will provide opportunities for small independent repair shops to deliver vital services for consumers.

Again, congratulations on the passage of the Digital Fair Repair Act. As the Commission informed Congress in the Nixing the Fix Report, we stand ready to work with legislators at the state and federal level in order to ensure that consumers have choices when they need to repair products that they purchase and own.

¹ Federal Trade Commission. 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-repairrestrictions/nixing_the_fix_report_final_5521_630pm-508_002.p

Sincerely,

/s/ Samuel Levine

Director
Bureau of Consumer Protection

/s/ Elizabeth Wilkins

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