



American Intellectual Property Law Association

February 1, 2024

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Via Federal eRulemaking Portal at <https://www.regulations.gov>

**Re: AIPLA Comments re Proposed Rulemaking re Consumers “Right to Repair”
(FTC Docket File No. R407000)**

The American Intellectual Property Law Association (“AIPLA”) respectfully files these public comments in response to the petition for rulemaking of PIRG and iFixit to the Federal Trade Commission (“FTC”) to issue rulemaking to protect consumers’ right to repair products they have purchased (“Petition”, “Proposal” or “Proposed Rule”).¹

Founded in 1897, the American Intellectual Property Law Association is a national bar association of approximately 7,000 members including professionals engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

Intellectual property rights are important building blocks of any competitive process. The FTC and the U.S. Department of Justice Antitrust Division have long recognized that “intellectual property laws and antitrust laws share the same fundamental goals of enhancing consumer welfare and promoting innovation.”²

Legal policy analysis of the “right-to-repair” involves significant intellectual property concerns. The Petition³ references, in passing, relevant intellectual property aspects of

¹ Petition for Rulemaking of PIRG and iFixit – A Proposed Rule by the Federal Trade Commission (January 3, 2024), 89 FR 286 <https://www.federalregister.gov/documents/2024/01/03/2023-28874/petition-for-rulemaking-of-pirg-and-ifixit>.

² U.S. Dep’t of Justice & Fed. Trade Comm’n, Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition (2007) at 1 (“Over the past several decades, antitrust enforcers and the courts have come to recognize that intellectual property laws and antitrust laws share the same fundamental goals of enhancing consumer welfare and promoting innovation”) <https://www.ftc.gov/sites/default/files/documents/reports/antitrust-enforcement-and-intellectual-property-rights-promoting-innovation-and-competition-report.s.department-justice-and-federal-trade-commission/p040101promotinginnovationandcompetitionrpt0704.pdf>.

³ Petition for Section 5 Rulemaking Addressing Consumers’ Right to Repair, <https://www.regulations.gov/document/FTC-2023-0077-0020>.

the right-to-repair discussion, mostly copyright.⁴ However, these references are cursory and lacking.

This administration has recognized the importance of a whole-of-government approach, including in the antitrust policy area.⁵ Given that the lead U.S. government agencies with expertise in and oversight of intellectual property policy in general and copyright in particular are the U.S. Patent and Trademark Office (“USPTO”) and the U.S. Copyright Office, AIPLA respectfully recommends that the FTC consult and collaborate with the USPTO and Copyright Office as it considers and/or develops rules or policy in this area.

AIPLA would welcome the opportunity to discuss the intellectual property aspects of this matter or respond to any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Ann M. Mueting". The signature is written in dark ink and is positioned above the typed name and title.

Ann M. Mueting
President
American Intellectual Property Law Association

⁴ *Id.* at 7, 11 and 21.

⁵ White House, Executive Order on Promoting Competition in the American Economy (July 9, 2021) (“Section 2. The Statutory Basis of a Whole-of-Government Competition Policy . . . (g) This order recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy. Such an approach is supported by existing statutory mandates”) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.