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February 2, 2024

Mr. Joel Christie
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Petition docket number FTC–2023–0077

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

Dear Mr. Christie:

Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the petition for rulemaking of PIRG and iFixit sent to the FTC, petition docket number FTC–2023–0077.

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; supporting and advocating for diversity, equity, and inclusion in IP and innovation; and disseminating information to the public on the importance of IP rights.

IPO’s vision is the global acceleration of innovation, creativity, and investment necessary to improve lives. The Board of Directors has adopted a strategic objective to foster diverse engagement in the innovation ecosystem and to integrate diversity, equity, and inclusion in all its work to complement IPO’s mission of promoting high quality and enforceable IP rights and predictable legal systems for all industries and technologies.

A. The Right to Repair, IP, and Innovation

IPO believes that that right to repair policies must ensure that IP rights are protected and, more specifically, that infringement of IP and forced disclosure of trade secrets must remain prohibited. IP provides incentives for innovation and collaboration that allow for investment in research and technology and creative thinking about solutions. The expectation that the creative output resulting from costly R&D initiatives will be protected through existing IP protections is vital and must be preserved.

The issue is of such importance to IPO that its Board has two existing resolutions on the subject, both of which were passed in 2020. One of the resolutions addresses the right to repair generally, stating:

RESOLVED, IPO opposes, in principle, incorporating into the U.S. and state laws statutory provisions providing an unfettered right to repair devices, computer programs, or other products, processes, or equipment without the IP owners' authorization.

The other addresses both exhaustion and the right of repair for design patents, saying:

RESOLVED, IPO supports the consistent application of exhaustion principles throughout patent law and across all industries. As such, exhaustion should not apply to the unauthorized sale by a third party of replacement parts or sub-parts of multi-component products.

FURTHER RESOLVED, IPO supports that the right of repair does not authorize infringement of other patent rights. A patent owner should be able to enforce a patent on a component regardless of the component's relation to the whole item.

B. The Role of Congress, the USPTO, and the U.S. Copyright Office

Without suggesting that rulemaking is needed at the current time, IPO suggests that, if right to repair issues are to be addressed through rulemaking, it would seem to be appropriate for Congress to designate which agency should be responsible for rulemaking and implementation. A right to repair rulemaking would potentially impact intellectual property laws, and IP is an area where the Constitution has granted Congress the power to act.¹ Further, Congress has shown interest in considering the issues related to right to repair, as there are several bills that have been introduced in recent years regarding this topic. IPO also suggests that any policymaking related to right to repair should allow for input from the United States Patent and Trademark Office and the U.S. Copyright Office, who have vast expertise in IP, and who could provide insights on the IP impacts of any proposed rules.

C. IPO Does Not Believe that the Petition Supports Rulemaking Under Section 5

The petition states that “a rulemaking under the Commission’s Section 5 authority, 15 U.S.C. § 45, is necessary...,” but the petition fails to explain how the acts of manufacturers are “unfair” or “deceptive” based on the appropriate standards. IPO therefore supports denial of this petition.

¹ See U.S. Constitution, Article I, Section 8, Clause 8.

IPO thanks you for your attention to IPO's comments submitted herein and welcomes further dialogue and the opportunity to provide additional comments.

Sincerely,

A handwritten signature in black ink that reads "Krish Gupta". The signature is written in a cursive style with a long horizontal stroke at the end of the word "Gupta".

Krish Gupta
IPO President