

ONE HUNDRED SEVENTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

August 26, 2021

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

Dear Hon. Khan:

Thank you for appearing before the Subcommittee on Consumer Protection and Commerce on Wednesday, July 28, 2021, at the hearing entitled “Transforming the FTC: Legislation to Modernize Consumer Protection.” I appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from certain members of the Committee. In preparing your answers to these questions, please address your response to the member who has submitted the questions in the space provided.

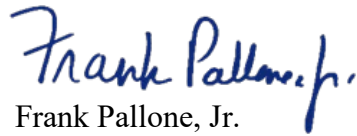
To facilitate the printing of the hearing record, please submit your responses to these questions no later than the close of business on Friday, August 27, 2021. As previously noted, this transmittal letter and your responses, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided to Ed Kaczmariski, Policy Analyst, at [ed.kaczmariski@mail.house.gov](mailto:ed.kaczmariski@mail.house.gov). To help in maintaining the proper format for hearing records, please use the document provided to complete your responses.

The Honorable Lina Khan

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ed Kaczmariski with the Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.  
Chairman

Attachment

cc: The Honorable Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce

The Honorable Jan Schakowsky  
Chair  
Subcommittee on Consumer Protection and Commerce

The Honorable Gus Bilirakis  
Ranking Member  
Subcommittee on Consumer Protection and Commerce

**Attachment—Additional Questions for the Record**  
**Subcommittee on Consumer Protection and Commerce**  
**Hearing on**  
**“Transforming the FTC: Legislation to Modernize Consumer Protection”**  
**July 28, 2021**

The Honorable Lina Khan, Chair, Federal Trade Commission

**The Honorable Yvette Clarke (D-NY)**

- 1. Intellectual property protection has fueled American innovation. IP has led to countless technologies and manufacturing advancements that have made the United States the most prosperous nation in the world. What assurances can you provide that the FTC respects IP protection and will not pursue actions that would undermine IP protection laws?**

**RESPONSE:** Patents can play a key role in promoting innovation, and the FTC respects lawful claims of intellectual property rights. Misuse of intellectual property rights, however, may deprive Americans of critical advances. Claims that anticompetitive conduct is justified to protect intellectual property rights will be closely scrutinized and should be rejected if found to be a mere pretext for anticompetitive conduct.

- 2. The FTC’s Nixing the Fix report mentions copyright eighteen times, but during the commission’s open meeting discussion of Repair Restrictions Imposed by Manufacturers and Sellers, none of the Commissioners referenced copyright protection. Only one Commissioner mentioned intellectual property protection. How will the FTC’s new initiatives on Repair Restrictions comply with and defer to federal laws protecting intellectual property and copyrights?**

**RESPONSE:** Intellectual property rights can play a key role in promoting innovation but can also be abused to impede free and fair competition. For instance, as noted in the recent Commission report on repair restrictions, Commission staff uncovered evidence that manufacturers and sellers may be restricting fair competition for repair services in a number of ways, including through the anticompetitive assertion of patent rights and enforcement of trademarks.<sup>1</sup>

While efforts by dominant firms to restrict competition in repair markets are not new, changes in technology and more prevalent use of software has created fresh opportunities for companies to limit independent repair. As both the FTC’s work and public reporting have documented, companies routinely use a whole set of practices, including limiting

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<sup>1</sup> FED. TRADE COMM’N, NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS at 10 (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](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).

the availability of parts and tools and using exclusionary designs and product decisions that make independent repairs less safe. These types of restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs, and undermine resiliency.

**3. How will the FTC enforce “right to repair” policies, while at the same time protect intellectual property and copyright laws that drive the creativity and innovation for other U.S. business sectors?**

**RESPONSE:** Right to repair may overlap with a number of different policy and legal issues, including intellectual property. As noted in the recent Commission report, efforts to enable independent repair would benefit from engagement with government partners to account for concerns relating to laws and policies outside of our jurisdiction.<sup>2</sup>

**4. Some states force auto manufacturers to sell their vehicles through franchise dealerships, so interested car buyers have no other choice but to go to a dealership. Are dealership protection laws in the best interest of the consumer?**

**RESPONSE:** The prevalence of the direct-to-consumer business model where permitted suggests that consumers may prefer buying direct when purchasing a new or used car. Laws that restrict the retail distribution of automobiles may forestall innovation in automobile retail sales.

**5. How can Congress help provide American consumers with more options for buying cars other than having to go to a franchised auto dealer?**

**RESPONSE:** Although the Commission is not currently supporting any specific proposal in this area, the agency stands ready to work with lawmakers, either at the federal or state level, to ensure fair competition in automobile retailing.

The Commission’s enforcement of the various statutes under its jurisdiction can also help protect Americans seeking to purchase a car.<sup>3</sup> Last year, FTC staff released a report that highlights some of the challenges Americans face when buying and financing an automobile.<sup>4</sup>

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<sup>2</sup> *Id.* at 53-54.

<sup>3</sup> See FED. TRADE COMM’N: THE AUTO MARKETPLACE, <https://www.ftc.gov/news-events/media-resources/consumer-finance/auto-marketplace>. For example, the FTC can take action when car dealers and others make deceptive advertising claims or falsely promise to reduce auto loan payments, or when telemarketers pitch bogus auto “warranties” that are actually extended service contracts. The FTC also enforces the Used Car Rule, which requires posting of the familiar Buyer’s Guide that appears on used cars and gives consumers key information about who will pay for repairs if something goes wrong with the car they buy. Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. pt. 455 (2021), <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/used-car-rule>.

<sup>4</sup> FED. TRADE COMM’N BUREAU OF CONSUMER PROTECTION STAFF, BUCKLE UP: NAVIGATING AUTO SALES AND FINANCING (Jul. 2020), [https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/buckle-navigating-auto-sales-financing/bcpstaffreportautofinancing_0.pdf).

6. **In 2015, FTC Staff wrote a letter to a Michigan Legislator supporting his bill that would have allowed manufacturers of autocycles (three-wheeled vehicles and enclosed motorcycles) to sell their products directly to consumers, instead of forcing their distribution through franchised dealers. The letter stated that the bill “would enhance competition in a new product category and would provide tangible benefits for Michigan consumers.” Many bills like this are being introduced around the country now. In addition to the competition benefits, could you please elaborate on what the other “tangible benefits” the direct sales model could provide consumers?**

**RESPONSE:** Although I was not at the Commission when staff submitted comments in connection with a proposed bill in Michigan relating to the sale and servicing of automobiles,<sup>5</sup> the direct sales model in some instances may provide greater options to Americans seeking to purchase a car.

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<sup>5</sup> Comment from FTC Staff to Senator Darwin L. Booher, State Senate of Michigan (May 7, 2015), [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-regarding-michigan-senate-bill-268-which-would-create-limited-exception-current/150511michiganautocycle.pdf).