



Submitted via email to julypubliccomments@ftc.gov

July 18, 2021

The Honorable Lina Khan
Chairwoman
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Joshua Phillips
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Rohit Chopra
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Christine S. Wilson
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

The Honorable Rebecca Kelly Slaughter
Commissioner
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: AED Comments on Proposed FTC Policy Statement on Repair Restrictions Imposed by Manufacturers and Sellers

Dear Chairwoman Khan and Commissioners Chopra, Phillips, Slaughter and Wilson:

Associated Equipment Distributors (AED) appreciates the opportunity to provide comment prior to the Federal Trade Commission's (FTC) consideration of a policy statement regarding repair restrictions by manufacturers and sellers at its July 21 public meeting.

AED is the trade association representing companies that sell, rent, service and manufacture construction, mining, farm, energy, forestry and industrial equipment. Its nearly 500 distributor members, which are predominantly small-medium-sized, family-owned businesses, have over 3,500 locations, employ 150,000 workers and account for more than \$60 billion of annual sales revenue in the United States and its territories. AED also has 350 non-distributor members, which include equipment manufacturers and industry service providers.

The equipment distributed by our member companies contains sophisticated technology with complex safety and emissions features. Consequently, AED members invest significant resources training and developing qualified technicians to service and repair the heavy equipment. These well-paying careers are located in communities across the country, including in rural areas and towns that have suffered economic distress.

AED is concerned with the FTC's plans to adopt a policy statement on July 21 supporting so-called "right to repair" initiatives and the possibility of subsequent regulations as contemplated by President Biden's recent executive order.

Unfortunately, a primary basis for applying right to repair policies to the equipment industry is based on a false narrative that customers are unable to fix their machinery. To the contrary, equipment manufacturers and distributors make available diagnostic tools, repair information and parts. However, consumers do not have the ability to modify the complex environmental and safety protections on the equipment, and for reasons outlined below, policymakers should refrain from mandating this type of unfettered access.

A broad right to repair mandate applied to the equipment industry will be detrimental to safety and environmental compliance. Indeed, given that customers are already able to repair their own equipment, the primary reason someone would want the ability to access and alter source code is to override emission controls and safety mechanisms to increase performance. This is not fixing equipment; this is modifying it.

The equipment industry has invested significant time and resources to meet the Environmental Protection Administration's (EPA) Tier 4 diesel emissions standards. These specifications, applicable to engines used in off-road equipment have resulted in a significant reduction in emissions. Unfortunately, right to repair threatens these gains as the public would have the ability to circumvent environmental protections on machinery to boost performance.

Furthermore, modern heavy equipment has numerous safety features to protect both equipment operators and the public, the latter who oftentimes are driving or walking past construction sites and other areas while machinery is in use. Granting access to override safety features poses undue risk on operators and bystanders in the vicinity while equipment is in use.

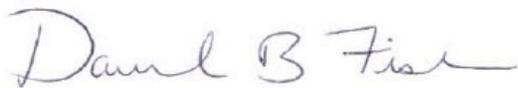
It is also important for policymakers to recognize a key difference between equipment sold by AED members and other products, such as consumer electronics. Heavy machinery has a significantly longer life cycle that may be jeopardized by granting unfettered access to source code. In fact, equipment will oftentimes be sold to a customer, traded-in when the customers purchase a new machine, and subsequently, either resold or rented. Modifications to equipment can jeopardize its durability, which in turn can also have a negative environmental impact as machinery may need to be discarded and is deemed unusable prematurely.

Because of the nature of the used equipment sales, rental, and trade-in markets, allowing for modification of safety and environmental features also would subject AED members to significant, unnecessary legal liability issues due to an end-user's ability to tamper with machinery source code.

In conclusion, end-users of machinery have the information and parts they need to repair and fix their equipment. The only reason for greater access contemplated by right to repair policies is to circumvent safety and emissions standards or to access proprietary intellectual property. AED urges the FTC to refrain from adopting a policy statement in favor of right to repair, recognizing that the equipment industry's customers do not need any additional resources to fix their machinery.

Thank you for consideration of our comments and please do not hesitate to reach out for further information should you or your staff need it.

Sincerely,

A handwritten signature in blue ink that reads "Daniel B. Fisher". The signature is written in a cursive, flowing style.

Daniel B. Fisher, Esq.
Vice President of Government & External Affairs