

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Request for Public Comment Regarding “Gender-Affirming Care” for Minors [FTC-2025-0264]

Introduction

Public Knowledge submits these comments in response to the Federal Trade Commission’s (hereinafter “FTC”) Request for Public Comment on their July 9 workshop entitled “Gender-Affirming Care” for Minors.

The Federal Trade Commission is breaking down

The Federal Trade Commission (FTC) is an independent federal agency charged with promoting fair competition and protecting the public from unlawful business practices. The FTC’s mission is to protect consumers, workers, and honest businesses from anticompetitive, deceptive, and unfair practices across the economy. Over its century-long history, the FTC has prioritized addressing novel and important challenges that arise from the development and deployment of new technologies to ensure our markets are fair and free from monopolistic restraints.

No norms is the new normal

Breaking from longstanding agency precedent, the FTC did not open a docket for public comment in connection with its July 9 workshop, “The Dangers of ‘Gender-Affirming Care’ for Minors.” Former FTC officials noted that the agency barred public attendance, excluded dissenting perspectives, and amplified only anti-transgender voices—with 28-year FTC veteran and former Executive Director Eileen Harrington saying: “Good government processes promote democratic engagement. In contrast, authoritarian government processes only allow for one point of view – and that’s what we saw...” In response to this break from agency norms, civil society organization Fight for the Future is hosting its own public comment docket for 60-days.

Rather than harp on the FTC’s exploitation of its consumer protection mandate and politicization of well-established medical practices, Public Knowledge urges Chairman Ferguson and FTC staff to conduct business as it was designed; as a bipartisan, independent agency that addresses ongoing consumer harms created by consolidated industries like price gouging, supply chain shocks, and overall product quality.

We call on the FTC to reverse their dereliction of duty and follow-through on competition and consumer protection efforts. Specifically, the FTC must:

1. Clarify what constitutes a “sale” of digital goods in a way that reflects traditional ownership rights;
2. Support the reinstatement of minority commissioners and return to operating as a bipartisan, independent agency.

Digital ownership is real ownership

Public Knowledge urges the FTC to reduce legal uncertainty and pass a federal standard for digital ownership. Specifically, we ask the agency to clarify what constitutes a “digital sale” in order to protect consumers nationwide and provide industry stakeholders with a uniform set of expectations. There’s bipartisan appetite for such a standard: In 2021, the Commission voted 5-0 to direct law enforcement against illegal repair restrictions that violate antitrust laws or the FTC Act’s prohibitions on unfair or deceptive acts and practices.¹

In a May 2025 letter, Public Knowledge and an alliance of public interest organizations, library groups, and consumer rights advocates called for the FTC to clarify expectations and standardize the definitions of ownership and “sale” of goods. As stated in the letter:

“Americans understand ownership to mean more than mere temporary access—it means control. It means they have bought something, not leased it on someone else’s terms. These expectations do not vanish when the format shifts from physical to digital. Yet today’s digital platforms often advertise a “sale” while delivering only a revocable license—without disclosing the limitations until after the purchase. This is not just a failure of transparency; it is a distortion of basic consumer understanding.

To that end, we urge the FTC to define the term digital sale in a way that reflects traditional ownership rights. Specifically, a transaction should only be labeled as a sale if it includes:

- **The Right to Use:** Ownership must mean continued access and the ability to use the digital product. If a digital store closes or a service ends, users should retain functional access to their media.

¹ “FTC to Ramp up Law Enforcement against Illegal Repair Restrictions.” Federal Trade Commission, 21 July 2021, www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegal-repair-restrictions.

- **The Right to Preserve:** Consumers must have the technical and legal ability to archive, repair, and back up digital purchases. Ownership must allow consumers to ensure they can still access and use their stuff even after a platform ends support or the content is removed from a catalog.
- **The Right to Transfer:** Like physical goods, digital products should be transferable. Whether by lending to a friend, leaving to children in a will, donating to a library, or reselling, consumers deserve to exercise this traditional ownership prerogative.”

Today, we reiterate these provisions and call for Chairman Andrew Ferguson to clarify ambiguous ownership rights in the digital age. A transaction cannot constitute a “sale” if the buyer is unable to take possession of the digital product at the time of purchase and instead can access it only through a proprietary device or platform. The FTC's own findings in its May 2021 [Nixing the Fix report](#) underscore why repair restrictions, revocable licenses, limited access rights, and prohibitions on transferability are inconsistent with established principles of ownership.

Correct the monopolization and copyright conspiracies

In its *Nixing the Fix* report, the FTC expressly pledged:

“While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years, the Commission has determined that it will devote more enforcement resources to combat these practices... Accordingly, the Commission will now prioritize investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act and Section 5 of the FTC Act.”

The report also committed the FTC to work with state and federal lawmakers, promising to “coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.” That language made clear the agency was primed for action. Yet, more than four years later, enforcement remains limited despite mounting evidence of anticompetitive repair restrictions, and growing support for legislative [right-to-repair reforms](#).

Manufacturers and sellers cite intellectual property (IP) rights and “protecting trade secrets” to justify revoking, altering, or restricting access to digital products and applications. While protection of IP is a legitimate concern, these claims are often used as a pretext to limit

aftermarket competition and consumer autonomy—a direct violation of domestic antitrust laws.² Some manufacturers argue that expanding user control over digital products [e.g. allowing repairs, modifications, or transfers] could lead to copyright infringement. Such positions are based on the premise that users, by exercising ownership-like rights, may exceed the scope of the license granted or violate access controls protected under the The Copyright Act and the Digital Millennium Copyright Act (DMCA).

However, copyright protections are not absolute.³ Courts and scholars have affirmed that [copyright](#) and [intellectual property](#) do not override [lawful ownership rights](#) and cannot be used to prohibit legitimate repair or restrict competition under the guise of infringement prevention. The Copyright Act covers statutory limitations that support the right to repair and lawful use of purchased products, namely the “first sale” doctrine and fair use cases:

- **Section 109 ("First Sale" Doctrine)** allows individuals who lawfully acquire a copy of a copyrighted work to use, resell, or lend that copy without the copyright owner's permission—affirming consumers’ “right to repair”.
- **Section 117(c)** explicitly allows the owner or lessee of a machine to make copies of a computer program as needed for the maintenance or repair of that machine.

Altogether, these provisions and precedents illustrate that copyright protections are not a blank check. Courts favor personal autonomy and have also rejected the idea that copyright law can be used to suppress competition, restrict independent repair, or eliminate aftermarket competition. Nonetheless, the DMCA carves out safe harbor measures for online service providers (OSPs) and establishes a notice-and-takedown process to shield OSPs from liability for user-posted content, provided they respond appropriately to infringement claims. Legal scholars reinforce this interpretation. Despite the DMCA’s intent to prevent piracy, courts, regulators—and other lega

² *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992). The FTC, along with the Illinois and Minnesota Attorneys General, later relied on these statutes in *FTC v. Deere & Co.* (2025). <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-states-sue-deere-company-protect-farmers-unfair-corporate-tactics-high-repair-costs>

³ Manufacturers and sellers typically point to *17 U.S.C. § 1201* of the Digital Millennium Copyright Act (DMCA), which prohibits the circumvention of technology barriers to copyrighted works.

scholars—have acknowledged that its anti-circumvention provisions should not be weaponized to suppress legitimate repair and competition.^{4 5 6}

“Safety” and “accountability” claims protect market dominance, not public welfare

Manufacturers justify repair restrictions by citing physical safety and cybersecurity concerns for consumers and repair workers, but the *Nixing the Fix* report debunks these claims.

Firstly, the report describes how manufacturers have invoked the FTC’s 2015 [Internet of Things \(IoT\) staff report](#) and its [Start with Security](#) framework to justify limiting consumer access to digital repair tools, software, and diagnostics—framing these restrictions as necessary for accountability and product integrity. In reality, these arguments serve to protect market dominance rather than users. Manufacturers claim that unauthorized repairs pose safety risks and assert a need for lifecycle oversight, yet they have failed to provide empirical evidence supporting these claims.

Likewise, during public comment periods, manufacturers were unable to demonstrate that consumer or independent repairs present meaningful safety concerns. Regulatory agencies and courts have rejected generalized safety justifications as insufficient. The only cited incident—a 2011 mobile phone battery failure in Australia—was cited repeatedly by industry trade associations and tech lobbyists despite no broader data linking injuries to independent repairs.⁷

⁴ In *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451 (1992), and *FTC v. Actavis, Inc.*, 570 U.S. 136 (2013), courts affirmed that asserting IP rights does not shield a manufacturer from antitrust liability when those rights are used to unlawfully exclude competitors.

⁵ In *Philips North America LLC v. Advanced Imaging Services, Inc.*, No. 8:22-cv-01513, 2023 WL 6215293 (C.D. Cal. Sept. 6, 2023), a federal court denied Philips’ motion to dismiss a claim by an independent repair provider. The plaintiff alleged that the manufacturer used software updates with “no legitimate business reason” to exclude third-party repairers—all under the pretext of copyright protection.

⁶ As Pamela Samuelson noted in *Freedom to Tinker*, IP rights must be balanced against consumer rights and market competition. See Pamela Samuelson, *Intellectual Property and the Regulation of Aftermarkets* (2016), <https://doi.org/10.2139/ssrn.2800362>.

⁷ *Nixing the fix: An FTC report to Congress on repair restrictions*, Federal Trade Commission, at 41 (May 2021) (“Other than citing to the mobile phone thermal runaway occurring in Australia in 2011, manufacturers provided no data to support their argument that injuries are tied to repairs performed by consumers or independent repair shops...nor have manufacturers provided factual support for their statements that authorized repair persons are more careful or that individuals or independent repair shops fail to take appropriate safety precautions, or that independent repair workers who enter homes pose more of a safety risk to consumers than authorized repair workers.”), 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.

⁸Manufacturers also failed to substantiate claims that third-party technicians are less careful or more likely to endanger users than authorized repair providers operating in consumers' homes.⁹
10 11

Furthermore, the report outlines how repair restrictions disproportionately burden communities of color and low-income populations. Black and Hispanic Americans were nearly twice as likely as white Americans to lack home broadband and rely solely on smartphones for internet access; *Nixing the Fix* also highlights the outsized financial and regulatory burdens that restrictions place on small repair businesses, many of them owned by people of color.^{12 13}

⁸ Gloria, Glenda. "iPhone Incident: Australia Warns about Overheating." RAPPLER, 4 May 2012, www.rappler.com/life-and-style/4796-iphone-incident-australia-warns-about-overheating/.

⁹In a 2018 public workshop, the Food and Drug Administration (FDA) declined to impose additional burdens on independent repair providers, concluding that "the currently available objective evidence is not sufficient to conclude whether or not there is a widespread public health concern related to servicing of medical devices, including by third-party servicers" (U.S. Food and Drug Administration, 2018, p. i). *FDA report on the quality, safety, and effectiveness of servicing of medical devices*. <https://www.fda.gov/media/113431/download>.

¹⁰The automotive industry offers a useful precedent: following Massachusetts' 2012 right-to-repair law, major car manufacturers and independent repair associations entered into a 2014 memorandum of understanding (MOU) committing to share the same diagnostic tools and service information available to authorized dealers. This voluntary agreement helped standardize access across the industry and could be replicated within the tech sector to balance innovation, safety, and consumer rights (Alliance for Automotive Innovation, n.d.). *Automotive right to repair: Myth and fact sheet*. <https://www.autosinnovate.org/factsheet/Automotive%20Right%20to%20Repair%20Myth%20and%20Fact%20Sheet.pdf>

¹¹Numerous public comments submitted to the FTC's 2021 *Nixing the Fix* initiative raised concerns about manufacturers' compliance with the Magnuson-Moss Warranty Act (MMWA) and the broader consequences of repair restrictions: (1) former Marine officer Lucas Kunce and Marine logistics officer Elle Ekman described harms to military readiness caused by limited repair access; (2) the International Institute for Industrial Environmental Economics identified patent and trademark laws as key legal barriers preventing consumers and independent repair providers from buying, selling, and performing repairs in both the U.S. and the E.U. See Federal Trade Commission, *Nixing the fix: An FTC report to Congress on repair restrictions* [Public comments] (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.

¹² Pew Research Center found that "with fewer options for online access at their disposal, many lower-income Americans are relying more on smartphones. As of early 2019, 26% of adults living in households earning less than \$30,000 a year are 'smartphone-dependent' internet users—meaning they own a smartphone but do not have broadband internet at home. This represents a substantial increase from 12% in 2013. In contrast, only 5% of those living in households earning \$100,000 or more fall into this category in 2019." See Monica Anderson & Madhumitha Kumar, *Digital divide persists even as lower-income Americans make gains in tech adoption*, Pew Research Center (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

¹³ Povich, E. S. (2021, March 11). *Pandemic drives phone, computer 'right-to-repair' bills*. Pew Charitable Trusts. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/03/11/pandemic-drives-phone-computer-right-to-repair-bills>

The Commission wrote in *Nixing the Fix*, “The record contains no empirical evidence to suggest that independent repair shops are more or less likely than authorized repair shops to compromise or misuse customer data.” The FTC goes on to state, “The record does not establish that repairs conducted by independent repair shops would be inferior to those conducted by authorized repair shops if independent repair shops were afforded greater access to service manuals, diagnostic software and tools, and replacement parts.” These so-called safety and accountability measures are not safeguards for consumers, but strategic levers to lock out competition and maintain market dominance.

The FTC should support the reinstatement of minority commissioners because protecting consumers isn’t a partisan exercise

The FTC was designed to be a bipartisan, independent agency, not a tool for partisan gamesmanship. Currently, the agency operates under a 2-0 Republican majority, a reversal of the very criticisms once aimed at the Commission during the Biden administration’s 3-0 alignment under Chair Khan.¹⁴ ¹⁵ The refusal to fill vacant seats degrades the Commission’s legitimacy. In fact, it was President Trump who nominated Commissioner Slaughter in 2018.¹⁶

This decision comes amid growing concern about the Commission’s procedural breakdowns and erosion of bipartisan norms. Just over a year ago, Commissioner Andrew Ferguson himself [praised](#) broad deliberation and internal consensus at a Mercatus Center event, stating, “Multi-member bipartisan commissions were created...to test theories internally before marching them out the door...Having multiple people have to come together and reach a consensus to make a decision promotes sound decision-making”

¹⁴ In the October 2024 staff report, the House Oversight Committee asserted that “Chair Khan has abused her authority at the agency, trampling on the due process rights of regulated parties, upending the rule of law, and violating ethics standards she is bound to uphold.” See U.S. House of Representatives, Committee on Oversight and Accountability, *The Federal Trade Commission Under Chair Lina Khan: Undue Biden-Harris White House Influence and Sweeping Destruction of Agency Norms* (Oct. 31, 2024) (staff report), at 5.

¹⁵ House Energy and Commerce Chair Rep. Cathy McMorris Rodgers admonished former Chair Khan during an April 2023 hearing on FTC overreach that, “given these abuses of power, what is clearly needed before Congress considers any new authorities or funding are reforms, more guardrails, and increased transparency to ensure you are accountable to the American people.” See U.S. House of Representatives, Committee on Energy and Commerce, *Chair Rodgers on FTC Chair Khan’s abuses of power: Leadership matters* (Apr. 2023) <https://energycommerce.house.gov/posts/chair-rodgers-on-ftc-chair-khan-s-abuses-of-power-leadership-matters>.

¹⁶ The White House. (2018, March 26). President Donald J. Trump announces intent to nominate and appoint personnel to key administration posts. National Archives. <https://trumpwhitehouse.archives.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-personnel-key-administration-posts/>

Citing disdain for the FTC’s lack of collegiality and departure from bipartisanship, former Commissioners Christine Wilson and Noah Phillips [underscored](#) that diversity of opinion strengthens policy and shields the agency from politicized attacks:

“Each Commissioner brings varied perspectives and policy preferences to this job that enable the body to consider issues in a far more comprehensive way than any one of us would or could on his or her own. FTC staff have similarly varied perspectives, professional experiences, and comparative advantages. While we may not always agree with each other or with staff, our analysis is deeper and richer because of staff’s recommendations and insights, particularly when our analyses diverge.

Crushing internal dialogue diminishes the quality of our decision making and gives our detractors more ammunition. Process matters, so let’s get it right.”

With President Trump now in his final term, we cannot allow the current imbalance at the FTC to become the new normal. Despite its directive to operate independently, the FTC is rapidly losing credibility as a nonpartisan regulator. Single party agency action invites litigation, erodes public trust, and creates regulatory uncertainty. To restore its reputation and protect the public interest, the FTC must reassert its independence, rebuild its bipartisan structure, reengage in internal dialogue, and uphold long-standing norms of shared oversight.

Public Knowledge¹⁷

¹⁷ This comment was authored by Emily Rollman and Sara Collins.