



UNITED STATES COPYRIGHT OFFICE

## Long Comment Regarding a Proposed Exemption Under 17 U.S.C. § 1201

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### ITEM A. COMMENTER INFORMATION

The Alliance for Automotive Innovation (“Auto Innovators”) submits this comment in opposition to the adoption of the proposed exemption of Class 7. Auto Innovators, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers (“Auto Alliance”), is the singular voice of the automotive industry and includes motor vehicle manufacturers, original equipment suppliers, and technology and other automotive-related companies and trade associations. For further details, see <https://www.autosinnovate.org/>.

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### ITEM B. PROPOSED CLASS ADDRESSED

The existing exemption codified at 37 CFR § 201.40(b)(13) allows circumvention of access controls on certain motor vehicle software for diagnosis, repair or lawful modification of a vehicle function (“existing vehicle exemption”). The October 19, 2023 Notice of Proposed Rulemaking (NPRM) identified petitions seeking a new vehicle exemption to “access, store, and share vehicle operational data, including diagnostic and telematics data” from “a lawfully acquired motorized land vehicle or marine vessel such as a personal automobile or boat, commercial vehicle or vessel, or mechanized agricultural vehicle or vessel,” and purports to limit circumvention “to lawful vehicle owners and lessees, or those acting on their behalf.”<sup>1</sup> In their comments supporting the proposed exemption of Class 7, MEMA, the Vehicle Suppliers

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<sup>1</sup>See *Exemptions To Permit Circumvention of Access Controls on Copyrighted Works: Notice of Proposed Rulemaking*, 88 Fed. Reg. 71987, 72026 (Oct. 19, 2023) (“NPRM”).

**Privacy Act Advisory Statement:** Required by the Privacy Act of 1974 (P.L. 93-579)

The authority for requesting this information is 17 U.S.C. §§ 1201(a)(1) and 705. Furnishing the requested information is voluntary. The principal use of the requested information is publication on the Copyright Office website and use by Copyright Office staff for purposes of the rulemaking proceeding conducted under 17 U.S.C. § 1201(a)(1). NOTE: No other advisory statement will be given in connection with this submission. Please keep this statement and refer to it if we communicate with you regarding this submission.

Association (MEMA) and the Specialty Equipment Market Association (SEMA) (together, “Proponents”) argue in favor of this new exemption.<sup>2</sup>

For the reasons stated below, we oppose this new vehicle exemption as it relates to personal automobiles. These comments do not address whether this exemption should be adopted or rejected with respect to circumvention to access, store, and share such data from marine vessels, commercial vehicles or vessels, or mechanized agricultural vehicles or vessels.

### ITEM C. OVERVIEW

In nine pages of total commentary, Proponents have not provided even a single example of a user who has been unable to diagnose, repair, or make lawful modifications of his or her automobile because of the defined scope of the existing vehicle exemption. Nor have they submitted any evidence demonstrating that users will probably encounter such difficulties in the next three years. It was Proponents’ burden to do so under both Section 1201 and the rules of these proceedings.

Instead, Proponents have identified four categories of proposed uses for the data they seek, that they claim, without substantiation, are either now being adversely affected or will be adversely affected in the future.<sup>3</sup> Of those four uses, two are already permitted based on agreements and commitments made by Auto Innovators and others, or because the data can be obtained through third-party apps and services without the need for circumvention.<sup>4</sup> A third use relates to mere inconveniences caused by the auto repair process, which is not a copyright concern. And the fourth use broadly encompasses use types that either are already permitted or which are rightly prohibited for reasons relating to safety.

Even though they have not met their burden, Proponents assert an argument that their proposed activities constitute fair use. Courts have long held, however, that fair use is not a defense to a section 1201 anti-circumvention claim, because Congress intended to give claimants a right of access control that is distinct from traditional infringement of exclusive rights enumerated under section 106.<sup>5</sup>

Proponents also have not shown that current restrictions are the cause of any purported adverse effects they face. In addition to failing to show any actual harm suffered by anyone, Proponents frequently fail to note that they have access to the same information which would be

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<sup>2</sup> See *Comments of MEMA, The Vehicle Suppliers Association, to the U.S. Copyright Office on a Proposed Exemption Under 17 U.S.C. § 1201* (Dec. 22, 2023) (“MEMA Comment”); *Comments re Proposed Class: Class 7 (Computer Programs–Vehicle Operational Data)*, submitted by Specialty Equipment Market Association (Dec. 21, 2023) (“SEMA Comment”). MEMA’s seven-page submission sets forth the substance of the issues discussed in this response. SEMA has joined in and adopted MEMA’s arguments with a two-page submission of its own, but has not submitted any additional substantive comment.

<sup>3</sup> See MEMA Comment at 2-3.

<sup>4</sup> See Exhibit A, Exhibit B.

<sup>5</sup> See, e.g., *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 443 (2d Cir. 2001) (recognizing that section 1201(c)(1) “clearly and simply clarifies that the DMCA targets the *circumvention* of digital walls guarding copyrighted material, as well as trafficking in circumvention tools, but it does not concern itself with the *use* of those materials after circumvention has occurred”) (emphasis in original).

found in telematics data needed for diagnostics and repair due to a data sharing commitment signed within the past year by Auto Innovators and others.

#### **ITEM D. TECHNOLOGICAL PROTECTION MEASURE(S) AND METHOD(S) OF CIRCUMVENTION**

Proponents' submissions do not describe the relevant TPMs with any specificity. They generically state that the proposed exemption would "permit circumvention of technological protection measures ("TPMs") that control access to electronic control units ("ECUs") that are contained in and control the functioning of a lawfully acquired motorized land vehicle or marine vessel such as a personal automobile . . . to allow lawful vehicle owners and lessees, or those acting on their behalf, to access, store, and share vehicle operational data, including diagnostic and telematics data."<sup>6</sup> Aside from reference to prior DMCA triennial rulemakings, which discussed TPMs that restrict access to ECUs (such as challenge-response mechanisms, encryption, and disabled access ports on circuitry itself), Proponents do not identify the specific TPMs that this proposed exemption would affect.

In terms of describing the relevant methods of circumvention, Proponents do not provide detail beyond stating that they "seek the ability to circumvent TPMs that restrict access to copyrighted vehicle software programs solely to allow vehicle owners and lessees or those acting under their direction to copy, download, and otherwise utilize the non-copyrightable data stored within those copyrightable works."<sup>7</sup> Proponents admit that this activity will result in some degree of copying, but contend that any copied data would be limited, fleeting, and could be deleted after the targeted data is obtained.<sup>8</sup>

#### **ITEM E. ASSERTED ADVERSE EFFECTS ON NONINFRINGING USES**

##### **I. Proponents Do Not Describe The Relevant Vehicle Operational Data, Nor The Purpose Of Its Use, With Any Specificity**

Proponents have not provided anything beyond a very general description of the vehicle operational data they seek, and they have set forth only a vague sketch of their proposed uses of that data. MEMA's proposed language for "an exemption that contains reasonable limitations to protect third-party intellectual property rights and to ensure safety and regulatory compliance" exemplifies this. The proposed language largely parallels the language in the existing exemption for maintenance and repair, but includes key differences that give the exception an exceedingly broad scope, likely by design and certainly without appropriate justification.

Unlike the existing exemption codified at 37 CFR § 201.40(b)(13), MEMA's proposed language does not include an exception for programs accessed through a separate subscription service. Nor is the proposed language tied to necessity, nor is it limited to diagnosis, repair, or lawful modification of a vehicle, as is the case in the current exemption. And, the proposed

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<sup>6</sup> MEMA Comment at 1-2.

<sup>7</sup> MEMA Comment at 4.

<sup>8</sup> *Id.*

exemption allows for the access, storage, and sharing of such data without limitation to any specified purpose (e.g. non-commercial or lawful use).

Most problematic, the term “vehicle operational data,” as used in MEMA’s proposed language, is loosely defined to include “diagnostic and telematics data,” with no further description. Consequently, “vehicle operational data” can be read broadly to cover not only data generated by a driver’s use of the vehicle, but other data stored in the vehicle which are necessary for its technical operation or performance (e.g., vehicle, ECU, engine, or sensor calibration data) but which are not related to a specific driver. As such, this data may be protected not only by copyright, but also as trade secrets of the vehicle manufacturer. Allowing access to such data (including to third parties with no limitations regarding the scope of use) could therefore be incredibly damaging to manufacturers.

## II. Proponents Have Failed To Establish Any Adverse Effects On Noninfringing Uses

As set forth in the NPRM, “before the Office can recommend a temporary exemption from the prohibition on circumvention, the record must establish that ‘persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition . . . in their ability to make noninfringing uses under [title 17] of a particular class of copyrighted works.’”<sup>9</sup> And, the instructions provided for commenters to fill out these submission forms state: “*Commenters should demonstrate, or refute, that the asserted adverse effects are real, tangible, and concrete, and not merely hypothetical, theoretical, or speculative—that is, they are not merely possible, but probable.*”<sup>10</sup>

Proponents identify four claimed adverse effects of restrictions imposed by TPMs and current law which they claim are “evident today” and are “likely to become even more so over the next three years.”<sup>11</sup> Specifically, Proponents assert that current restrictions will:

1. “Stifle competition” by providing “exclusive control” over data by the original equipment manufacturer, making it “more difficult for owners and lessees to exercise genuine choice in the service and aftermarket parts markets, which will ultimately result in less competition and higher prices for consumers.”
2. Restrict access to driving records and vehicle logs that could be used to monitor or evaluate the driving habits of new drivers using the family car.
3. Create inefficiencies in vehicle repair and maintenance processes by making it more difficult for independent service providers to know exactly what parts to have on hand, making repairs more inconvenient and time-consuming for vehicle owners and lessees.<sup>12</sup>

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<sup>9</sup> NPRM at 72014.

<sup>10</sup> See Long Comment Form, Ninth Triennial Section 1201 Proceeding, 2024 Cycle.

<sup>11</sup> MEMA Comment at 2-3.

<sup>12</sup> “Rather than leaving a car in the garage for days or weeks awaiting replacement parts or making multiple trips to the garage, the service provider would know which specific replacement parts are needed and have them ready.” MEMA Comment at 3.

4. Prevent vehicle owners from personalizing or customizing their vehicles, such as by “preventing owners with disabilities from enhancing accessibility; improving vehicle energy efficiency; changing audio settings; eliminating distracting software features or functions; and turning off or customizing self-driving and driver-assist technologies.”

In connection with these four categories, Proponents have not provided even a single example of a user who has been unable to diagnose, repair, or make lawful modifications of his or her automobile because of the defined scope of the existing vehicle exemption. Nor have they made any effort to evaluate these purported adverse effects in the context of section 1201(a)(1)(C)’s five statutory factors.<sup>13</sup> Consequently, each of the above bases is unsupported, and Proponents’ claimed harm is purely theoretical, hypothetical and speculative.

A. Third-Party Servicers Already Have Authorized Access to Circumvention Tools

Despite the fact that Section 1201(a)(1)(C) asks commenters to evaluate, among other factors, “the availability for use of copyrighted works,”<sup>14</sup> Proponents ignore that vehicle owners and lessees possess a significant number of alternate channels to obtain the data sought by Proponents without the need for circumvention. As Auto Innovators has detailed in past submissions, independent repair shops already have access to all necessary diagnostic and repair tools and information. In 2002, automakers committed to make available to third-party servicers emission and non-emission related information, a commitment that has been updated several times.<sup>15</sup> In 2014, the two predecessor automotive trade associations that have since combined to form Auto Innovators signed a Memorandum of Understanding (“MOU”)<sup>16</sup> in which they committed to provide independent repair facilities and owners access to the same diagnostic and

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<sup>13</sup> Section 1201(a)(1)(C) states in pertinent part as follows:

During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights . . . shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine—

- (i) the availability for use of copyrighted works;
- (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
- (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
- (v) such other factors as the Librarian considers appropriate.

<sup>14</sup> This is further reinforced in the instructions for submitting these comments, which states in pertinent part: “*in analyzing the first statutory factor, commenters should examine whether there are any potential alternatives that permit the asserted noninfringing use(s) without the need for circumvention, and whether such potential alternatives are realistic options.*” See Long Comment Form, Ninth Triennial Section 1201 Proceeding, 2024 Cycle.

<sup>15</sup> See Alliance for Automotive Innovation (Auto Innovators), Comments in Response to Petitions to Renew the “Streamlined Renewal Process” Exemption (Sept. 8, 2020) (“Auto Innovators Renewal Comment”) at 3-4.

<sup>16</sup> A copy of the MOU and its incorporated “Right to Repair” Agreement (R2R Agreement) is attached to this submission as Exhibit A.

repair information that manufacturers provide to franchised dealers, and to make available to owners and independent repair facilities diagnostic repair tools that incorporate the same repair capabilities that manufacturers make available to dealers.<sup>17</sup>

The Auto Alliance comment in opposition to the proposed exemption on Class 7 during the 2018 rulemaking provided details on the MOU and its attached comprehensive “Right to Repair” or R2R Agreement.<sup>18</sup> As discussed, the MOU includes a dispute resolution panel (“DRP”) that can be invoked by any repair facility that believes an auto manufacturer has failed to provide information or tools required by the MOU on “fair and reasonable” terms.<sup>19</sup> Since the MOU entered into force, there has not been a single instance of an owner or independent repair facility employing the DRP, including to contest the MOU’s guarantee of a “fair and reasonable” price.<sup>20</sup> The MOU, therefore, ensures vehicle owners and independent repair facilities have all of the information and access necessary to diagnose vehicles and complete vehicle repairs.

In light of this longstanding commitment, Proponents’ assertions are completely unfounded. They provide no evidence that automobile owners have had any difficulty repairing their vehicles. Instead, they identify categories of non-infringing uses that they claim TPMs will adversely affect in the future “as computer programs become more integral to vehicles and perform more functions.” In particular, Proponents conclude that, as vehicles generate more and more data, restrictions imposed by TPMs and the law will make it “more and more difficult for owners and lessees to exercise genuine choice in the service and aftermarket parts markets,” resulting in “less competition and higher prices for consumers.” This is a purely hypothetical, speculative, evidence-free assertion that simply does not match up with the reality of a nationwide system in which manufacturers have fulfilled their legally mandated (emissions-related) and publicly stated (non-emissions-related) obligations to share with independent repair facilities and vehicle owners the same information necessary to diagnose and repair vehicles that they provide to dealers.<sup>21</sup> Thus, users are able to fully avail themselves of the existing vehicle exemption by repairing their vehicles themselves; or, if they require third-party assistance, taking their vehicles to an independent repair servicer that has access to all the same diagnostic and repair tools and information that are available to the dealer.

Additionally, in 2023, Auto Innovators, the Society of Collision Repair Specialists (“SCRS”) and the Automotive Service Association (“ASA”) executed an Automotive Repair Data Sharing Commitment (the “Data Sharing Commitment”), which “recognizes and reaffirms the belief that consumers should have access to safe and proper repairs throughout a vehicle’s lifecycle. Through the Data Sharing Commitment (a copy of which is attached as Exhibit B),

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<sup>17</sup>The obligations under the MOU to which the automakers committed have not changed since the merger of the Auto Alliance and the Association of Global Automakers, and remain in place today.

<sup>18</sup>See Auto Alliance, Class 7 Long Comment at 3-7 (Feb. 12, 2018).

<sup>19</sup>See Exhibit A, R2R Agreement, ¶ 6.

<sup>20</sup>Moreover, as stated in the 2018 Auto Alliance comment, the cost of items under the MOU is irrelevant to the scope of the existing exemption, and this proceeding is not the appropriate forum to debate issues of cost or competition.

<sup>21</sup>For example, the website OEM1Stop (<https://oem1stop.com/>) is a repository of diagnostics data that provides independent technicians with the most up to date repair information made available by each of the auto manufacturers, including start-up manufacturers such as Tesla and Rivian.

signatories committed to give vehicle owners and independent repair facilities access to, *inter alia*:

- The same diagnostic and repair information that a manufacturer makes available to its authorized dealers in electronic form.
- Vehicle diagnostic systems, onboard diagnostic and repair data systems integrated and entirely self-controlled within vehicles (including but not limited to diagnostic or service information systems integrated into an onboard display).
- Systems that provide direct access to onboard diagnostic and repair data through non-proprietary vehicle interfaces such as Ethernet, USB or DVD.
- Access to repair tools incorporating the same functional capabilities that a manufacturer makes available to its authorized dealers.

The Data Sharing Commitment further states that to the extent specific telematics, diagnostic and repair data is needed to complete a repair, and is also provided to authorized dealers, then the automaker must make the same information available to vehicle owners and independent repair facilities (if it is not otherwise available through a tool or third-party information provider).<sup>22</sup> The Data Sharing Commitment specifically notes that this “does not apply to any telematics data beyond what is necessary to diagnose and repair a vehicle.”<sup>23</sup>

Proponents therefore already have guaranteed access, and in many cases have had access for over a decade, to the very same information found in diagnostic and telematics data for which they now seek a new exemption.

B. Existing Third-Party Apps And Services Provide Access To Personal Driving Records And Vehicle Logs That Could Be Used To Evaluate Driving Habits

Proponents also assert that TPMs and current law restrict access to driving records and vehicle logs that could be used to monitor or evaluate driving habits of new drivers. In doing so, they completely ignore that there exist numerous third-party apps and services, some of them free, that can be used to obtain exactly this type of data for the same purpose and without the need for circumvention.<sup>24</sup> Apps and services of this nature allow one to monitor a car’s speed, location, and even acceleration and braking, generally through the use of GPS-enabled devices.<sup>25</sup> They also allow users to create a “geo-fence” around a particular area (such as a school,

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<sup>22</sup> See Exhibit B at 2 (Telematics).

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., <https://www.life360.com/driving-safety/> (Life360 “Safe Driving App” that provides users with “family driving summaries” and “individual driver reports”); <https://www.bouncie.com/family> (“Bouncie” app designed for families to share location, trip details, driving habits and summaries, and vehicle diagnostics); <https://appadvice.com/app/truemotion-family-safe-driving/1121316964> (“TrueMotion Family is a FREE family-oriented app that gives you a complete picture of your family’s driving safety.”).

<sup>25</sup> Insurers also use apps such as these to collect exactly this type of data in order to, for example, determine whether insureds qualify for save driver discounts.

workplace, or even entire region) and send an alert when the car crosses a boundary.<sup>26</sup> Some of these apps and services have been available for several years, and while they are commonly advertised for parents to use with their teenagers, they also can be used to monitor the driving habits of senior citizens.<sup>27</sup> This is yet another existing avenue for vehicle owners and lessees to obtain the same information sought by Proponents in these proceedings, without the need for circumvention.<sup>28</sup>

### C. Inconvenience Does Not Constitute Substantial Adverse Impact

Proponents next contend that current restrictions create “inefficiencies in vehicle repair and maintenance processes,” and claim that, if the proposed exemption is adopted, repairs could happen quicker because service providers could use the data they obtain to ensure they have all necessary replacement parts on hand. But, Proponents once again have not provided a single example of any owner or lessee having had such difficulty. And more fundamentally, in using this proceeding to attack the alleged inefficiency of vehicle repair and maintenance processes, proponents’ unsubstantiated complaints are misplaced. Previously, in its 2017 Report on Section 1201 (1201 Report), the Copyright Office reiterated its statement from the 2015 Recommendation that “rulemaking must be ‘principally focused on the copyright concerns implicated by any proposed exemption.’”<sup>29</sup> The Copyright Office should therefore reject Proponents’ call for the Office to attempt to deregulate the market for auto repair tools because this is clearly not a copyright concern. The speed with which independent services and automobile dealers are able to obtain parts in order to conduct repairs is at best marginal to this proceeding. To the extent that it is relevant, it does not match up with the reality of a nationwide system in which manufacturers have fulfilled their publicly stated obligation to share with independent facilities and interested owners essentially all the information related to diagnosis and repair that they provide to dealers. Moreover, throughout the history of this proceeding, and faithful to Congressional intent, it has been a truism that *de minimis* impacts or “mere inconveniences . . . do not rise to the level of a substantial adverse impact.”<sup>30</sup> Proponents’ evidence-free assertions that they should be allowed to circumvent because making use of the information and tools made available to them pursuant to the MOU, R2R Agreement and Data Sharing Commitment would be too burdensome or time-consuming are just the sort of

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<sup>26</sup> See <https://www.consumerreports.org/cro/magazine/2014/07/how-to-track-your-teen-driver/index.htm>

<sup>27</sup> See *id.*

<sup>28</sup> Related to this proposed use, much attention has been paid recently, including by the FCC, to the possibility of domestic abusers and stalkers using connected vehicle features to track the movements and locations of their victims. Indeed, just last month FCC Chairwoman Jessica Rosenworcel sent letters to several automakers raising the issue, and asked each of the automakers if they have “policies or processes in place to remove access to connected apps, devices, or other features from certain individuals” upon request by survivors of domestic violence or abuse. See <https://news.bloomberglaw.com/privacy-and-data-security/fcc-quizzes-tesla-ford-gm-on-abuse-of-location-tracking-tech#>. Allowing free access to the data sought by Proponents could make this concern even more acute, and place victims in further danger.

<sup>29</sup> See U.S. Copyright Office, *Section 1201 of Title 17: A Report of the Register of Copyrights* (“1201 Report”) at 125 (quoting from the 2015 Recommendation).

<sup>30</sup> See *id.* at 28 (quoting the Commerce Committee Report and the House Manager’s Report); see also NPRM at 72014-15 (indicating that proponents must show “‘distinct, verifiable, and measurable impacts’ compared to ‘de minimis impacts.’”).

complaints the Office and Librarian should reject. The assertion that alternatives may take longer than circumvention should not validate claims that an exemption should be granted.<sup>31</sup>

D. Owners And Lessees Already May “Personalize Or Customize” Their Vehicles In Ways Identified By Proponents, And Other Identified Uses Either Are Not Copyright Concerns Or Create Safety Hazards

In their fourth category, Proponents submit a smattering of hypothetical concerns—again with no evidence that any actual vehicle owners or lessees have suffered harm—arguing that TPMs and current law prevent vehicle owners from “personalizing or customizing their vehicles,” providing examples such as allowing disabled drivers to enhance accessibility, “improving energy efficiency,” “changing audio settings,” “eliminating distracting software features or functions,” and “turning off or customizing self-driving and driver-assist technologies.” Setting aside whether it is appropriate for the Copyright Office to consider such non-copyright issues, there is no evidence that these concerns actually exist.<sup>32</sup> For example, cars commonly are customized to allow for accessibility modifications, and manufacturers have for years provided various options to customize the driving experience (*e.g.*, the ability to switch between sport, eco, and “comfort” mode), as well as robust features that allow users to customize audio and other settings. With respect to other identified concerns, to the extent that they even are copyright concerns, the restrictions are in place for good reason. Automobile manufacturers cannot allow drivers to, for example, turn off safety features that they deem annoying, nor can they allow individuals the ability to freely modify technology like autonomous driving features, though individuals of course retain the right to turn the system on or off through in dash settings. Allowing modification could create massive potential safety risks for the public at large, not to mention the possibility of increased litigation for automobile manufacturers.

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<sup>31</sup> See, *e.g.*, U.S. Copyright Office, Section 1201 Rulemaking: Third Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 75-76 (2006) (“2006 Recommendation”) (denying exemption to allow circumvention of region coding on DVDs, because “there are numerous options available to individuals seeking access to content from other regions,” including purchasing additional DVD players or DVD-ROM drives set to play products from other regions); U.S. Copyright Office, Section 1201 Rulemaking: Fourth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights 224 (2010) (“2010 Recommendation”) (noting that it is “not the purpose of this rulemaking to provide consumers with the most cost-effective manner” to access copyrighted material; “[t]he statute does not provide the Register with the responsibility of enabling the most convenient method”; and where “there are many reasonably-priced alternatives that may fulfill the consumers’ wants and needs.... purchasing a DVD player is not an unreasonable, cost-prohibitive alternative” to circumvention so that DVDs can be played on incompatible operating systems); U.S. Copyright Office, Section 1201 Rulemaking: Fifth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention: Recommendation of the Register of Copyrights 47 (2012) (“2012 Recommendation”) (exemption denied because “abundant alternatives to circumvention” existed where non-infringing use [independent development of “homebrew” videogames and applications] can be carried out through programs sponsored by manufacturers, “even though there may be participation fees” for such programs).

<sup>32</sup> In the 1201 Report, the Copyright Office indicated “. . . that the rulemaking must be ‘principally focused on the copyright concerns implicated by any proposed exemption.’” See 1201 Report at 125.

### **III. Proponents' Proposed Uses Do Not Constitute Fair Use**

Proponents' failure to show any adverse effects created by current restrictions, in addition to the fact that Proponents already possess a number of other authorized means to gain access to the very same data they seek through the proposed exemption—without the need for circumvention—should be the end of this inquiry. Nonetheless, having admitted that the vaguely-described circumvention method needed to undertake their proposed uses necessarily would involve copying, Proponents claim that any copying undertaken by their proposal would constitute fair use. This defense, however, is inapplicable.

With respect to the use itself, Proponents claim that much of the data they seek is not copyrightable. Proponents assert that vehicle software programs collect and process “a large amount of raw data generated as a direct result of the owner or lessee’s use of and operation of the vehicle,” and note that such data may be stored as “unmodified raw data or may be processed and stored as part of an organized database schema.” While they acknowledge that manufacturers may claim copyright protection for database schema, they assert that “raw and unprocessed data is not capable of copyright protection because it is purely factual and the owner or lessee plays a significant role in producing that data.” Once again, though, Proponents provide no evidence at all to show which type of data would be obtained through circumvention. Furthermore, they ignore that if selectively arranged in a sufficiently creative manner, raw data certainly can be part of a copyrightable whole, and so the taking of a portion would constitute infringement.<sup>33</sup> There is simply no way of telling, based on Proponents’ conclusory assertions, and failure to include any evidence, exactly what they intend to access, or how.

Notwithstanding these defects, Proponents’ fair use analysis is entirely misplaced because fair use is not a defense to a section 1201 anti-circumvention claim. This principle has been recognized since the earliest days of the DMCA.<sup>34</sup>

### **IV. Proponents Have Not Shown That The Statutory Prohibition On Circumvention Prevents Vehicle Owners And Lessees From Using Telematics Data Or Vehicle Operational Data In A Non-Infringing Manner**

Proponents have not made a showing that the statutory prohibition on circumvention prevents vehicle owners and lessees from using the data they seek in a non-infringing manner.

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<sup>33</sup> *Feist Publications, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 348-49 (1991) (finding that selection and arrangement of data may be sufficiently original to give rise to copyright protection).

<sup>34</sup> Courts have explicitly treated fair use as independent of, and therefore inapplicable to, anti-circumvention limitations, noting that Section 1201(c)(1) “clearly and simply clarifies that the DMCA targets the *circumvention* of digital walls guarding copyrighted material, as well as trafficking in circumvention tools, but it does not concern itself with the *use* of those materials after circumvention has occurred.” *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 443 (2d Cir. 2001) (emphasis in original); *see also Universal City Studios, Inc. v. Reimerdes*, 82 F. Supp. 2d 211, 219 (S.D.N.Y. 2000) (precluding fair use defense against action for anti-circumvention and reasoning that “[i]f Congress had meant for the fair use defense to apply to such actions it would have said so”); *MDY Industries, LLC v. Blizzard Entertainment, Inc.* 629 F.3d 928, 950, (9th Cir. 2010), *as amended on denial of reh’g* (Feb. 17, 2011), *opinion amended and superseded on denial of reh’g* 2011 WL 538748 (9th Cir., Feb. 17, 2011) (recognizing that Congress did not intend fair use to be a defense to Section 1201, because the purpose of Section 1201 is to “prohibit even non-infringing circumvention and trafficking in circumventing devices”).

As set forth herein, vehicle owners and lessees possess myriad means to use telematics and vehicle operational data in a non-infringing manner thanks to commitments and agreements made by Auto Innovators and others. The MOU and R2R Agreement, for example, are commitments to provide independent repair facilities and owners access to the same diagnostic and repair information that manufacturers provide to franchised dealers, as well as commitments to make available to owners and independent repair facilities diagnostic repair tools that incorporate the same repair capabilities that manufacturers make available to dealers. To the extent that Proponents are unable to undertake certain of the uses they have identified, it is because they relate to mere inconvenience or they are prohibited for reasons relating to safety.

At present, Proponents have even less cause to complain, because the recent Data Sharing Commitment provides vehicle owners and independent repair facilities access to the same telematics, diagnostic and repair data provided to authorized dealers if it is needed to complete a repair. Vehicle owners and independent repair facilities therefore have access to precisely the types of telematics and repair data that Proponents claim to be pursuing through the proposed exemption.<sup>35</sup> To the extent Proponents claim to need anything different, they either have not identified it, it is not a proper request for purposes of these proceedings (*i.e.*, it is not copyright-related), or it is not data which is appropriate to be accessed by the public.

The comparisons that Proponents make to other exemptions and safe harbors under the DMCA—and Proponents’ claims that they have no corresponding protections—therefore do not hold water.

## V. Conclusion

Proponents have not met their statutory burden to identify adverse effects caused by the present statutory exemption. It is not necessary to provide vehicle owners, lessees, or independent repair facilities with access to telematics, diagnostic and repair data, because they already have access to such data due to agreements and commitments made by Auto Innovators and others and through third-party apps and services. Proponents’ other purported adverse effects amount either to inconvenience, concerns outside of copyright law and therefore outside the scope of this proceeding, or constitute inability to utilize circumvention tools to undertake activities that are rightly prohibited for reasons relating to safety. To the extent Proponents have shown the existence of any adverse impacts, their fair use analysis is misplaced. And, given the foregoing, it cannot be said that statutory prohibitions actually restrict anyone from storing, accessing, or using the data which Proponents seek by this proceeding, particularly considering the lengths to which Auto Innovators and others have gone to ensure that vehicle owners, lessees, and independent repair facilities have access to the same telematics, diagnostic and repair data that are provided to dealers.

All of this considered, Auto Innovators are struck by the lack of any factual support for Proponents’ proposed exemption, as well as the degree to which Proponents have simply ignored what the MOU, R2R Agreement, and Data Sharing Commitment already allow them to do. Auto Innovators question if Proponents have another, commercial goal in mind for the proposed

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<sup>35</sup> Exhibit B at 2.

exemption. To give just one example, it cannot be ignored that over the past decade plus, personal data has become one of the most lucrative and highly sought-after commodities in the world. Personal vehicle data in the form of telematics has the potential to be particularly valuable, but automakers and third parties are restricted in their ability to monetize such data.<sup>36</sup> In recent years, there have been sustained efforts by automotive aftermarket companies to lobby for legislation that would allow this data to be accessed, and Auto Innovators has spent significant time and effort lobbying against them.<sup>37</sup> Such efforts to obtain data are often cloaked in language that suggest they are part of a fight over vehicle “right to repair,” or are rooted in consumer protection concerns and support for small business.<sup>38</sup> In reality, the goal is to obtain such data for direct sales and marketing opportunities and extends far beyond information needed for diagnosis or repair.

While it ultimately is unclear whether this is Proponents’ driving objective, their submission’s lack of evidence and absence of reasoning, coupled with the broad scope of the exemption they seek, raises questions regarding their motives.

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<sup>36</sup> See Alliance for Automotive Innovation Memo (“No, your car isn’t spying...it’s keeping you safe”), December 2023 (“Automakers are prohibited from using this sensitive vehicle data for marketing purposes or from sharing this vehicle data with third parties – without consent.”).

<sup>37</sup> See Alliance for Automotive Innovation Memo (“Dig Deeper: Maine Telematics Ballot Initiative”), October 2022.

<sup>38</sup> See *id.*

Submission of The Alliance for Automotive Innovation represented by:  
Mark C. Humphrey, Partner, Mitchell Silberberg & Knupp LLP

**DOCUMENTARY EVIDENCE**

**Exhibit A**

**Memorandum of Understanding and Right to Repair (R2R) Agreement (January 15, 2014)**

**Exhibit B**

**Automotive Repair Data Sharing Commitment (July 2023)**

# EXHIBIT A



**AUTO ALLIANCE**  
DRIVING INNOVATION®

**AAIA**®  
**Automotive Aftermarket**  
Industry Association

**GlobalAutomakers** 



## MEMORANDUM of UNDERSTANDING

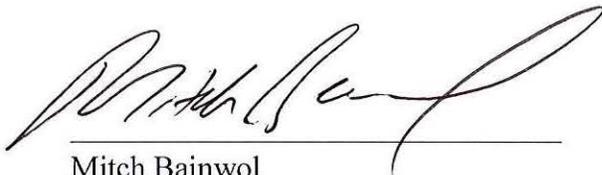
The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth (15th) day of January, 2014 and voluntarily agree as follows:

1. The Original Parties fully support this MOU and attached “Right to Repair” (R2R) agreement (“R2R Agreement”). Automobile manufacturer members of the Alliance and Global Automakers indicate their individual company’s agreement to comply with the MOU and R2R Agreement in all fifty (50) States and the District of Columbia through their individual letters of endorsement.
2. Until such time as the provisions of Section 2(c)(i) (common interface device) of the R2R Agreement have been fully implemented, with respect to model year 2018 and newer vehicles, for two years or January 2, 2019, whichever is earlier, and provided the OEMs comply with the MOU during this period, CARE and AAIA agree to continue to work with other Original Parties to fully implement the MOU and to oppose and not to fund or otherwise support, directly or indirectly, any new state R2R legislation.
3. The Original Parties agree to work to strongly encourage any new entrants to the U.S. automotive market or to R2R issues to become signatories to the MOU.
4. The Original Parties agree to work together to resolve any future or related R2R issues that might otherwise be the subject of state legislation and, subject to the mutual consent of the Original parties, amend the MOU and R2R Agreement to include these additional matters.
5. Once the Original Parties have signed on to the MOU, additional parties may join but any amendments or revisions to the terms of the MOU and R2R Agreement, triggered by admission of additional participants, shall require consent of the Original Parties.
6. The Original Parties agree to meet as needed and at least semi-annually, to assess how the MOU is operating, address operational concerns and discuss any other matters relevant to R2R or the MOU or future amendments or parties to the MOU. In the event that one of

the Original Parties concludes that, due to changed circumstances, the MOU or R2R Agreement may no longer be viable, that party shall, upon thirty (30) days written notice to the other three Original Parties, call a meeting to discuss the need for the MOU and R2R Agreement to continue.

7. The Original Parties agree that should a state(s) pass a law relating to issues covered by this MOU and R2R Agreement, after the effective date of the MOU and R2R Agreement, any automobile manufacturer member of the Alliance and Global Automakers may elect to withdraw its letter of endorsement for the MOU and R2R Agreement partially or entirely for the impacted state(s).

Signed on this 15<sup>th</sup> day of January, 2014:



Mitch Bainwol  
President & CEO  
Alliance of Automobile Manufacturers



Michael Stanton  
President & CEO  
Association of Global Automakers



Kathleen Schmatz  
President & CEO  
Automotive Aftermarket Industry Association



Ray Pohlman  
President  
Coalition for Auto Repair Equality

## R2R AGREEMENT

**Section 1.** As used in this agreement, the following words shall, unless the context clearly indicates otherwise, have the following meanings:

**“Dealer”**, any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a license, as required under applicable law, and is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines pursuant to said franchise agreement.

**“Franchise agreement”**, a written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

**“Fair and Reasonable Terms”** Provided that nothing in this MOU and R2R Agreement precludes an automaker and an owner or independent repair shop who is subject to the agreement from agreeing to the sale of information and tools on any other terms on which they agree, in determining whether a price is on “fair and reasonable terms,” consideration may be given to relevant factors, including, but not limited to, the following:

- (i) The net cost to the manufacturer’s franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.
- (ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included.
- (iii) The price charged by other manufacturers for similar information.
- (iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.
- (v) The ability of aftermarket technicians or shops to afford the information.
- (vi) The means by which the information is distributed.
- (vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.
- (viii) Inflation.

**“Immobilizer system”**, an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorization code.

**"Independent repair facility"**, a person or business that is not affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines;

**"Manufacturer"**, any person or business engaged in the business of manufacturing or assembling new motor vehicles.

**"Dispute Resolution Panel (DRP)"**, a 5-person panel established by the Original Parties comprised of the following: one Alliance representative, Alliance member or Alliance designee, one Global Automakers representative, Global Automakers' manufacturer member or Global Automakers designee, two representatives of the independent vehicle repair industry to be selected and mutually agreed upon by AAIA and CARE, and one DRP Chair. The DRP Chair shall be an independent professional mediator with no affiliation to any of the Original Parties, shall be selected by unanimous consent of the Original Parties and shall be funded in equal amounts by each of the Original Parties. The Original Parties shall, at one of the two annual meetings, have an opportunity to revisit their respective representative or ask the Original Parties to revisit the person acting as DRP Chair.

**"Motor vehicle"**, any vehicle that is designed for transporting persons or property on a street or highway and that is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States, but excluding (i) a motorcycle; (ii) a vehicle with a gross vehicle weight over 14,000 pounds; or (iii) a recreational vehicle or an auto home equipped for habitation.

**"Owner"**, a person or business who owns or leases a registered motor vehicle.

**"Trade secret"**, anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of 18 U.S.C. § 1839(3).

## **Section 2.**

**(2)(a).** Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles and thereafter, a manufacturer of motor vehicles sold in United States shall make available for purchase by owners of motor vehicles manufactured by such manufacturer and by independent repair facilities the same diagnostic and repair information, including repair technical updates, that such manufacturer makes available to its dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system shall be made available to owners and to independent repair facilities in the same form and manner and to the same extent as is made available to dealers utilizing such diagnostic and repair information system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms.

**(2)(b)(i)** For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor vehicles sold in the United States shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate the same functional repair capabilities that such manufacturer makes available to dealers. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

**(ii)** Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

**(2)(c)(i)** Commencing in Model Year 2018, except as provided in subsection (2)(e), manufacturers of motor vehicles sold in the United States shall provide access to their onboard diagnostic and repair information system, as required under this section, using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer and:

**(a)** a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers SAE J2534, the International Standards Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Standards Organizations; or,

**(b)** an on-board diagnostic and repair information system integrated and entirely self-contained within the vehicle including, but not limited to, service information systems integrated into an onboard display, or

**(c)** a system that provides direct access to on-board diagnostic and repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board diagnostic and repair information available to their dealers, including technical updates to such on-board systems, through such non-proprietary interfaces as referenced in this paragraph. Nothing in this agreement shall be construed to require a dealer to use the non-proprietary vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this subsection, nor shall this agreement be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device, provided that the manufacturer also complies with Section 2(c)(i) and the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms, and otherwise complies with Section 2(a).

**(2)(c)(ii)** No manufacturer shall be prohibited from making proprietary tools available to dealers if such tools are for a specific specialized diagnostic or repair procedure developed for

the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through the non-proprietary interface set out in (2)(c)(i). Provision of such proprietary tools under this paragraph shall not constitute a violation of this agreement even if such tools provide functions not available through the interface set forth in (2)(c)(i), provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(c)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in (2)(c)(i), for diagnostic or repair procedures that fall outside the provisions of (2)(c)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(c)(i).

**(2)(d)** Manufacturers of motor vehicles sold in the United States may exclude diagnostic, service and repair information necessary to reset an immobilizer system or security-related electronic modules from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

**(2)(e)** With the exception of telematics diagnostic and repair information that is provided to dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to an independent repair facility via the tools specified in 2(c)(i) above, nothing in this agreement shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from the vehicle by mobile communications; provided, however, that nothing in this agreement shall be construed to abrogate a telematics services or other contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a dealer. For purposes of this agreement, telematics services include but are not limited to automatic airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location, remote door unlock, transmitting emergency and vehicle location information to public safety answering points as well as any other service integrating vehicle location technology and wireless communications. Nothing in this agreement shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

**Section 3.** Nothing in this agreement shall be construed to require a manufacturer to divulge a trade secret.

**Section 4.** Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this agreement shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any franchise agreement executed and in force between a dealer and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to such franchise agreement.

**Section 5.** Nothing in this agreement shall be construed to require manufacturers or dealers to provide an owner or independent repair facility access to non-diagnostic and repair information

provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to the terms of a franchise agreement.

**Section 6.** If an independent repair facility or owner believes that a manufacturer has failed to provide the information or tool required by this MOU, he may challenge the manufacturer's actions by first notifying the manufacturer in writing. The manufacturer has thirty (30) days from the time it receives the reasonably clear and specific complaint to cure the failure, unless the parties otherwise agree. If the complainant is not satisfied, he has thirty (30) days to appeal the manufacturer's decision to the DRP. The DRP shall be convened by the Chair within thirty (30) days of receipt of the appeal of the manufacturer's decision. The DRP will attempt to reach agreement between the parties. If unsuccessful, the DRP shall convene and issue its decision. The decision must be issued within 30 days of receipt of the appeal of the manufacturer's decision, unless otherwise agreed to by the parties. The DRP decision shall be disseminated to the complainant, the manufacturer, and the Original Parties. If the manufacturer and complainant still cannot reach agreement, the complainant may take whatever legal measures are available to it.

# EXHIBIT B



## Automotive Repair Data Sharing Commitment

This commitment was created with one group of people in mind: vehicle owners. It recognizes and reaffirms the belief that consumers should have access to safe and proper repairs throughout a vehicle's lifecycle.

The parties commit to ensure consumer choice in vehicle repair decisions and support the independent repair community as provided below and as outlined in the existing 2014 Memorandum of Understanding:

**Access to diagnostic and repair information** – There shall be available for purchase by owners of motor vehicles and by independent repair facilities on fair and reasonable terms the same diagnostic and repair information, including service manuals and technical repair updates, that a manufacturer makes available to its authorized dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible repair information system.

**Access to vehicle systems** – There shall be available access to vehicle diagnostic systems through (i) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers standard J2534, commonly referred to as SAE J2534, the International Organization for Standardization standard 22900, commonly referred to as ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Organization for Standardization; (ii) an onboard diagnostic and repair data system integrated and entirely self-contained within the vehicle, including, but not limited to, diagnostic or service information systems integrated into an onboard display; or (iii) a system that provides direct access to onboard diagnostic and repair data through a non-proprietary vehicle interface, such as ethernet, universal serial bus or digital versatile disc; provided that each manufacturer provides access to the same onboard diagnostic and repair data and functions available to their dealers, including technical updates to such onboard systems, through such non-proprietary interfaces as referenced in this paragraph.

**Alternate Fueled Vehicles** – Just as is the case for traditional internal combustion vehicles, access to vehicle diagnostic data and to vehicle systems for diagnostic and repair purposes shall be available for purchase by vehicle owners and by independent repair facilities on fair and reasonable terms for alternately fueled vehicles. This commitment applies to all vehicle technologies regardless of powertrain, including gasoline, diesel, fuel cell, electric battery, hybrid, and plug-in hybrid electric powertrains.

**Telematics** – Telematics systems shall not be used to circumvent the commitments made in this commitment to provide independent repair facilities with access to vehicle diagnostic data. To the extent that specific telematic diagnostic and repair data is needed to complete a repair, and also provided to an automaker’s authorized dealers, the automaker shall make such information available to vehicle owners and independent repair facilities, if it is not otherwise available through a tool or third-party service information provider. This does not apply to any telematics data beyond what is necessary to diagnose and repair a vehicle.

**Access to tools** – There shall be made available for purchase by owners of motor vehicles and by independent repair facilities diagnostic repair tools incorporating the same functional capabilities that a manufacturer makes available to its authorized dealers.

**Fair and Reasonable Terms** – There shall be access to diagnostic and repair information and tools on fair and reasonable terms, consistent with U.S. Environmental Protection Agency, California Air Resources Board, and Massachusetts statutory requirements.

**Support of Third-Party Tool Manufacturers** – Diagnostic and repair information shall be made available to each third-party tool manufacturer and each third-party service information provider with whom a manufacturer has appropriate licensing, contractual, or confidentiality commitment for the sole purpose of building diagnostic tools and third-party service information publications and systems.

**Trade secret protections** – Nothing in this commitment shall be construed to require a manufacturer to divulge a trade secret.

**Education** – The parties shall develop a plan to educate both mechanical and collision repair facilities on the avenues by which they can access repair information, including directly through manufacturer repair websites, on [www.oem1stop.com](http://www.oem1stop.com), or by accessing third-party tool and data service providers, among others.

**Training** – The parties shall review existing training options for both mechanical and collision repair facilities and work to ensure repairers have access to the latest training opportunities.

### **Working Together to Address Any Identified Gaps**

As a complement to the existing process for resolving disputes involving the availability of diagnostic and repair information from specific manufacturers established in the 2014 MOU, the parties commit to establish a Vehicle Data Access Panel (VDAP) to identify issues a party may have with respect to the availability of diagnostic data and repair information as pledged in this commitment and collaborate on potential solutions where feasible. The VDAP shall be comprised of representatives from Automotive Service Association, Society of Collision Repair Specialists and Alliance for Automotive Innovation, and shall meet, at a minimum, biannually.

## **Periodic Review to Ensure Continued Relevancy**

In recognition of this industry's dynamic marketplace, the parties commit to review this commitment annually and update, if appropriate. To that end, the parties shall establish a Data Access Working Group to consider any technological advancements that may alter the vehicle repair marketplace. The size and membership of this Working Group shall be established by the parties and can be altered at any time with the commitment of the signing parties.

## **Cooperation and Advocacy**

**Federal legislation** – The parties commit to working together in support of federal legislation to codify the various provisions of this commitment, ensuring consumer choice in vehicle repair across the country. The parties also commit to working together against any legislation that is in direct conflict with the tenets of this document.

**Federal regulations** – The parties commit to working together in support of a petition to the Environmental Protection Agency to ensure reparability of electric vehicles by requiring standardized data communication protocols from OBDII-type connectors on all battery electric, plug-in hybrid, hybrid, and fuel cell vehicles model year 2026 and beyond in alignment with California's Advanced Clean Cars II regulation.

**State legislation** – The parties commit to working together against any legislation that is in conflict with the tenets of this commitment. Engagement on state legislation not in conflict with the tenets of this commitment shall be evaluated on its merits and subject to the commitment of the parties.

## **Signing Parties**

### **Automotive Service Association (ASA)**

ASA is the largest and oldest national organization committed to protecting the automotive repair industry with ONE VOICE. Our members own and operate automotive mechanical and collision repair facilities responsible for the majority of all, post warranty, repair services in the United States. ASA advocates for the interests of its members and their customers in Washington, D.C. The education, resources, and services ASA provides empowers its members in all 50 states to remain trusted stewards of mobility in their communities. [www.ASAShop.org](http://www.ASAShop.org)

### **Society of Collision Repair Specialists (SCRS)**

Through our direct members and affiliate associations, SCRS proudly represents over 6,000 collision repair businesses and 58,500 specialized professionals who work to repair collision-damaged vehicles. Since 1982, SCRS has served as the largest national trade association solely dedicated to the hardworking collision repair facilities across North America. Since its formation, SCRS has provided repairers with an audible voice, and an extensive grassroots network of industry professionals who strive to better our trade. Additional information about SCRS including other news releases is available at the SCRS website. [www.scrs.com](http://www.scrs.com)

**Alliance for Automotive Innovation**

From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.

[www.autosinnovate.org](http://www.autosinnovate.org)

**Effective Date**

This Commitment is effective immediately upon signed letter transmittal to Chairwoman Cantwell, Ranking Member Cruz, Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Jordan, Ranking Member Nadler, Chairman Durbin, and Ranking Member Graham.