

April 27, 2023

The Honorable Aaron Frey
Maine Attorney General
Indiana Government Center South
6 State House Station
Augusta, ME 04333

Re: Federal right-to-repair legislation

Dear Mr. Attorney General:

I write regarding your March 24 letter urging Congress to pass several federal right-to-repair measures, including bills “targeted at automobiles” that ensure “consumers have choices” for vehicle repair and small automobile businesses “can remain competitive...”

I’m happy to report that in the automotive space, all of those conditions *already exist*, and these federal efforts are not necessary at this time.

Automakers already make available to independent repair businesses all the information needed to diagnose and repair a vehicle. This was settled under a 2014 nationwide agreement, that remains in effect today, guaranteeing to repairers and vehicle owners the same access to repair and diagnostic information as provided to auto dealers. This applies regardless of whether the vehicle is powered by an internal combustion engine or an electric motor.

The Alliance for Automotive Innovation (Auto Innovators) represents the automotive manufacturers producing most vehicles sold in the U.S., as well as autonomous vehicle innovators, equipment suppliers, battery producers and semiconductor makers. This is an industry that supports 10 million American jobs and five percent of the economy.

I appreciate the opportunity to explain why the specific bills you cited, notably the REPAIR Act, are not required to achieve what is a fundamental principle – and our mutual goal: guaranteeing consumers choice when it comes to vehicle repair and the ability to service their vehicle anytime, anywhere, anyplace. Moreover, as detailed below, the REPAIR Act will have unintended consequences that harm consumers and create privacy and cybersecurity risks.

Indeed, the Federal Trade Commission – the federal government’s top consumer protection and competition agency – has said America’s automotive repair market is working well, citing, “a broad, if not complete, right to repair in the automotive industry.”¹ We agree. The system works and is fiercely competitive. It provides drivers with a range of vehicle service options: from authorized dealer networks, to national chains, to independent repairers, to instructions for technically inclined ‘do it yourselfers.’

¹ U.S. Federal Trade Commission, Nixing the Fix: An FTC Report to Congress on Repair Restrictions. May 2021, page 45.

As noted, it works because automakers already make available to independent repair businesses all the information needed to diagnose and repair a vehicle via that 2014 nationwide agreement guaranteeing repairers and vehicle owners access to the same repair and diagnostic information provided to auto dealers.

That agreement remains in place today and is working just fine.

Today, 70 percent of post-warranty vehicle repairs happen at independent repair businesses. To make it even easier to retrieve the information needed to repair a vehicle, automakers created a one-stop location to access this information: www.OEM1stop.com.

If redundancy were the only issue, we might not be so concerned. However, the scope of data access required under the REPAIR Act – including the precise location of a vehicle that may be operated by multiple individuals, the time of day the vehicle is used, and individuals' driving behaviors – could also create gaps in vehicles cybersecurity protections and risk driver safety and privacy.

As the National Highway Traffic Safety Administration (NHTSA) has testified regarding similar provisions in Massachusetts, this type of "remote, real-time, bi-directional... access to safety-critical vehicle data systems" increases the risk that malicious actors could "receive and/or send information to vehicles outside the vehicle itself," raising significant cybersecurity and consumer privacy concerns.²

For these reasons, the REPAIR Act is unnecessary and unwise in today's repair marketplace.

The SMART Act is also problematic. It reduces the number of years of protection for automotive design patents – and would devalue the work of these employees and place American jobs at risk. This would be an unfortunate outcome, especially since there is nothing unique about automotive replacement parts that should warrant discriminatory treatment under the law. In fact, by targeting automotive design patents for discriminatory treatment, the legislation may very well violate the WTO-administrated Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement) which requires WTO members to make patent rights available without discrimination as to the field of technology.

As you correctly note in your letter, the auto industry has "more robust independent repair than many others..." That's exactly right. Automotive right-to-repair already exists. In fact, we're confident it always will even as technology and powertrains will evolve over time.

I have attached a copy of the 2014 agreement for your information. Auto Innovators is happy to be a resource to your office on this issue and welcomes an opportunity to describe the ongoing cooperation and alignment between OEMs and independent repair and collisions businesses on right-to-repair.

Sincerely,



John Bozzella
President and CEO
Alliance for Automotive Innovation

² Letter from James C. Owen, Deputy Administrator of NHTSA to Massachusetts Legislature. July 20, 2020.
https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/nhtsa_testimony_in_response_to_ma_committee_letter_july_20_2020.pdf.



AUTO ALLIANCE
DRIVING INNOVATION®

AAIA®
Automotive Aftermarket
Industry Association

GlobalAutomakers



MEMORANDUM of UNDERSTANDING

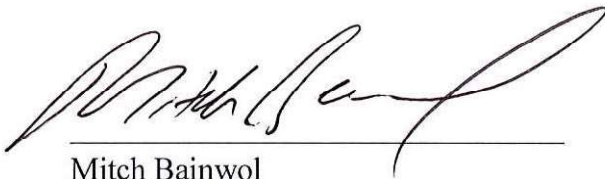
The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth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