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August 24, 2018

via e-mail

Regan Smith
General Counsel
United States Copyright Office
Library of Congress
101 Independence Avenue. SE
Washington DC 20559

**Re: Docket No. 2017-10
2017–2018 Section 1201 Triennial Review
Proposed Class 7—Repair
Notice and Summary of Ex Parte Communications**

Dear Ms. Smith:

Thank you for meeting with me on Wednesday, August 22. Joining me were Andrew Shore and Emily Vaughan on behalf of the Owners' Rights Initiative; Joe Marion, Neil Vill, and Todd Bone on behalf of the Association of Service and Computer Dealers; and Lyle Gore and Shellie Dubay on behalf of the United Network Equipment Dealers. Emily Vaughan and I participated in person; Ms. Dubay and Messrs. Shore, Marion, Bone, Gore, and Vill joined by telephone. In addition to you, we met with Anna Chauvet, Kevin Amer, and Nick Bartelt of the Copyright Office. This letter summarizes that meeting as required in the Office's guidelines for ex parte communications concerning section 1201 exemptions.¹

1. We reiterated the broader context for the petition: the long struggle between original equipment manufacturers ("OEMs") and independent resellers and maintenance providers. We described the various means OEMS have employed to prevent competition from independent resellers and maintenance providers. In response to a question from the Copyright Office, we explained that an exemption would not address all the methods OEMs use to limit competition, but it would remove the barrier created by 17 U.S.C. § 1201.

2. We stressed the enormous benefit individual consumers and government agencies would receive from broadening of the existing exemption for the repair of motorized land vehicles.

¹ <https://www.copyright.gov/1201/2018/ex-parte-communications.html>.


3. We underscored that the access we sought to software would not enable infringement of the copyright in the software. Nor were we attempting to unlock features that a consumer had not paid for. Rather, the circumvention permitted by the exemption would enable the testing and resetting of the device in the repair context.

4. In response to a question from the Copyright Office, we explained that right-to-repair legislation pending in some state legislatures currently was not a viable alternative to an exemption.

5. We stated that restricting the exemption to devices that were not capable of playback of entertainment content would exclude many of the devices we sought to repair, such as computers and servers. At the same time, we noted that we had no interest in consoles only capable of playing video games.

ORI, ASCDI, and UNEDA appreciate the opportunity to discuss these issues with the Copyright Office.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Band', with a stylized flourish at the end.

Jonathan Band