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Class 12_InitialComments_Auto Care Association

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Comment

Comment of AutoCare Association in Support of
Petition of The Repair Association and iFixit (Class 12)

AutoCare Association supports the Petition of The Repair Association and iFixit ("Petitioners") to expand the current exemption covering the circumvention of technological protection measures for computer programs that control any lawfully acquired devices to permit the diagnosis, repair, maintenance, or modification of those devices. AutoCare has petitioned the Librarian beginning with the 2015 rulemaking proceeding for an exemption covering such circumvention in the context of motorized land vehicles, for the purpose of diagnosis, repair, maintenance, or modification. The exemption offers substantial economic benefits to consumers and businesses that engage in such lawful repair activities. Despite the opposition of the vehicle manufacturers, the exemption has never been shown to promote infringing uses of such works or to interfere with a vehicle's safety and environmental controls.

As the Copyright Office observed in its 2016 Study of Software-Enabled Consumer Products, computer programs control the operations of myriad products. The Librarian has recognized this by allowing circumvention to diagnose, maintain, repair, and modify motorized land vehicles and cell phones.

But the principles behind those exemptions apply to any consumer product to doorbells, thermostats, refrigerators, and ovens. It surely was lawful to repair earlier generations of such products with mechanical controls. And, as the Study recognized, consumers and business that repair such products with computer software alone would almost certainly be engaged in noninfringing uses. "Traditional copyright doctrines such as the idea/expression dichotomy, merger, scènes faire, and fair use provide a combined and reasonable defense for many tinkering and repair activities." 2016 Study p. 33.

In the four years since the Study, the use of embedded software in consumer products has grown rapidly, and with it the deployment of TPMs. The Study suggested that a statutory exemption for repair might soon become obsolete, given the pace of technological change. The same obsolescence concern does not apply to an exemption by the Librarian, which can be revisited and revised every three years. But that concern with the adequacy of an exemption also suggests that an exemption for a category of clearly noninfringing

uses such as product repair should be capacious enough. Users should not have to apply for repair exemptions on a product-by-product basis where the principle of lawful repair is the same. Considering the effort and expense of the exemption process, and the ubiquity of software-enabled products, such a requirement should be unnecessary.

We see no justification to constrain the scope of repair solely because a manufacturer chooses to put its software behind a technological firewall particularly since those manufacturers often deploy those TPMs to stifle aftermarket competition, not to protect the integrity of their copyrights.

AutoCare therefore urges the Librarian to approve the requested exemption.

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Comment Details

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