



Submitted via www.regulations.gov

February 20, 2024

Rhea Efthimiadis
Assistant to the General Counsel
U.S. Copyright Office
101 Independence Ave., SE
Washington, DC 20559

Re: Proposed Class 5: Computer Programs—Repair

To Whom It May Concern:

Associated Equipment Distributors (AED) appreciates the opportunity to provide comments on the United States Copyright Office's the ninth triennial rulemaking proceeding under the Digital Millennium Copyright Act ("DMCA") concerning possible temporary exemptions to the DMCA's prohibition against circumvention of technological measures that control access to copyrighted works.

AED is the trade association representing companies that sell, rent, service and manufacture construction, farm, mining, energy, forestry and industrial equipment. Its nearly 600 distributor members, which are predominantly small-medium-sized, family-owned businesses, have over 6,800 locations, employ 140,000 workers and account for more than \$90 billion of annual sales revenue in the United States and its territories.

AED is particularly concerned with "Proposed Class 5: Computer Programs—Repair" and the suggested expansion of the existing exemption for consumer devices to include industrial and commercial equipment.

As acknowledged by the commenters (iFixit and Public Knowledge), the attempted class expansion is unusually broad in nature.¹ Specifically, the use of technological protection measures (TPMs) in consumer devices is unrelated to their utilization in construction equipment. Furthermore, combining commercial soft serve machines, programmable logic controllers, and enterprise IT with construction equipment demonstrates a lack of understanding of the reason TPMs are used in heavy machinery.

The Copyright Office has noted that "it will generally decline to consider health, safety, and environmental concerns as part of the triennial proceeding," recognizing that "an exemption provides no defense to those who use it as an excuse to violate other laws and regulations."² Nonetheless, the significant environmental and safety consequences of faulty repairs and maintenance on construction equipment are exactly what differentiates it from consumer devices.

TPMs on construction equipment protect access to intellectual property that controls environmental and safety-sensitive mechanisms. These are the critical functions, which if widely accessed, can have significant public safety consequences. An incorrect repair on a personal electronic device or laptop could cause inoperability while on construction equipment the implications could be catastrophic.

Furthermore, commenters assert that TPM circumvention is necessary to the diagnosis, maintenance, or repair on construction equipment. That narrative is false. Most of the diagnosis, maintenance, and

¹ Long Comment Regarding a Proposed Exemption Under 17 U.S.C. 1201 by iFixIt and Public Knowledge at 7

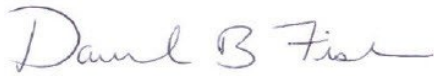
² 2021 Recommendation at 218, citing U.S. COPYRIGHT OFFICE, SECTION 1201 OF TITLE 17: A REPORT OF THE REGISTER OF COPYRIGHTS at 126 (2017).

repair can be completed by a customer or independent repair provider without consulting an authorized dealership or the manufacturer. However, the TPMs on construction equipment protect access to intellectual property that controls environmental and safety-sensitive mechanisms. These are the critical functions, which if incorrectly repaired, can have significant public safety consequences.

The commenters are attempting to concoct a one-size-fits-all approach to copyright law by utilizing a handful of false and deceptive anecdotes from a few of the thousands of original equipment manufacturers and the millions of heavy equipment customers across the United States. Construction equipment is completely unrelated to soft serve machines, programmable logic controllers, enterprise IT, and consumer devices. In short, construction equipment is not a member of the single "class of works" as outlined by the petitioners.

We respectfully urge you to deny expansion of the existing exemption for consumer devices to include industrial and commercial equipment.

Sincerely,

A handwritten signature in cursive script that reads "Daniel B. Fisher". The signature is written in dark ink and is positioned above the typed name and title.

Daniel B. Fisher
Senior Vice President, Government & External Affairs