



MITCHELL SILBERBERG & KNUPP LLP
A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Lucy Holmes Plovnick
Partner
(202) 355-7918 Phone
lhp@msk.com

September 28, 2026

FILED VIA REGULATIONS.GOV

Emily Chapuis
General Counsel and Associate Register of Copyrights
United States Copyright Office
Library of Congress
101 Independence Avenue SE
Washington, DC 20559-6000

Re: Docket No. COLC-2026-0100
Comments of the Alliance for Automotive Innovation in Response to Petitions to
Renew 37 C.F.R. § 201.40(b)(14)

Dear Ms. Chapuis:

I submit this letter on behalf of the Alliance for Automotive Innovation (Auto Innovators),¹ the singular voice of the automotive industry. Auto Innovators submits this letter in response to petitions of the Auto Care Association (ACA); iFixit; MEMA, The Vehicle Suppliers Association (MEMA); and Specialty Equipment Market Association (SEMA) (collectively, “Petitioners”) that ostensibly request renewal of a regulatory exemption to the anti-circumvention prohibition of 17 U.S.C. § 1201(a)(1). Specifically, Auto Innovators writes to (1) raise concerns with the submissions of ACA, MEMA, and SEMA to the extent these submissions are inconsistent with the “streamlined renewal” process laid out in the Notice of Inquiry (NOI) and (2) oppose Petitioners’ submissions to the extent they suggest that vehicle owners, lessees, and independent repairers would be unable to access vehicle operational data without the exemption. The ACA submission can be found at <https://www.regulations.gov/document/COLC-2026-0100-0013>, the iFixit submission at <https://www.regulations.gov/document/COLC-2026-0100-0038>, the MEMA submission at <https://www.regulations.gov/document/COLC-2026-0100-0041>, and the SEMA submission at <https://www.regulations.gov/document/COLC-2026-0100-0059>.

I. The ACA, MEMA, and SEMA Submissions are Inconsistent with the “Streamlined Renewal” Process

Pursuant to the NOI, the streamlined renewal process is available only to petitioners seeking to renew existing exemptions that were granted during the ninth rulemaking. 91 Fed. Reg. 34,796. As noted in the NOI: “Only petitions requesting renewal of current exemptions as currently written in the *Code of Federal Regulations*, without modification, may be considered under the streamlined renewal procedure.” 91 Fed. Reg. 34,795. Although the submissions of

¹ In 2020, the Alliance of Automobile Manufacturers and Global Automakers merged to create the Alliance for Automotive Innovation. The organization includes motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies, and trade associations.

ACA, MEMA, and SEMA are purportedly to support renewal of the current temporary exemption outlined in 37 C.F.R. § 201.40(b)(14), these submissions mischaracterize the scope of the existing exemption and appear to argue for an expanded exemption, rather than for renewal of the existing exemption as it is “currently written in the *Code of Federal Regulations*, without modification.”

A. The Existing Exemption Does Not Permit Unlawful Trafficking in Circumvention Tools or Services

The existing exemption provides that the circumvention prohibition against circumvention of technological protection measures (TPMs) under Section 1201(a)(1)(A) shall not apply to “[c]omputer programs that are contained in and control the functioning of” various “lawfully acquired” vehicles and vessels “to allow vehicle or vessel owners and lessees, or those acting on their behalf, to access, store, and share operational data, including diagnostic and telematics data, where such circumvention is not accomplished for the purpose of gaining unauthorized access to other copyrighted works.” 37 C.F.R. § 201.40(b)(14). The statute is clear that the exemptions derived from this rulemaking proceeding do not apply to the Section 1201(a)(2) prohibitions against the manufacture or trafficking of circumvention tools, and providing or trafficking in services for circumventing access controls, nor to the Section 1201(b) prohibitions against the manufacture or trafficking of circumvention tools, and providing or trafficking in services for circumventing copy controls. Accordingly, the existing exemption does not permit third-party repair services to manufacture or traffic circumvention tools or provide circumvention services. Underscoring this limitation, the existing exemption expressly provides that “[e]ligibility for this exemption is not a safe harbor from, or defense to, liability under other applicable laws, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency.”

Petitioners’ submissions misstate the scope of the exemption to the extent that they suggest that the exemption permits activity that is otherwise unlawful under the prohibitions of Sections 1201(a)(2) and (b). In particular, the ACA submission states that the exemption permits its members to “lawfully assist[] consumers in the maintenance, repair, and upgrade of their vehicles.” MEMA asserts that the exemption “permits access [to vehicle operational data] through any technological means” and that “[a]ftermarket suppliers have long relied on standardized access [to vehicle operational data] through physical diagnostic interfaces to develop diagnostic tools, replacement parts, and service equipment that support vehicle owners and independent repairers.” Finally, SEMA asserts that “[f]or people who do not have the time, knowledge, and ability to work on their own vehicles, their service professional of choice must be protected from copyright infringement for accessing their customer’s vehicle operational data in order to work on, repair, customize, or modify it.”

Petitioners’ suggestions that the existing exemption permits third-party repair shops to circumvent access controls on vehicle software in order to provide commercial repair services are incorrect. Providing a commercial service that requires circumventing access controls or copy controls (e.g., using or providing certain engine tuning software) is indisputably trafficking in an unlawful service under Sections 1201(a)(2) and (b) and, therefore, is clearly outside the scope of the existing exemption. Further, the MEMA submission suggests that the existing exemption may

permit independent repairers to circumvent TPMs to develop commercial diagnostic tools. These activities would similarly constitute unlawful manufacturing or trafficking in circumvention tools or the provision of unlawful circumvention services under Sections 1201(a)(2) or (b) and, accordingly, are not permissible under the existing exemption.

ACA also falsely asserts that “motor vehicle manufacturers adopted these technological protection measures intending to hinder access by independent repair shops to the software that is necessary to car repair.” To the contrary, access controls to these vital computer programs are necessary to protect the safety and security of drivers and passengers and to reduce the level of non-compliance with regulatory standards. Automakers continue to take important steps to strengthen and secure vehicle security and to help protect against cyberattacks, consistent with cybersecurity best practices and National Highway Traffic Safety Administration’s (NHTSA) guidance. This includes taking deliberate steps to prevent *unauthorized* access to a vehicle’s safety systems and implementing layers of defense into all levels of a vehicle’s architecture. The Copyright Office recognized the importance of these technological protection measures by narrowly circumscribing the existing temporary exemption to prohibit any circumvention that violates applicable law, including Department of Transportation and Environmental Protection Agency regulations.

This streamlined renewal process applies only to the existing exemption as currently formulated, without modification. Accordingly, the Copyright Office should reject any argument to expand the current exemption to permit unlawful trafficking in circumvention tools or the unlawful provision of circumvention services by third-party servicers.

II. Third-Party Servicers Already Have Access to Circumvention Tools

Furthermore, contrary to Petitioners’ suggestions, even without the temporary exemption, vehicle owners and independent repair shops already have access to all necessary operational data, including diagnostic and telematics data. ACA claims that renewal of the exemption “provides the only cost-effective way” for American consumers “to perform their own maintenance and repairs where circumvention of a technological protection measure is needed to access vehicle software controls.” Likewise, MEMA argues that “[w]ithout this exemption, vehicle owners would be unable to share service alerts, vehicle performance metrics, or driving records with their preferred service provider, aftermarket parts manufacturer, or insurance company.” Similarly, SEMA states that “[i]t is important that this exemption is renewed to ensure vehicle owners and their designees can download, copy, and use the non-copyrightable data . . . in their vehicles,” and iFixit contends that “[n]o marketplace alternative has eliminated the need for owners and lessees to access, store, and share data generated by lawfully acquired vehicles and vessels.”

Original Equipment Manufacturers (OEMs) have long provided the operational data that Petitioners describe. For over two decades, both the U.S. Environmental Protection Agency

(EPA)² and the California Air Resources Board (CARB)³ have maintained vehicle service information regulations for light-duty vehicles and heavy-duty vehicles up to 14,000 pounds. Among other things, these regulations require OEMs to make full text emissions-related service information and training information available via the Internet, provide equipment and tool companies with information that allows them to develop equipment with passthrough reprogramming capabilities, make enhanced diagnostic information available to equipment and tool companies, and make OEM-specific diagnostic tools available for sale to interested parties.

In 2002, automakers committed to make available to third-party servicers emission and non-emission related service information, training information, and diagnostic tools—a commitment that has been updated several times. Representatives of the aftermarket supplier and automotive repair industries signed a January 15, 2014 “Memorandum of Understanding (MOU)” with the two predecessor automotive trade associations that have since combined to form Auto Innovators.⁴ Under that MOU, automakers committed to provide independent repair facilities and owners access to the same diagnostic and repair information that a manufacturer provides a franchised dealer, 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. These commitments and obligations remain in place, and Petitioners have not alleged otherwise.

Since the MOU entered into force, there has not been a single instance of an owner or independent repair facility completing the dispute resolution panel (DRP) process contemplated by the MOU for unresolved issues with diagnostic and repair access. Simply put, the MOU is working. Vehicle owners and independent repair facilities continue to have the information and access to diagnose vehicles and complete vehicle repairs.

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, 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).

² See Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines, 68 Fed. Reg. 38,428 (June 27, 2003), <https://www.govinfo.gov/content/pkg/FR-2003-06-27/pdf/03-14461.pdf>.

³ The California Light Duty Vehicle Service Information regulations were adopted in 2001. For current regulations which have included heavy-duty vehicles since 2006, see 13 Cal. Code Reg. §1969.

⁴ The obligations under the MOU to which the automakers committed have not changed since the merger.

- Systems that provide direct access to onboard diagnostic and repair data through non-proprietary vehicle interfaces such as Ethernet, USB or DVD.
- 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).

MEMA asserts that, without the exemption, vehicle owners would be unable to access and share “driving records” with third parties, such as service providers and insurers. Similarly, Petitioner iFixit contends that vehicle owners and lessees lack “marketplace alternative[s]” that provide access, storage, and sharing capabilities for vehicle operational data. These arguments 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.⁵ 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.⁶ They also allow users to create a “geo-fence” around a particular area (such as a school, workplace, or even entire region) and send an alert when the car crosses a boundary.⁷ Many of these apps and services have been available for several years, and while they are commonly advertised for parents to use with their teenagers or to share driving behavior with insurers, they also can be used to monitor driving habits more generally.⁸ This is yet another existing avenue for vehicle owners and lessees to obtain the same information sought by Petitioners, without the need for circumvention.

Rather than acknowledge the wealth of vehicle operational data that OEMs already provide, Petitioners raise unfounded cost concerns that are inappropriate for consideration in a renewal proceeding. For instance, ACA raises the specter that without “independent repair and car optimization businesses, auto manufacturers and dealers would be able to charge monopoly prices for providing products and services after warranties have expired.” But the cost of products and services is irrelevant to the scope of the existing exemption, and this petition process is not the appropriate forum to debate the issue.

⁵ See, e.g., *Driving Safety*, Life360, <https://www.life360.com/driving-safety> (describing Life360 “Safe Driving App” that provides users with “family driving summaries” and “individual driver reports”); *Family*, Bouncie, <https://www.bouncie.com/family> (“Bouncie” app designed for families to share location, trip details, driving habits and summaries, and vehicle diagnostics); *TrueMotion Partners with INRIX to Deliver Contextual Driving Data to Auto Insurers*, INRIX (Apr. 23, 2018), <https://inrix.com/press-releases/truemotion> (describing the TrueMotion product that “offers auto insurers a mobile telematics platform . . . [that] can accurately determine when a person is driving and reveal her behaviors behind the wheel”).

⁶ *How to Track Your Teen Driver*, Consumer Reports (May 2014), <https://www.consumerreports.org/cro/magazine/2014/07/how-to-track-your-teen-driver/index.htm>

⁷ *Id.*

⁸ See *supra* note 5.

Moreover, ACA's complaint has no merit. The MOU guarantees "fair and reasonable" terms for data access and permits pricing to be tailored for varying use cases.⁹ For instance, the regulations provide for subscription pricing such that a repair shop owner that does a high volume of repair work on a particular line may choose to subscribe annually whereas the owner of a shop that does very little work on a particular line may choose a shorter-term subscription. Prices are adjusted accordingly. Not one owner or independent repair facility has completed the DRP process since the MOU entered into force, including to contest the MOU's guarantee of a "fair and reasonable" price.

More fundamentally, to the extent Petitioners argue for expanding the current exemption to cover unlawful circumvention by third-party repair services because making use of the information and tools currently available to them would be too expensive or burdensome, this argument must be rejected. As stated in the NOI, this streamlined renewal process is only applicable to exemptions as currently formulated, without modification. Moreover, ACA's complaints do 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 vehicle operational information that they provide to dealers. To the extent independent repair facilities wish to complain about the cost or difficulty of acquiring tools, the dispute settlement provision of the MOU, not this proceeding, is the appropriate mechanism to address those issues.

III. Conclusion

For the foregoing reasons, the Copyright Office should reject any part of the ACA, MEMA, and SEMA petitions that argues for expanding the existing temporary exemption outlined in 37 C.F.R. § 201.40(b)(14). Consistent with the streamlined process available to petitioners seeking to renew existing exemptions, the Copyright Office should consider these petitions only to the extent they seek renewal of the existing exemption as currently formulated, without modification. In addition, the Copyright Office should reject the assertions in the ACA, iFixit, MEMA, and SEMA petitions that marketplace alternatives do not already allow vehicle owners and lessees to access, store, and share vehicle operational data.

Sincerely,

/s/ Lucy Holmes Plovnick

Lucy Holmes Plovnick
Partner of
MITCHELL SILBERBERG & KNUPP LLP

LHP/pxt

⁹ The "fair and reasonable" language is taken directly from the EPA and CARB regulations. Those regulations provide a number of factors for establishing "fair and reasonable" pricing. This exact definition applies to the MOU.