

July 18, 2023

The Honorable Darrell Issa  
Chairman  
Subcommittee on Courts, Intellectual  
Property, and the Internet  
Committee on Judiciary  
U.S. House of Representatives  
Washington, D.C. 20510

The Honorable Hank Johnson  
Ranking Member  
Subcommittee on Courts, Intellectual  
Property, and the Internet  
Committee on Judiciary  
U.S. House of Representatives  
Washington, D.C. 20510

Dear Chairman Issa and Ranking Member Johnson:

MEMA Aftermarket Suppliers—a membership group within MEMA, The Vehicle Suppliers Association—is comprised of the companies that manufacture and remanufacture parts, components, and systems for use in the motor vehicle aftermarket. Aftermarket suppliers make certain that quality parts and service choices are available to the 281 million vehicles on our nation's roads. Suppliers are the foundation of a vibrant aftermarket industry, which employs more than 4 million Americans across manufacturers, motor vehicle repair facilities, and distribution and services providers. Furthermore, the independent aftermarket currently services around 70 percent of motor vehicle repairs in the United States.

We applaud the Subcommittee for holding today's hearing to examine this critical question, and we respectfully share our views on "Is There a Right to Repair?"

## **BACKGROUND**

For more than 100 years, vehicle owners have been able to choose where and with what parts and components to repair their vehicles. For some vehicle owners, those repairs have been "do-it-yourself" or, in the case of fleet owners, completed by an employee of the fleet. Other repairs have been performed at a dealer service center. Finally, the vast majority of repairs are conducted at an independent aftermarket repair facility. These repair choices have led to a vibrant and competitive marketplace that provides consumers with multiple options at different price points and availability. Additionally, the competition has also guaranteed that consumers are able to choose quality repair locations that are convenient and able to service their vehicle in a timely fashion.

As vehicle technology continues to advance and vehicle systems become more automated, new barriers to the competitive motor vehicle repair market are emerging. Federal and state policies, including cybersecurity and privacy provisions, must not inherently limit a consumer's choice in where, how, and with what parts to repair their vehicles. The automotive aftermarket industry is committed to ensuring

safe, affordable, and accessible vehicle service, maintenance, and repair for consumers. Without action by either federal or state legislatures, we are concerned that vehicle original equipment manufacturers and their dealer networks will have a monopoly, preventing consumer choice. A lack of competition in the aftermarket could increase the costs and time investments to consumers, limit interoperability and advancement, and impact consumer safety.

## **POLICY SOLUTIONS MUST PROTECT COMPETITION**

The aftermarket industry seeks policy solutions that will allow competition to continue in the aftermarket. Vehicle manufacturers have historically shared with Congress that providing access to vehicle data with the independent aftermarket would create a vehicle safety and cybersecurity risk. This is simply not the case. Currently, both dealer service bays and independent aftermarket repair shops use real-time, bi-directional data to repair and maintain vehicles. This bi-directional interaction with the vehicle is used to diagnose and test vehicle systems requiring repair and to turn off dashboard warning lights that indicate that something on the vehicle needs attention after the repair is complete.

Aftermarket repair shops are already facing difficulties accessing some vehicles' data, requiring the consumer to make unnecessary choices. These choices can include visiting the dealer to perform a repair, ignoring the light, or, even worse, deactivating the warning light entirely. Each of these choices has a downside for the consumer, from increased costs for the dealer visit to environmental impacts and safety risks from unperformed repair and maintenance.

## **TECHNOLOGY ADVANCES ARE CHANGING REPAIR NEEDS**

New technologies create technological barriers that impair the ability of a motor vehicle owner and their chosen vehicle repairer to diagnose, repair, and maintain vehicles. Additionally, federal and state requirements such as the Magnusson Moss Warranty Act have not been updated to take into consideration emerging technological barriers. Taken together, technological and legal barriers eliminate consumer choice and hinder a competitive market.

For example, the deployment of advanced safety and crash avoidance features such as rearview cameras and advanced driver assist systems (ADAS) has dramatically increased over the last decade due to both consumer demands for safety technology and federal requirements to install advanced systems. As new technologies are deployed, the number of sensors and cameras on vehicles are quickly increasing. Rearview cameras have been required on all new vehicles under 10,000 pounds since May 1, 2018<sup>1</sup> and front crash prevention will be required on all new vehicles as the National Highway Transportation Safety Administration (NHTSA)

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<sup>1</sup> Federal Motor Vehicle Safety Standards; Rear Visibility, 2014.

implements congressional requirements outlined in the Infrastructure Investment and Jobs Act (IIJA).<sup>2</sup>

A study released by the Insurance Institute for Highway Safety (IIHS) in February 2023 found that the confusion around repairing these advanced crash avoidance features was growing as the popularity of the features grows. Improperly calibrated sensors and cameras can have catastrophic results. If an automatic braking system is receiving inaccurate information due to an improperly calibrated sensor, the vehicle might not be able to stop in time to avoid a crash. IIHS found that repairers are facing challenges in gaining access to repair instructions for these features, and the study finds that databases with comprehensive repair information are out of reach for most technicians. IIHS recommends that vehicle manufacturers simplify scanning and calibration procedures and establish a centralized database with repair and calibration specifications and instructions.<sup>3</sup>

## **CYBERSECURITY PROTECTIONS ARE CRITICAL TO VEHICLE REPAIR**

Providing independent aftermarket direct access to vehicle data for repair, service, and maintenance needs can be done in a safe, cybersecure, and controlled manner that will not put the motoring public at risk. MEMA Aftermarket supports policies that would allow the vehicle original equipment manufacturer (OEM) to utilize cryptographic or technological protections as long as the aftermarket industry continues to have the same ability to diagnose, repair, and maintain a motor vehicle in the same manner as any motor vehicle manufacturer or motor vehicle dealer.

The independent aftermarket can continue to be trusted partners in repairing, maintaining and servicing Americans' cars and trucks. The aftermarket currently does and can continue to protect safety, cybersecurity and privacy. We have repaired electronics, software, & safety systems – effectively – for decades. We have dealt with private, security data such as key codes to provide replacement key fobs to vehicles. This secure data sharing has been conducted in an effective, cooperative way with automakers for decades. The aftermarket has well-established training and certification systems in the industry. As many technology leaders among our members can attest, the technology solutions are available to provide both cybersecurity protections and vehicle repair.

In the 2022 *Cybersecurity Best Practices for the Safety of Modern Vehicles*<sup>4</sup>, NHTSA recognizes the need for a balance between third party serviceability and vehicle cybersecurity. NHTSA states, "cybersecurity should not become a reason to justify limiting serviceability. Similarly, serviceability should not limit strong cybersecurity controls."

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<sup>2</sup> Crash Avoidance Technology, 49 U.S.C. Sec. 30129 (2021)

<sup>3</sup> Mueller, Alexandra S., Cicchino, Jessica B., Zuby, David S., Calvanelli, Jr., Joseph V. Insurance Institute for Highway Safety. "Consumer Experiences with Crash Avoidance Feature Repairs." February 2023.

<sup>4</sup> National Highway Traffic Safety Administration. *Cybersecurity Best Practices for the Safety of Modern Vehicles*. September 2022.

## US COPYRIGHT OFFICE HAS ACKNOWLEDGED SOFTWARE ISSUES AND REPAIR

Software programs such as those used in vehicles are protected in the U.S. by the Copyright Act. Copyright law restricts parties from making, selling, or copying unauthorized copies of copyrighted material, including software. The 1998 Digital Millennium Copyright Act (DMCA) bolstered these protections. This law prohibits the circumvention of technical protection measures (TPMs) set by copyright owners to restrict access to copyrighted works. The effect of this provision was to restrict the ability to access such copyrighted programs, including access by third-party repairers in repairing and servicing vehicles. An exemption on such anti-circumvention restrictions was made in 2015 to allow vehicle owners access to computer programs related to technology in their own vehicles. However, third parties, including the aftermarket industry, remained subject to the restriction and were unable to lawfully access such software.<sup>5</sup>

In 2018, the exemption on the DMCA's anti-circumvention restrictions was expanded to allow third-party service providers to access copyrighted computer programs in vehicles that control the vehicle's functioning.<sup>6</sup> The rule also allows access to vehicular computer programs designed for the control of telematics or entertainment systems. The exemption applies, however, only when circumvention, including the access to programs for the control of telematics or entertainment systems, is a necessary step to allow the diagnosis, repair, or lawful modification of a vehicle function. In 2021, these exemptions were extended. The Copyright Office is currently conducting its triennial review of exemptions, and MEMA Aftermarket has requested an extension of these exemptions.<sup>7</sup>

By granting and extending these exemptions allowing access to copyrighted software, the Copyright Office has acknowledged the growing integration of technology in vehicles and the need for third-party technicians to be able to access copyrighted software, including software related to telematics and entertainment systems, to effectively service and repair vehicles. This allows independent third-party repairers to access software without infringing the DMCA, meaning consumers will no longer be restricted to accessing software themselves to service and repair their vehicles or having to rely on manufacturers for that purpose. Ultimately, providing the freedom to lawfully access software to repair vehicles, protects both the long-standing competition within vehicle repair and provides consumers with options for the service of their vehicles.

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<sup>5</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2015, 80 Fed. Reg. 65944 (October 28, 2015).

<sup>6</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2018, 83 Fed. Reg. 54010 (October 26, 2018).

<sup>7</sup> Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 2021, 86 Fed. Reg. 59627 (October 28, 2021).

## **CONSUMERS WILL BE HURT WITH FEWER REPAIR OPTIONS**

Preventing the aftermarket from having access to vehicle data will remove the choice consumers can now make to repair and maintain their vehicles by relying on the independent aftermarket. In a competitive market, consumers prefer independent service providers over OEM dealers by a ratio of 70 percent to 30 percent; a split that has persisted for decades. An independent study conducted by a firm that works with both automakers and the aftermarket estimated that if repair restrictions were not addressed, that share would drop to 56 percent by 2035 and continue to decline in the future.<sup>8</sup> By locking independent service providers out of the market, repair restrictions artificially distort consumers’ natural preference for more cost-effective independent maintenance and repair services and implement monopoly pricing.

Recently, the Automotive Service Association (ASA), the Society of Collision Repair Specialists (SCRS) and the Alliance for Automotive Innovation shared a “right to repair pact” with legislators on Capitol Hill that they had reached. This pact recognizes that there is a need to address motor vehicle right to repair and that legislation is necessary to protect consumers long-term; however, their pact falls short of addressing the current challenges faced by the independent aftermarket. The agreement released last week demonstrates that stakeholders can and should collaborate to find a solution that is in the best interest of the motoring public and the marketplace. It also highlights that the current Memorandum of Understanding between the aftermarket and the original equipment manufacturers, signed in 2014, fails to protect current and future repair access. Despite their efforts to remedy the situation, their document does not provide the necessary protections to ensure consumer choice now and into the future.

## **CONGRESS MUST PASS COMPREHENSIVE REPAIR LEGISLATION**

As an alternative, MEMA Aftermarket supports comprehensive repair access legislation. Such legislation must include:

- All vehicles in operation, including light-duty, medium-duty, and heavy-duty vehicles;
- Access to telematics and diagnostics data beyond that available just through the OBDII port;
- An enforcement mechanism;
- The ability for independent repair shops, using bi-directional communication, to update vehicles and parts to the latest software;
- The authority for NHTSA to set cybersecurity rules governing wireless access;
- Language addressing the risk of repair monopolies; and

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<sup>8</sup> Roland Berger. “*The U.S. Automotive Aftermarket in 2035.*” May 1, 2022.

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- Language to protect consumers' access to both light duty and heavy-duty vehicle repair, maintenance, and parts of their choosing through all iterations of vehicle technology on the road today and to come.

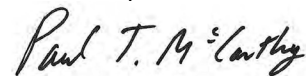
In February 2023, a bipartisan group of Members of Congress, led by Reps. Neal Dunn (R-FL), Brendan Boyle (D-PA), Warren Davidson (R-OH), and Marie Gluesenkamp Perez (D-WA) introduced H.R. 906, the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act. This comprehensive bill addresses the issues facing the independent aftermarket and will protect a consumer's ability to choose where and with what parts to repair their vehicles. MEMA Aftermarket urges Members of the Subcommittee to support this legislation and urge your colleagues to take action on the REPAIR Act this year.

### CONCLUSION

MEMA Aftermarket welcomes the opportunity to constructively engage with stakeholders on how to best protect consumers financially and against potential cyber-threats, how to secure the intellectual property of the OEMs and the original equipment suppliers who developed much of the systems and components that are subject to this debate, and how to preserve the competition within the aftermarket that provided consumers a choice in how to maintain a vehicle for decades.

MEMA Aftermarket is available to discuss this with the Committee and would like to reach a solution that is acceptable to all parties. Should you have questions or concerns, please contact Catherine Boland, vice president, legislative affairs at [cboland@mema.org](mailto:cboland@mema.org) or 301-509-2791.

Sincerely,



Paul McCarthy

President and Chief Operating Officer