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Section 1201 Public Hearings, Audience Participation Panel
U.S. Copyright Office

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Good afternoon. My name is Charles Crain, and I am the Vice President of Domestic Policy at the National Association of Manufacturers. The NAM represents 14,000 manufacturers of all sizes, in every industrial sector, and across all 50 states. I'm joining you today to share the NAM's perspectives on Class 5 and Class 7.

The basis of the so-called "right-to-repair" movement hinges on the false notion that owners do not have the ability to repair their own equipment. The truth, however, is that the majority of OEMs already provide a wide range of resources and tools that allow users—and third-party repair businesses—to maintain, diagnose, and repair products. In short, right-to-repair is a solution in search of a problem.

With respect to this specific rulemaking, the Copyright Office should reject the proposed Class 5 and Class 7 exemptions. These exemptions would undermine manufacturers' IP rights in service of right-to-repair—and the record does not support their adoption.

First, both proposed exemptions are overbroad, poorly defined, and unclear about permitted uses.

- For Class 5, proponents concede that it is "unusually broad in nature."
 - Basic, key terms in the proposed exemption are vague and overly broad—potentially implicating a wide range of products that operate very differently.
 - Proponents claim commonality because the products in question are used for a "commercial purpose"—but the mere fact of commercial use does not mean that all commercial devices operate in the same way, use the same TPMs, or have identical users and use-cases.
- Class 7, meanwhile, would allow for the circumvention of TPMs across a broad and abstract class that would include any lawfully acquired vehicle or vessel.
 - The proposed exemption also does not specify the precise types of data that would be accessed or even what the terms "vehicle operational data" and "diagnostic and telematics data" would precisely mean.

Second, for both classes, proponents have not supplied direct evidence about the specific TPMs that would be subject to the proposed exemptions, whether the TPMs are the same throughout each class, or whether circumvention of those specific TPMs would allow for the proposed uses.

Finally, proponents for Class 5 and Class 7 have failed to show that users will be adversely affected absent the ability to circumvent.

- Indeed, proponents have not shown that the proposed uses, and the circumvention allegedly necessary to access them, are even desired by users.
 - For Class 5, the examples are both de minimis and speculative.
 - The Class 7 proposal, meanwhile, fails to include any specific examples of a user wanting to, but being unable to, access, store, or share vehicle operational data.

In the past, the Copyright Office has held that the totality of the rulemaking record must, on balance, reflect the need for an exemption. When the record offered by exemption proponents does not clearly define the proposed category or justify the need for the exemption, the Copyright Office has historically recommended against adoption.

Here, it is clear that petitioners have not met their burden. The totality of the record does not support adoption of the proposed exemptions in Class 5 and Class 7. Further, granting these exemptions absent the necessary evidence or justification would undermine manufacturers' IP rights—in service of so-called “right-to-repair” when in fact users already have access to the resources and tools necessary to conduct repairs and maintenance. Accordingly, the Copyright Office should recommend against adoption of these proposed exemptions.

Thank you.