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**SUBMITTED VIA REGULATIONS.GOV**

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General Counsel and  
Associate Register of Copyrights  
United States Copyright Office  
Library of Congress, James Madison Memorial  
Building, 101 Independence Avenue, S.E.  
Washington, D.C. 20003

**Re: Comments of the Alliance of Automobile Manufacturers Regarding Streamlined  
Renewal Process: Docket No. 2017-10, Exemptions to Permit Circumvention of  
Access Controls on Copyrighted Works**

Dear Associate Register Damle:

I submit this letter on behalf of the Alliance of Automobile Manufacturers (Auto Alliance), the leading advocacy group for the auto industry. Its members represent 77% of all car and light truck sales in the United States, including the BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America. For further details, see <http://www.autoalliance.org/>.

The Auto Alliance does not submit this letter in opposition to any specific petition requesting renewal of an existing regulatory exemption to the anti-circumvention prohibition of 17 U.S.C. § 1201(a)(1). Instead, the Auto Alliance raises concerns with the submission of the Auto Care Association (ACA) to the extent it is inconsistent with the “streamlined renewal” process laid out in the Notice of Inquiry (NOI). The ACA submission can be found here: <https://www.regulations.gov/contentStreamer?documentId=COLC-2017-0007-0030&attachmentNumber=1&contentType=pdf>.

Pursuant to the NOI, the streamlined renewal process is only available to petitioners seeking to renew current exemptions that were granted during the sixth rulemaking. *See* 82 FR 29805. As noted in the NOI, “Renewal may only be sought for current exemptions as they are currently formulated, without modification.” *See* 82 FR 29806. Although the submission of the ACA is purportedly to support renewal of the current temporary exemption outlined in 37 C.F.R. § 201.40(b)(6), the ACA’s submission unfortunately mischaracterizes the scope of the current exemption and appears to argue for an expanded exemption, rather than for renewal of the current exemption as it is “currently formulated, without modification.”

For example, the current exemption only permits the “authorized owner of the vehicle” to undertake the circumvention, and does not extend to third parties that provide this service to the owner. Thus, ACA’s submission misstates the scope of the exemption when it indicates that, under the exception, repair shops are able to lawfully assist “customers in the maintenance, repair, and upgrade of their vehicles.” In its Final Rule, the Copyright Office expressly excluded third parties from circumvention activities under this exemption, noting that “a broader exception allowing third parties to engage in circumvention activities on behalf of others is in tension with the anti-trafficking provisions of section 1201(a)(2) and (b).” *See* 80 FR 65954. ACA’s misinterpretation of the scope of this exemption has real consequences. For example, pending litigation involves an aftermarket part dealer that sells a tool for circumventing an automobile manufacturer’s access controls in order to facilitate third party service technicians’ unauthorized access to copyrighted software for installation on an aftermarket part that controls a vehicle’s transmission. *See* Plaintiff’s Second Amended Complaint ¶¶53-68, *General Motors, Inc. v. Dorman Products, Inc. et al.* 15-cv-12917 (E.D. Mich, Oct. 21, 2016). Often, the installed software is an obsolete or superseded version, thus compromising safety and emission standards. *See id.*

ACA further argues that measures to control access to vehicle electronic control units (ECUs) are merely intended to impede independent repair shops. 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. The Copyright Office recognized the importance of these technological protection measures by narrowly circumscribing the temporary exemption, and prohibiting any circumvention that violates an applicable law, including Department of Transportation or Environmental Protection Agency regulations. Finally, although the ACA complains about the cost of acquiring software tools under the Memorandum of Understanding (MOU), this issue is irrelevant to the scope of the existing exemption and this petition process is not the appropriate forum to debate the cost of items covered by the MOU.

Therefore, the Copyright Office should reject any part of the ACA petition that argues for expanding the current temporary exemption outlined in 37 C.F.R. § 201.40(b)(6), and should only consider the petition to the extent it seeks renewal of the current exemption as it is currently formulated, without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin M. Rosenbaum".

Kevin M. Rosenbaum  
Of Counsel for  
MITCHELL SILBERBERG & KNUPP LLP

cc: Regan Smith, Deputy General Counsel  
Anna Chauvet, Assistant General Counsel  
Jason Sloan, Attorney-Advisor