Computer programs that control motorized land vehicles, including farm equipment, for  
diagnosis, repair, or modification of the vehicle, including to access diagnostic data  

September 8, 2020  

Consumer Reports\(^1\) submits this statement in support of renewing the current exemption  
for diagnosis, repair, and lawful modification of motorized land vehicles.  

As we have stated in previous submissions to the Copyright Office, and in our Digital  
Testing Standard launched in March 2017\(^2\), when a consumer purchases a product, the consumer  
should obtain genuine ownership of the product and its parts, including the ability to make  
effective use of the product, and the ability to effectively resell it.\(^3\) We believe consumers  
should have the ability to use the products they have purchased in all these respects, as they see  
fit. We have successfully made this case with respect to mobile devices, both in Congress and  
before the Copyright Office. And we believe it also applies here.  

In our view, the prohibition in section 1201 of the Digital Millennium Copyright Act  
against circumvention of technological protection measures has proven, in experience, to be an  
overbroad response to a concern that the digital age would usher in a massive deluge of  
copyright infringement, for which drastic new countermeasures were needed. Instead, its  
proliferating use to protect access to software that enables and governs – and restricts – the  
functioning of everyday consumer products in which it is embedded, and their interoperability  
with other products, causes far-reaching harm to fundamental consumer rights.  

\(^1\) Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers  
to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and  
ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on  
behalf of consumers’ interests. Unconstrained by advertising, CR has exposed landmark public health and safety  
issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto  
safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against  
predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices  
of consumers. CR has long been engaged in promoting consumer interests in the DMCA triennial reviews,  
particularly with respect to the exemption for unlocking mobile devices, both before the Copyright Office and in  
Congress.  

\(^2\) The Digital Testing Standard (theDigitalStandard.org) was launched on March 6th, 2017 and is the result of a  
collaboration with our cybersecurity partners, Disconnect, Ranking Digital Rights, and the Cyber Independent  
Testing Lab. The Standard is designed to hold companies accountable and equip Consumer Reports and other  
organizations to test and rate products for how responsibly they handle our private data. This is a collaborative and  
open source effort. The Standard is designed to empower consumers to make informed choices about the connected  
products, apps, and services consumers use every day.  

We recognize the value of copyright law in nurturing and protecting incentives for innovation, both generally and in particular with respect to computer software. At the same time, it is important that the monopoly rights conferred on creators by the copyright laws be kept appropriately contained, so they do not spill over into broader, unjustified and counterproductive restraints on competition and consumer choice, and do not undermine long-established, fundamental rights and expectations of consumers regarding their ownership and dominion over the products they have lawfully acquired. Beyond these immediate effects on consumer rights and expectations, broader innovation is impeded if a product’s manufacturer is given inordinately sweeping power to control how it is used once it has been released into the marketplace.

We also recognize that some product alterations can have serious implications for safety. Ensuring product safety has been a bedrock objective of Consumers Reports’ mission since its founding over 80 years ago. Safety must of course be at the forefront of concerns carefully monitored and vigorously addressed as we move to increasingly complex and interactive technologies. Likewise, pro-consumer data privacy and data security practices must be a top priority, for manufacturers and for policymakers; companies should compete and be held accountable on the basis of the data privacy and security protections they incorporate into the design of their products and services, and consumers should receive sufficient information to exercise informed choices.

But these considerations generally do not implicate copyright law, and generally fall outside the Copyright Office’s expertise. And it is important that they not be permitted to be used by companies as a pretext for blocking competition and consumer choice and undermining rights of ownership. In our view, the Copyright Office dealt with this issue appropriately in the 2018 review by clarifying that any alterations be subject to any applicable safety regulations promulgated by the Department of Transportation or the Environmental Protection Agency, agencies whose missions and expertise are directed at those issues.

This exemption has proven very beneficial to consumers in removing this obstacle to convenience and choice in access to vehicle software for diagnosis, repair, and lawful modification – and for ensuring that they can preserve the functionality of their vehicles. We therefore support its renewal.

Respectfully,

George P. Slover, Senior Policy Counsel
Maureen Mahoney, Policy Analyst
Consumer Reports
1101 17th St., NW, Suite 500
Washington, DC  20036
(202) 462-6262