

Legal Sidebar

Copyright Law Restrictions on a Consumer's Right to Repair Cars and Tractors

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When a consumer buys a car, truck, or piece of farm equipment, the consumer owns such physical machinery, but what about any installed software programs that help control and manage its functions? Manufacturers of cars and tractors argue that due to their contractual arrangements with the supplier of the software, the consumer has acquired only an [“implied license”](#) to use such software. They assert that consumers that license, rather than own, the software have no right to make any changes to it for purposes of repair or improvement; instead, they must seek out dealers and suppliers that are authorized by the original manufacturers of the equipment to perform such work. However, whether by rule or statute, this may soon change.

On the surface, this issue resembles a dispute that arose several years ago over “cellphone unlocking,” which was the subject of a [previous Legal Sidebar](#). Software in smartphones restricts them to operate only on certain cellular networks; if consumers want to use their phones with a different service provider, they would need to disable the “digital lock” that the software places on the phone. However, if consumers attempt to take such action on their own, without their existing service provider’s permission, it would constitute a violation of copyright law (as explained below), if not for a law that Congress passed in 2014, the Unlocking Consumer Choice and Wireless Competition Act ([P.L. 113-144](#)), which allows consumers to unlock their phones to connect them to another wireless carrier.

Why does copyright law have anything to do with cellphones, cars, and tractors, not to mention [coffee makers](#), [garage door openers](#), and [printer toner cartridges](#)? It is because the software that is embedded in such devices is protected by copyright law; thus, these devices contain copyrighted content. The Digital Millennium Copyright Act (DMCA) generally [forbids anyone from disabling “technological protection measures” \(TPM\)](#) (such as passwords, codes, and encryption) that exist in consumer products to prevent the unauthorized duplication or distribution of copyrighted materials contained in those products (such as music, movies, and software). A common example of TPM is the software encoded on DVDs that makes it difficult for consumers to easily copy or “rip” the copyrighted content (movies or television shows) for online sharing or syncing to a smartphone or tablet. The DMCA subjects individuals and businesses to [civil](#) and [criminal](#) penalties for engaging in unlawful acts that “circumvent” TPM.

However, the statutory prohibition on the picking of digital locks is not absolute. The DMCA empowers the Librarian of Congress to issue regulations that provide consumers the right to engage in “circumvention” of digital locks that control access to specific “classes” of copyrighted materials, if he believes that persons are, or are likely to be, adversely affected (due to the DMCA’s restrictions) in their ability to make noninfringing uses of those classes of materials. Proposals for such classes are submitted by members of the public during a lengthy [rulemaking proceeding](#); the Register of Copyrights then offers her recommendations of designated classes to the Librarian for his approval. The regulations thus create “exemptions” to the DMCA’s “anti-circumvention” prohibition, such that users may lawfully modify or disable the particular TPM during the three-year period for which the regulation applies. (The Librarian is required by the DMCA to issue a ruling every three years in order to ensure that the classes remain technologically and commercially appropriate.)

The Register of Copyrights is currently in the process of [conducting the sixth triennial rulemaking](#) proceeding to determine possible exemptions. Several groups have asked the Librarian to recognize an exemption that permits the

consumer to circumvent TPMs on software programs that control the functioning of [motorized land vehicles](#) and [agricultural machinery](#), in order to perform diagnosis, repair, personalization, modifications, or other improvements to the vehicles. If consumers try to conduct those activities by themselves, [they may be violating copyright law](#) if the work involves tampering with any digital locks protecting the software that controls the engine, braking, steering, entertainment system, and other mechanical functions. If the DMCA exemption is approved, owners of cars and tractors would be able to do repair work and make modifications to their vehicles without concern of liability for violations of the copyright law. One proponent of the exemption, the Electronic Frontier Foundation, has [explained](#) that “[m]odifications and adjustments to car firmware allow car owners to fix malfunctioning software, install new parts, add new features, and customize the vehicle for their own use.” However, agricultural equipment manufacturer John Deere has [opposed](#) the proposed exemption, arguing that circumvention of TPMs “will make it possible for pirates, third-party software developers, and less innovative competitors to free-ride off the creativity, unique expression and ingenuity of vehicle software designed by leading vehicle manufacturers and their suppliers.” General Motors has similarly [urged](#) the Copyright Office to deny the exemption because of significant negative consequences that may occur by altering TPMs that “play a critical role in ensuring the safety and security, as well as the regulatory compliance of the modern car.” The Librarian’s rulemaking proceeding is expected to conclude by October 2015.

In addition, legislation has been introduced in the 114th Congress, the Breaking Down Barriers to Innovation Act of 2015 ([S. 990](#)), that would require the Librarian, in deciding which exemptions to approve, to consider the impact that the DMCA’s anti-circumvention prohibition has on “repair, recycling, research, or other fair uses, and on access to information not subject to copyright protection.” Another bill, the Unlocking Technology Act of 2015 ([H.R. 1587](#)), would directly amend the DMCA to allow circumvention of TPMs if the purpose of such action “is to engage in a use that is not an infringement of copyright.”