

The History of Right to Repair

The Right to Repair initiative actually started in California in 1999. At that time the California Air Resources Board (CARB) had issued a regulation requiring only “certified technicians” be allowed to work on the vehicles on board diagnostic system (OBD). “Certified technicians” meant only those technicians working for new car dealers could repair vehicles with the check engine light (CEL) illuminated.

In order to have this regulation negated, the automotive aftermarket, primarily the Coalition for Auto Repair Equality (CARE) and the Auto Care Association (AAIA at the time) went to the California legislature for help. Senator John Burton (D) authored a bill entitled the “Vehicle Owners Right to Repair Act” SB 1146 which was eventually approved by the legislature in 2000.

Buoyed by the success in California, the aftermarket decided to expand Right to Repair beyond the OBD systems and make it bumper to bumper. In 2001, the Vehicle Owners Right to Repair Act of 2001 was introduced in the U.S. Congress. Despite some impressive sponsors on both sides of the aisle, the aftermarket ran into a juggernaut of opposition led by the car manufacturers (OEs) and their dealer networks represented by the National Automobile Dealers Association (NADA), one of the most influential and powerful advocacy groups in Washington, DC.

After nearly 6 years of no success in Congress, the aftermarket changed course and introduced Right to Repair in two states, New Jersey and Massachusetts. Both states were strategically chosen because they were seen as consumer-friendly and there was no significant OE presence in either state. In 2009, Right to Repair passed the New Jersey Assembly (House of Representatives) by a 2 to 1 margin but stalled in the Senate.

Meanwhile, in Massachusetts, Right to Repair received more favorable treatment but it was very slow and deliberate. Finally, on July 31, 2012, the Massachusetts legislature approved Right to Repair and it was signed into law by the Governor in August. But that was not the end of the Massachusetts story. In an effort to move things along in the legislature, the aftermarket had successfully petitioned the State to put Right to Repair to a referendum vote. Let the people decide! The legislature’s action in July of that year was too late to remove the Right to Repair referendum from the November ballot. Subsequently, Right to Repair was approved by an outstanding 86% of the voters.

Now, there were two Right to Repair laws in Massachusetts. One enacted by the legislature and the other by way of referendum. It took the legislature another full year to reconcile the two and Massachusetts Right to Repair was passed and signed into law in November, 2013 more than 14 years after California. It goes into effect with the 2018 model year which in reality is any vehicle manufactured after January, 2017.

The new law became the basis for a Memorandum of Understanding (MOU) between the car companies and the automotive aftermarket on Right to Repair which was signed in January, 2014 by the trade associations representing the OEs. Subsequently, the

individual car companies signed the agreement along with the board of directors of CARE and executive committee of the Auto Care Association, the two aftermarket associations who were the driving force behind Right to Repair.



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MEMORANDUM of UNDERSTANDING

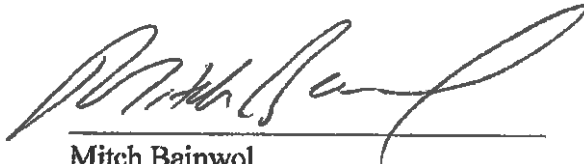
The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth (15th) day of January, 2014 and voluntarily agree as follows:

1. The Original Parties fully support this MOU and attached “Right to Repair” (R2R) agreement (“R2R Agreement”). Automobile manufacturer members of the Alliance and Global Automakers indicate their individual company’s agreement to comply with the MOU and R2R Agreement in all fifty (50) States and the District of Columbia through their individual letters of endorsement.
2. Until such time as the provisions of Section 2(c)(i) (common interface device) of the R2R Agreement have been fully implemented, with respect to model year 2018 and newer vehicles, for two years or January 2, 2019, whichever is earlier, and provided the OEMs comply with the MOU during this period, CARE and AAIA agree to continue to work with other Original Parties to fully implement the MOU and to oppose and not to fund or otherwise support, directly or indirectly, any new state R2R legislation.
3. The Original Parties agree to work to strongly encourage any new entrants to the U.S. automotive market or to R2R issues to become signatories to the MOU.
4. The Original Parties agree to work together to resolve any future or related R2R issues that might otherwise be the subject of state legislation and, subject to the mutual consent of the Original parties, amend the MOU and R2R Agreement to include these additional matters.
5. Once the Original Parties have signed on to the MOU, additional parties may join but any amendments or revisions to the terms of the MOU and R2R Agreement, triggered by admission of additional participants, shall require consent of the Original Parties.
6. The Original Parties agree to meet as needed and at least semi-annually, to assess how the MOU is operating, address operational concerns and discuss any other matters relevant to R2R or the MOU or future amendments or parties to the MOU. In the event that one of

the Original Parties concludes that, due to changed circumstances, the MOU or R2R Agreement may no longer be viable, that party shall, upon thirty (30) days written notice to the other three Original Parties, call a meeting to discuss the need for the MOU and R2R Agreement to continue.

7. The Original Parties agree that should a state(s) pass a law relating to issues covered by this MOU and R2R Agreement, after the effective date of the MOU and R2R Agreement, any automobile manufacturer member of the Alliance and Global Automakers may elect to withdraw its letter of endorsement for the MOU and R2R Agreement partially or entirely for the impacted state(s).

Signed on this 15th day of January, 2014:



Mitch Bainwol
President & CEO
Alliance of Automobile Manufacturers



Michael Stanton
President & CEO
Association of Global Automakers



Kathleen Schmatz
President & CEO
Automotive Aftermarket Industry Association



Ray Pohlman
President
Coalition for Auto Repair Equality

R2R AGREEMENT

Section 1. As used in this agreement, the following words shall, unless the context clearly indicates otherwise, have the following meanings:

"Dealer", any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a license, as required under applicable law, and is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines pursuant to said franchise agreement.

"Franchise agreement", a written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

"Fair and Reasonable Terms" Provided that nothing in this MOU and R2R Agreement precludes an automaker and an owner or independent repair shop who is subject to the agreement from agreeing to the sale of information and tools on any other terms on which they agree, in determining whether a price is on "fair and reasonable terms," consideration may be given to relevant factors, including, but not limited to, the following:

- (i) The net cost to the manufacturer's franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.
- (ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included.
- (iii) The price charged by other manufacturers for similar information.
- (iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.
- (v) The ability of aftermarket technicians or shops to afford the information.
- (vi) The means by which the information is distributed.
- (vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.
- (viii) Inflation.

"Immobilizer system", an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorization code.

"Independent repair facility", a person or business that is not affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines;

"Manufacturer", any person or business engaged in the business of manufacturing or assembling new motor vehicles.

"Dispute Resolution Panel (DRP)", a 5-person panel established by the Original Parties comprised of the following: one Alliance representative, Alliance member or Alliance designee, one Global Automakers representative, Global Automakers' manufacturer member or Global Automakers designee, two representatives of the independent vehicle repair industry to be selected and mutually agreed upon by AAIA and CARE, and one DRP Chair. The DRP Chair shall be an independent professional mediator with no affiliation to any of the Original Parties, shall be selected by unanimous consent of the Original Parties and shall be funded in equal amounts by each of the Original Parties. The Original Parties shall, at one of the two annual meetings, have an opportunity to revisit their respective representative or ask the Original Parties to revisit the person acting as DRP Chair.

"Motor vehicle", any vehicle that is designed for transporting persons or property on a street or highway and that is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States, but excluding (i) a motorcycle; (ii) a vehicle with a gross vehicle weight over 14,000 pounds; or (iii) a recreational vehicle or an auto home equipped for habitation.

"Owner", a person or business who owns or leases a registered motor vehicle.

"Trade secret", anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of 18 U.S.C. § 1839(3).

Section 2.

(2)(a). Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles and thereafter, a manufacturer of motor vehicles sold in United States shall make available for purchase by owners of motor vehicles manufactured by such manufacturer and by independent repair facilities the same diagnostic and repair information, including repair technical updates, that such manufacturer makes available to its dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system shall be made available to owners and to independent repair facilities in the same form and manner and to the same extent as is made available to dealers utilizing such diagnostic and repair information system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms.

(2)(b)(i) For Model Year 2002 motor vehicles and thereafter, each manufacturer of motor vehicles sold in the United States shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate the same functional repair capabilities that such manufacturer makes available to dealers. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

(ii) Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

(2)(c)(i) Commencing in Model Year 2018, except as provided in subsection (2)(e), manufacturers of motor vehicles sold in the United States shall provide access to their onboard diagnostic and repair information system, as required under this section, using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer and:

(a) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers SAE J2534, the International Standards Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Standards Organizations; or,

(b) an on-board diagnostic and repair information system integrated and entirely self-contained within the vehicle including, but not limited to, service information systems integrated into an onboard display, or

(c) a system that provides direct access to on-board diagnostic and repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board diagnostic and repair information available to their dealers, including technical updates to such on-board systems, through such non-proprietary interfaces as referenced in this paragraph. Nothing in this agreement shall be construed to require a dealer to use the non-proprietary vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this subsection, nor shall this agreement be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device, provided that the manufacturer also complies with Section 2(c)(i) and the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms, and otherwise complies with Section 2(a).

(2)(c)(ii) No manufacturer shall be prohibited from making proprietary tools available to dealers if such tools are for a specific specialized diagnostic or repair procedure developed for

the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through the non-proprietary interface set out in (2)(c)(i). Provision of such proprietary tools under this paragraph shall not constitute a violation of this agreement even if such tools provide functions not available through the interface set forth in (2)(c)(i), provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(c)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in (2)(c)(i), for diagnostic or repair procedures that fall outside the provisions of (2)(c)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(c)(i).

(2)(d) Manufacturers of motor vehicles sold in the United States may exclude diagnostic, service and repair information necessary to reset an immobilizer system or security-related electronic modules from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

(2)(e) With the exception of telematics diagnostic and repair information that is provided to dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to an independent repair facility via the tools specified in 2(c)(i) above, nothing in this agreement shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from the vehicle by mobile communications; provided, however, that nothing in this agreement shall be construed to abrogate a telematics services or other contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a dealer. For purposes of this agreement, telematics services include but are not limited to automatic airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location, remote door unlock, transmitting emergency and vehicle location information to public safety answering points as well as any other service integrating vehicle location technology and wireless communications. Nothing in this agreement shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

Section 3. Nothing in this agreement shall be construed to require a manufacturer to divulge a trade secret.

Section 4. Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this agreement shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any franchise agreement executed and in force between a dealer and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to such franchise agreement.

Section 5. Nothing in this agreement shall be construed to require manufacturers or dealers to provide an owner or independent repair facility access to non-diagnostic and repair information

provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to the terms of a franchise agreement.

Section 6. If an independent repair facility or owner believes that a manufacturer has failed to provide the information or tool required by this MOU, he may challenge the manufacturer's actions by first notifying the manufacturer in writing. The manufacturer has thirty (30) days from the time it receives the reasonably clear and specific complaint to cure the failure, unless the parties otherwise agree. If the complainant is not satisfied, he has thirty (30) days to appeal the manufacturer's decision to the DRP. The DRP shall be convened by the Chair within thirty (30) days of receipt of the appeal of the manufacturer's decision. The DRP will attempt to reach agreement between the parties. If unsuccessful, the DRP shall convene and issue its decision. The decision must be issued within 30 days of receipt of the appeal of the manufacturer's decision, unless otherwise agreed to by the parties. The DRP decision shall be disseminated to the complainant, the manufacturer, and the Original Parties. If the manufacturer and complainant still cannot reach agreement, the complainant may take whatever legal measures are available to it.

Frequently Asked Questions about the Right to Repair National Memorandum of Understanding

Who are the parties to the MOU?

The MOU is an agreement between two associations representing the independent aftermarket, the Automotive Aftermarket Industry Association (AAIA) and the Coalition for Auto Repair Equality (CARE); and the vehicle manufacturers represented by the Alliance of Automobile Manufacturers and the Global Automakers.

Why did AAIA and CARE take this action?

AAIA and CARE have been engaged in a battle with the vehicle manufacturers for the passage of right to repair since 2001. In 2012, the independent aftermarket came to agreement with the car companies on a right to repair law which ensured access to service information, tools and software needed to work on late model computer controlled vehicles. That law was enacted by the Massachusetts legislature in late 2013. As part of the agreement, AAIA, CARE, the Alliance and Global began negotiations to develop an MOU that would ensure that the new law in Massachusetts would apply across the country and which was hoped would end the expensive and often contentious state-by-state right to repair battles.

What will the MOU

Under the MOU, the car companies agree to abide nationwide with the requirements of the Massachusetts right to repair law that was enacted in December of 2013. Specifically, the car companies will be required to:

- Immediately make available to consumers and the independent vehicle repair industry on “fair and reasonable terms”, the same tools, software, and repair information that they make available to their franchised dealers.
- Beginning with the 2018 model year, establish web sites or “clouds” that will contain the same information and software that dealers have access to as part of their proprietary tools.
- Car companies provide access to the vehicles diagnostic computers using a standardized vehicle interface that meets either the Society for Automotive Engineers (SAE) J 2534 or International Standards Organization (ISO) 22900 standards.

How would a repair shop or car owner take action against a car company that fails to comply with the MOU?

Should a consumer or repair shop be unable to obtain information, software or a tool from a automaker, the complaining party would first be required to contact the car company either directly or through the National Automotive Service Task Force, to request access to the information, tool or software. A car company has 30 days to respond to this request. If the shop or consumer are still not satisfied, then the

individual or shop can take the issue before a Dispute Resolution Panel (DRP) established under the MOU. The DRP would be comprised of two individuals appointed by the automakers and two appointed by CARE and AAIA. The panel also would be comprised of a fifth individual, unaffiliated with either the car companies or the aftermarket that would be agreed upon by all four parties and would chair the DRP. If the dispute cannot be resolved amicably, the panel will make a ruling based on the terms of the MOU.

What is the difference between an MOU and a law?

The MOU is a voluntary agreement that does not have the weight of law behind it. Therefore, under the MOU, an independent shop not located in Massachusetts would not be able to take legal action against a car company for failing to abide by the terms of the MOU. However, it is hoped that since the MOU is based on a law in place in Massachusetts, car companies will abide by the voluntary agreement for the other 49 states.

Does the MOU cover all vehicles?

The MOU applies to all automobiles under 14,000 pounds with the exclusion of motorcycles. It is hoped that groups representing the independent heavy duty repair industry will be able to negotiate a similar agreement with trade associations representing heavy duty truck manufacturers.

How does the signing of the MOU impact federal and state right to repair legislative efforts?

AAIA and CARE have agreed to work on implementation of the MOU through 2018 and to oppose other state efforts while the aftermarket and car companies implement the MOU. While AAIA and CARE would prefer a right to repair law, both groups believe that such a lobbying effort would take years to accomplish as well as significant resources. All groups felt that both the aftermarket and consumers would benefit more by devoting its resources to implementing a voluntary agreement.

What happens if the automakers do not comply with the MOU?

Should the car companies fail to comply with the terms of the MOU, AAIA and CARE will notify the vehicle manufacturer that we are pulling out of the MOU and will be resuming right to repair legislative efforts both on the federal and state level.

What happens now?

Now that all four trade groups have signed on, every vehicle manufacturer must sign individual letters pledging to comply with the terms of the MOU. Should every car company does not sign the pledge, the MOU is not considered in effect.



Jan. 25, 2017

Joseph Craig Westbrook
BMW of North America, LLC
PO Box 1227
Westwood, NJ 07675-1227

Dear Mr. Westbrook,

As you are likely aware, the Right to Repair statute passed in Massachusetts in 2013 and the memorandum of understanding (MOU) signed by the aftermarket and vehicle manufacturers in 2014 require vehicle manufacturers make available for model year 2002 and later vehicles, the same information, tools and software currently made available to their franchised dealers. In addition, beginning for model year 2018 and later vehicles, vehicle manufacturers will be required to have all of their diagnostic and repair software housed in a cloud that can be accessed by independent shops using a generic personal computer or laptop. Further, both the law and the MOU require that the vehicle utilize a standardized interface that meets either the J2534 or ISO 22900 industry standard.

Given that most model year 2018 vehicles will be released in 2017, the new Right to Repair requirements will go into effect in the very near future. Therefore, we are asking your company to provide us with an update as to whether you will be able to meet the new requirements and where exactly independent technicians will be able to access the software.

The intent of these new requirements are to ensure that proprietary diagnostic and repair software are available to both dealers and independents in a format that is affordable and efficient. This step will benefit the independent repair industry, consumers and automakers by ensuring that vehicles can be effectively and efficiently repaired by a large number of service facilities. Specifically, vehicle owners will benefit by continuing to be able to obtain repairs for their vehicles at the facility of their choice – a choice based on important factors including price, convenience and trust.

If your company is choosing not to comply, we would appreciate an explanation why you will not be meeting the requirements of the law and MOU. If you do plan to comply but not in the coming year, please provide an estimate on when you expect to be in compliance.

I want to assure your company that Auto Care and CARE are committed to continuing the spirit of cooperation that brought about the MOU in 2014. However, we also want to make sure that both the law and the MOU are fully carried out such that consumers can continue to obtain repairs for their vehicles at the facility of their choice.

Thank you in advance for your cooperation and we look forward to hearing from you soon regarding this information.

Sincerely,



Aaron Lowe
Senior Vice President, Regulatory & Government Affairs
Auto Care Association



Ray Pohlman
President
Coalition for Auto Repair Equality

<u>Company</u>	<u>Response</u>	<u>Comment</u>
Aston Martin		
BMW	Yes	Are or will be in compliance
FCA		
Ford	Yes	Are or will be in compliance
Fuji		
GM		Originally sent to wrong contact
Honda		Acknowledged receipt of the letter
Hyundai		
Kia		
Maserati	Yes	Are or will be in compliance
Mazada		
Mercedes-Benz		
Mitsubishi	Yes	Are or will be in compliance
Nissan		
Subaru	Pending	Confirmation coming
Tesla		
Toyota	Pending	Confirmation coming
VW		
Volvo		