

TESTIMONY OF
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FOR THE

AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

REGARDING THE
MOTOR VEHICLE OWNERS' RIGHT TO REPAIR ACT
BEFORE THE HOUSE COMMERCE, TRADE
AND CONSUMER PROTECTION SUBCOMMITTEE

May 17, 2006

The Automotive Aftermarket Industry Association is pleased to provide testimony in support of the “Motor Vehicle Owners’ Right to Repair Act” (HR 2048) sponsored by Representative Joe Barton and now co-sponsored by a bi-partisan list of 102 legislators. AAIA is a Bethesda, Md.-based trade association whose more than 8,000 member companies and affiliates manufacture, distribute, and sell motor vehicle parts, accessories, service, tools, equipment, materials and supplies. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets.

There has been an independent aftermarket around in this country almost since the invention of the automobile. Most surveys indicate that between 70 to 80 percent of car owners choose to patronize independent repair shops over the new car dealer for maintenance and repair of their vehicle after their new car warranty has expired. We attract many consumers because our members are often more affordable and convenient than the local dealer. More often than not, independents are able to provide effective repairs for their customers on the same day that they bring their vehicle into the shop. This minimizes the inconvenience for today’s stressed out car owners and keeps repair prices affordable.

However, today’s highly sophisticated vehicles are posing extensive challenges for all service facilities, whether dealer or independent. Repairing late model

vehicles requires sophisticated tools, information and training. While the independent service industry is more than willing to take up this challenge, much of the information and tools are only available through the original equipment manufacturer. As vehicles become more sophisticated, the need for enhanced information from the car company will only grow. Some vehicle manufacturers have recognized the importance of having an effective independent repair industry and have made the tools and information widely and affordably available. Other car companies have either made access difficult, or have totally prevented access to the information needed to provide repairs for their late model vehicles. If something is not done, many motorists may find themselves forced to wait for appointments with the new car dealers, and paying substantially more for the repairs once they are there.

The Right to Repair act is really very simple; it seeks to ensure that manufacturers share the same information and tools with independent repair facilities that they provide to their dealer. Of course, this is not a free ride for the aftermarket since car companies would be permitted to charge independents for access to the needed information and tools. For the many car companies that have claimed repeatedly that they are making everything available, passage of this legislation will impose no new requirements since they are already in compliance. For those that have been withholding information or tools, they will need to do what they should have been doing in the past, making sure that

anybody who repairs their vehicles have access to the necessary information and tools to do the job.

Let me clear; we are not asking for proprietary or patent information. Our manufacturing members do not need access to the car company blueprints for developing parts. In fact, the aftermarket has produced competitive replacement parts that are as good, and in many cases, better than the parts produced by the vehicle manufacturers. Sometimes the parts are sourced from the same company. What our members are concerned about is that if access is denied to the independent service facilities, our manufacturers and distributors will lose their primary market since most new car dealers only source from the car company.

The trade secret protections provided in the current version of HR 2048 are virtually the same as those in the Clean Air Act which requires the sharing of emissions related service information and tools. These rules have worked for the past 10 years without a single challenge from the manufacturers. Therefore, we are stunned to continue to hear from the manufacturers that we are after their intellectual property. We have made it clear to the manufacturers that it is not our intention to obtain this information through this legislation and have offered to work with the car companies and the committee to clarify this issue. Thus far, other than unsubstantiated allegations, no one has produced any examples as to how the current language falls short. Of course, as we move toward mark-up, we

are still open to revisit this language in order to ensure that the legislation only requires the sharing of the same service information and tools that are available to the dealer.

While AAIA strongly supports passage of right to repair legislation, we were hopeful that a non-legislative agreement could be reached that would provide for a third party voluntary enforcement program. As we discussed during the November hearing on Right to Repair, the aftermarket met with the car companies last summer at the Better Business Bureau to develop a non-legislative alternative to passage of HR 2048. Although much progress was made during these negotiations in developing an effective program for ensuring service information and tools are available to our industry, the discussions broke down over three major issues. Resolution of the following issues is key to ensuring the future competitiveness of the independent service industry.

1. **Car companies must make all information necessary for our tool supplier to include the same repair and diagnostic capabilities that are available to new car dealers through car company proprietary tools.** Since most independents work on multiple makes and models of vehicles, they often purchase tools that contain the capabilities to work on many different vehicle makes. Not only is this more cost effective, but it also ensures competition and thus makes the tools more affordable. While the provision to tool suppliers of this information can be subject to whatever commercial terms are appropriate, independents need to be able to obtain aftermarket tools that have the same capabilities as the dealer tools.
2. **Independents must have the ability to access vehicle immobilizer systems for both diagnostic and repair purposes.** These systems provide that a chip in the key must perform an electronic handshake with another chip in the engine system in order for the vehicle to be started. If

certain parts are replaced in the engine, the system must be reinitialized such that the two chips can talk to each other and the ignition will operate properly. Further, technicians must have the ability to diagnose problems with the immobilizer system that for example could be preventing a vehicle from being started. While car companies claim that they cannot provide this information without risking that a vehicle will be stolen, we are not so certain this is entirely true. Some car companies are currently providing this information without jeopardizing vehicle security. In addition, this information is available to the new car dealer which means that it is being shared outside of the car company offices. We do not believe that the dealer is any more trustworthy than the independent service industry. The bottom line is that the immobilizer is a major issue in today's repair market and access by the independent repair industry must be resolved by every manufacturer or competition and car owner choice will suffer as a direct result.

- 3. Governance of the organization that will oversee a non-legislative agreement must be fair and effective.** Although AAIA fully supports broad representation on a full board by the various parties that are involved in the repair industry, we also strongly believe that there needs to be an executive committee that will oversee the day-to-day work of the organization. In order to ensure fairness, this executive board should be split evenly between independent aftermarket and the car companies to ensure that it is fair and not dominated by either side. Furthermore, we agree with the suggestion made during the last hearing that the executive board contains independent representatives to ensure fairness and credibility for the organization.

I want to reiterate that AAIA feels strongly that a non-legislative agreement that has strong and comprehensive commitments from each manufacturer and, that is enforceable by a third party is preferable over legislation. However, the current effort to formalize the National Automotive Service Task Force (NASTF), while a step in the right direction to improve information availability, is a long way off from taking the place of Right to Repair legislation. In fact, it is unclear whether the governance structure is sufficiently different from that of the previous NASTF and whether any discussions over information availability will be acceptable to us and the car companies.

The truth is the work that was accomplished during the Better Business Bureau negotiations last summer moved our industry very close to a resolution that was not only acceptable, but would go a long way toward improving information and tool availability for our industry. Unfortunately, it seems that the discussions taking place in the current NASTF arena are attempting to make changes to that work that will move us further away from an acceptable agreement. For example, the discussion over a third party enforcement program centers on developing an arbitration system that will move any information dispute into a system that will be costly and time consuming and probably rarely used by independents. Further, while the governance structure now approved by NASTF has a wide representation from the industry, the same groups that ran the last NASTF are still on the executive board for this version of NASTF; the Automotive Service Association, the car companies and the tool companies. Unless the organization completely changes its leadership and the way it operates, it will continue to be ineffective and lack credibility.

The bottom line is that we should not be reinventing the wheel, but instead, building on the progress that we made in the Better Business Bureau negotiations. To that end, the Coalition for Auto Repair Equality (CARE) sent a letter to the vehicle manufacturers that outlined a resolution to the three issues listed previously. I have attached a copy of this letter. On nearly every issue, the letter represented an attempt by the aftermarket to compromise our position

in order to address car company concerns. To my knowledge, CARE has yet to receive a response to this letter from the vehicle manufacturers.

Further, at the request of this subcommittee, the aftermarket brought some of its leaders to Washington to meet with the manufacturers in order to see if the final issues regarding a non-legislative agreement can be resolved. Unfortunately, the manufacturers brought people to the meeting whom they admitted could not make any decisions regarding a possible agreement. Further, the manufacturers only allotted about one hour to the meeting, stating that they had a more important meeting to attend.

I want to thank the staff of this subcommittee for the extensive efforts they have made to help bridge the gap between the car companies and the aftermarket. You have gone way beyond the call of duty to try to obtain a non-legislative agreement that would ensure motorists continue to have a choice in automotive repair. However, it appears clear to us that the manufacturers, despite all of their public talk, do not want to resolve this issue and are hoping that this legislation goes away.

Therefore, AAIA, consumer groups, and small business organizations urge this subcommittee to wait no longer, but to move as soon as possible to enact Right to Repair legislation. Every day, more and more vehicles are entering the market, and we can no longer wait while the manufacturers use the present

process to stall attempts to ensure competition in the vehicle repair market. U.S. consumers deserve some assurance that the vehicles they purchase can be repaired anywhere they choose and a system that is not controlled by the manufacturers.

Mr. Chairman and members of this subcommittee, whether you believe the manufacturer's contention that everything is available; or if you believe the many technicians and shop owners that have come before this subcommittee that have questioned this conclusion and warned that competition is being threatened; most everyone agrees that car owners should be able to get their vehicle repaired where they choose. This legislation will only serve to ensure that car owners remain in the driver's seat when it comes to deciding who will repair their vehicle now and in the future.

Thank you for the opportunity to share our views on this important issue and I am available to answer any questions you might have.

ATTACHMENT #1

March 8, 2006

To: Mr. Mike Stanton

Vice President Government Affairs, Alliance of Automobile
Manufactures

Mr. John Cabaniss

Director Environment and Energy, Association of International
Automobile Manufactures

From: David Parde

President, Coalition for Auto Repair Equality

RE: RIGHT TO REPAIR NEGOTIATIONS

As you will recall, at the end of the Better Business Bureau negotiations this past summer, several issues were left unresolved at the end of the approximately two months of talks. Those remaining issues concerned NASTF Governance, Tools and Tool Information, the cost of Tools and how that would be handled in the enforcement process, Penalties, and Service Information. Here is our current position on these issues.

GOVERNANCE

CARE has supported several different configurations of a board, which originally included a 4-4 split of interested parties, an evenly split board with independent board members added, a completely independent board, and most recently we propose a compromise that includes the NASTF proposed board with a smaller, executive board composed of the parties of direct interest to the issue of information availability.

We believe that a smaller executive board is justified for several reasons. First, putting aside for the moment the issue of whether the makeup of the 15 member board is “fair” or not, we do not believe that the **structure** of the

NASTF board is conducive to providing strong leadership in resolving the issues, as they may come along, of information availability. We say this for two reasons. One, we believe that a 15 member board is too large to effectively conduct business. We have consistently maintained throughout our negotiations that the board must be kept small to be effective. We have always been open to wide participation in working groups and committees.

Secondly, many of the 15 proposed NASTF board members are duplicative of one another and many do not get into the day to day issues of shops obtaining the necessary tools and information. They are involved in the broad issues of reparability, but not whether a piece of information is available when the car is in the shop.

We believe that a smaller evenly divided board could tackle issues of information availability in a timely and fair manner, while the broader issues that may be only tangentially related to information availability can be handled by the larger board.

In summary, we believe there is a lot duplication in the NASTF board, with the same groups represented multiple times. Moreover, most of these groups aren't directly involved in the issue. They may be necessary to other NASTF concerns, but they do not add value, in our opinion, to resolving the core issues. They do, however, add a lot of uncertainty.

For these reasons, we would propose a 3-3-2 executive board that is composed of CARE and AAIA and AASP, on our side, AAM and AIAM and ASA or the Dealers (or whoever you want) on yours, and two independents. We would propose as the independents AAA and AARP or a similar type organization, and a consumer group, but if these are not acceptable they could be chosen by the FTC upon mutual agreement.

TOOLS / TOOL INFORMATION

Manufacturers shall make available to equipment and tool companies all generic and enhanced (car company specific) Tool Information necessary to produce generic tools that contain the same diagnostic and repair capabilities that are available to all franchised dealers.

Restricting only “scan tool information” to the aftermarket is not acceptable. On this issue we cannot move off what was in our final proposal before the BBB.

Tool issues need to be under the control of NASTF, but, the aftermarket agrees to leave the details of exactly how this would be implemented to future negotiations, if, the manufacturers would commit both to fully provide tool information and to a timetable for resolving the details.

COST OF TOOLS

Reluctantly, we would agree not to press (at this time) to have the cost of tools issue be enforced by NASTF.

PENALTIES / ENFORCEMENT

We accept the \$ 2,000 in monetary penalties proposed by the BBB document. We continue to demand an independent third party enforcement mechanism be put into place. We would recommend that the BBB be that third party.

IMMOBILIZERS

The aftermarket is generally happy with the method being used by Ford to resolve this issue. We would recommend and encourage all manufacturers to adopt a system like Fords.

However, we recognize that due to security concerns, certain manufacturers feel they cannot provide tool information that is necessary to work with vehicle security or immobilizer systems to tool manufacturers. Therefore, it is appropriate that the aftermarket and the manufacturers develop a method that will permit manufacturers to provide independent technicians with the ability to obtain within 24 hours or less, and at a fair and reasonable price, the necessary tools and information to fully repair vehicles equipped with immobilizer systems. This interim method will provide manufacturers with a period of time, not to exceed two (2) years to redesign their vehicle systems such that providing the necessary tool information to aftermarket tool companies will not jeopardize these systems.

NOTE - we want it recognized that not all problems linked to the immobilizer systems are security related.

SERVICE INFORMATION

All service related information shall be made available when it is generally available to all dealers.

Finally, we believe that any final agreement document needs to be signed by all manufactures within a reasonable period of time not to exceed (2 weeks). We would like to remind the committee that the CARE board is in town on March 15th, and we stand ready and willing to meet with equal participants from the manufacturers to resolve these issues at that time.

ATTACHMENT #2



Motor Vehicle Owner's Right to Repair Act Groups Supporting H.R. 2048

National Aftermarket Groups

Alliance of Automotive Service Providers (AASP) – www.autoserviceproviders.com
Automatic Transmission Rebuilders Association – www.atra.org
Automotive Aftermarket Industry Association (AAIA) - www.aftermarket.org
Automotive Engine Rebuilders Association (AERA) - www.aera.org
Automotive Oil Change Association – www.aoca.org
Automotive Parts Rebuilders Association (APRA) - www.apra.org
Automotive Warehouse Distributors Association (AWDA) - www.awda.org
Coalition for Auto Repair Equality (CARE) - www.careauto.org
Consumer Electronics Association (CAE) – www.ce.org
Retail Industry Leaders Association (RILA) – www.retail-leaders.org
Service Station Dealers of America (SSDA) - www.sdda-at.org
Tire Industry Association (TIA) - www.tireindustry.org

National Organizations

AAA – www.aaa.com
National Federation of Independent Businesses - www.nfib.com
National Grange - www.nationalgrange.org
The 60 Plus Association - www.60plus.org
Mobile Enhancement Retailers Association (MERA) - www.merausa.org
Motorcycles Rider Foundation – www.mrf.org

State Aftermarket Groups

Alliance of Automotive Service Providers
Massachusetts/Rhode Island (AASP-MARI) – www.aaspmari.org
Minnesota (AASP-MN) – www.aaspmn.org
New Jersey (AASP-NJ) – www.aaspnj.org
Pennsylvania/Delaware (AASP-PA) – www.aasp-pa.org
Automotive Aftermarket Associations (ASAAA) - www.asaaa.com
Automotive Aftermarket Assn of the Carolinas & Tennessee (AAACT)
Automotive Aftermarket Association Southeast (AAAS) – www.aaas.us
Automotive Service Councils of California (ASCCA) – www.ascca.com
Automotive Wholesalers of Arizona (AWOA) - www.awoaonline.org
Automotive Wholesalers of Illinois (AWOI) – www.awoi.com
Automotive Wholesalers of Texas (AWOT) – www.awot.org
California/Nevada Automotive Wholesalers Association (CAWA/NAWA) - www.cawa.org
Chesapeake Automotive Business Association (CABA) – www.caba.biz
Independent Garage Owners of North Carolina (IGONC) – www.igonc.com
Florida Automotive Industry Association (FAIA) – www.faia.org
Kentucky/Indiana Automotive Wholesalers Association (KAWA/IAWA)
Louisiana Automotive Industries Association (LAIA)

Michigan Automotive Parts Association (MAPA)
Midwest Automotive Industry Association (MAIA)
New York State Automotive Aftermarket Association (NYSAAA)
Ohio Valley Automotive Aftermarket Association (OVAAA) – www.ovaaa.org
Oregon Automotive Parts Association (OAPA)
Pennsylvania Automotive Wholesalers Association (PAWA)
Petroleum Retailers & Auto Repair Assoc. (PRARA)
Rocky Mountain Automotive Wholesalers Association (RMAWA)
Virginia Automotive Parts & Service Association (VAPSA)
Washington Automotive Wholesalers Association (WAWA) – www.wawa-pas.com
Wisconsin Automotive Parts Association (WAPA) - www.wapaonline.com