



# DIGITAL MILLENNIUM COPYRIGHT ACT

## UNDERSTANDING THE 2018 EXEMPTIONS AND RIGHT TO REPAIR

**R**ight to Repair advocates have been widely discussing a three year exemption to the Digital Millennium Copyright Act (37 CFR 201.40(b)-(c), “DMCA”) as a substantial development especially as it relates to agricultural equipment. This messaging, however, fails to give a realistic picture of the 2018 DMCA exemption and its limitations. Manufacturers and Dealers continue to support commonsense repair solutions but recognize that the Right to Repair is not the Right to modify. In short, the 2018 DMCA exemption does not provide widespread or unregulated access to embedded code for modifications purposes. Instead, in order to meet the DMCA exemption requirements, each of the following must be true:

### **1 The computer program cannot be one which is accessed through a separate, subscription service.**

Manufacturers, suppliers and their distributors are still permitted to utilize end-user license agreements that prohibit or restrict end users from making unauthorized software modifications or reverse engineering end user software to obtain source code or trade secrets.

*continued*

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## **2 The circumvention of the computer program must be necessary in order to allow one of the following:**

- a DIAGNOSIS** Even prior to the industry-planned, 2021 public availability of end-user materials for tractors and combines, some manufacturers already provide diagnostic tools (e.g., diagnostic code readers), vehicle displays, and manuals with diagnostic information for end users and independent repair shops
- b REPAIR** Many equipment repairs do not require software updates. Even if software updates are required, manufacturer-authorized software updates can be distributed conveniently to end users wirelessly or through distribution channels. Authorized distributors strive to rapidly respond to in-field repair requests related to manufacturer-authorized software updates to satisfy customers and minimize downtime in the field; some authorized dealers may offer expedited or priority repair service.
- c LAWFUL MODIFICATION** A modification is not lawful if it violates Department of Transportation (DOT) or Environmental Protection Agency (EPA) regulations. By way of example, under EPA existing regulations, it is illegal to manufacture, sell or install a component which is intended or designed to bypass, defeat or render inoperative emission controls. In addition, accessing the programming cannot be done for the purpose of gaining unauthorized access to copyrighted works or in order to reverse engineer trade secrets.

It is clear from the language of the 2018 DMCA exemption that circumvention of security measures can only be undertaken if it is necessary to effectuate a diagnosis, repair or lawful modification. Further, even if a modification is done within the legal parameters of the 2018 DMCA exemption, such modifications are not without additional risks.

Modifications of equipment manufacturer settings may:

- Detract from resale value of any equipment
- Be prone to unintended consequences of untested coding
- Pose unnecessary and avoidable safety risks
- Void or otherwise violate warranty provisions

Equipment manufacturers and dealers have made a commitment to make available a comprehensive toolkit of maintenance, diagnostic and repair information for tractors and combines by 2021. While much of this information is already available, manufacturers and dealers are going the extra step to provide end users with commonsense solutions that strike the proper balance in the way so called right to repair legislation would not.

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