|Please note: the original text of this E-Mail is in English and can be found online]

From: REDA Julia
Sent: Tuesday, October 06, 2015 12:37 AM
To: VW Group EU Representation
Subject: aktuelle Situation bei Volkswagen

Dear Mr Dr. Steg, dear Mr Klitz,

My name is Matthias Schindler, I am an assistant of Julia Reda, MEP, who forwarded your letter from the 2nd of October to me to process.

There are two aspects which are of special interest to me and I would be thankful if you could explain Volkswagen's current point of view as regards the following topics:

Copyright:

US and European copyright prohibits circumvention of effective technological protection measures (TPM), f.e. 17 U.S.C. §1201 (a) of the Digital Millennium Copyright Act. The DMCA allows the US Copyright Office to incorporate certain exceptions to circumvent these TPMs after a certain consultation procedure, for example for the work of archives or for research. In a letter sent by the Copyright Office on December 12th of last year (Federal Register Volume 79, Number 239) a statement is sought regarding the inclusion of exceptions for TDM-circumvention regarding vehicle software (Proposed Class 21 and 22).

Firmware like the one included on the defeat device of a Diesel engine could no longer be examined via subpoena by researchers.

The non-speculative nature of this question can be shown with the example of research concerning Megamos. In June 2013 Volkswagen effected an interim injunction against scientists in the case Volkswagen Aktiengesellschaft v Garcia & Ors [2013] EWHC 1832 (Ch). It forced the scientists to stop reporting on the vulnerability of remote key technology in cars. Volkswagen obtained this interim injunction not through copyright protection, but via the argument of protection of business secrets.

Trade secrets:

The European Parliament is currently negotiating the Trade Secret Directive in trilogue (2013/0402 (COD)). Article 2 of the proposed directive defines trade secrets as know-how and business information fulfilling the following criteria:

1. it is secret in the sense that it is not generally known among or readily accessible to the public, 2. has commercial value because it is secret, and 3. has been subject to reasonable steps to keep it secret.

As opposed to the definitions established in Germany a legitimate interest to keep it a secret is missing. This has been of significance in the past especially when authorities giving information to third parties in the case of companies breaking the law were concerned. Firmware such as on a defeat device of a diesel engine could arguably be seen as a business secret in the sense of the proposed EU directive, which would hinder the work of authorities or journalists.

Here are my questions:

Copyright:

* Has there been a statement to the US Copyright Office by Volkswagen directly or indirectly in Volkswagen's name via associations as regards TDM?

* Have there been equivalent statements by Volkswagen or in its name via associations in Europe?

* what is Volkswagen's current position on the legality of analysis of TDM-protected firmware in vehicles by third parties?

Trade Secrets:

* Has there been a statement to the European institutions by Volkswagen directly or indirectly in Volkswagen's name via associations as regards the trade secret directive?

* What is Volkswagen's current position as regards the application of laws protecting trade and business secrets and the existence and function of defeat devices?

Feel free to contact me if you have any questions.

Kind regards,
Mathias Schindler.