

EXPERT ANALYSIS

Self-Driving Vehicles Take the Law To Uncharted Territory

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Autonomous, driverless and self-driving vehicles — AVs — are set to become the next major technological development in the near future. AVs are expected to significantly reduce the number of vehicle-related deaths and injuries by eliminating human error. Additionally, there is hope that AVs will increase fuel efficiency, reduce traffic, improve accessibility for disabled people and promote overall productivity.

As AV technology drives forward, myriad legal implications surrounding AVs have yet to be addressed by federal and state regulations.

FEDERAL REGULATION

Last year the National Highway Traffic Safety Administration released its federal automated vehicles policy, the first stride towards federal regulation of AVs. The policy comprises a vehicle performance guidance, a model state policy and a summary of regulatory tools.

The VPG sets forth “best practices for the safe design, development and testing of AVs prior to commercial sale or operation on public roads.”

Although the VPG is not mandatory, the federal government expects manufacturers, individuals and entities to use the guidance and industry standards to facilitate the safe manufacturing and use of AVs. The VPG encourages AV manufacturers to collect incident and crash data and share that data with others in order to develop AV technology.

The VPG cautions that data sharing should be structured to protect third-party privacy. The guide, however, provides only general statements about cybersecurity and privacy and does not offer concrete guidance on how to address these concerns.

The model state policy was designed to foster a uniform legislative AV framework, and addresses how states can regulate AV testing and operations within their jurisdictions. The MSP additionally summarizes current regulatory tools to assist with the development of AV technology and future AV regulations.

STATE REGULATION

In the absence of firm federal regulation on AVs, many states have passed their own laws to regulate the testing and operation of AVs on public roadways. The level and scope of regulation varies from state to state.



NHTSA only provides general statements about cybersecurity and privacy and does not offer concrete guidance on how to address those concerns.

Some states have enacted laws that will only allow them to regulate AVs in the future. These laws allow state agencies to direct funds and resources toward AV research and investigation in order to understand the technology before establishing rules about their use.

More progressive states have laws that permit the testing of AVs under certain conditions, such as financial responsibility, specific technical safety features and compliance with other laws and standards applicable to motor vehicles.

These types of laws generally require a human operator to override or disengage the autonomous technology. Critics say that requiring a human operator undermines the ultimate purpose of AVs.

A smaller number of states have enacted legislation that permits not only the testing of AVs, but also their use and public deployment. Similar to testing regulations, the AVs may be used only when certain requirements are met, including registering with a state agency and recording and maintaining driving data.

DATA AND PRIVACY CONCERNS

Legislators, manufacturers and consumer groups all encourage the collection of data on the use and operation of AVs. There is a lack of consensus, however, on the accessibility of such data, given the privacy interests of the human owner and operator, and legislation fails to specifically address privacy issues.

Laws have only touched on maintaining the privacy of AV users when exchanging information among manufacturers and limiting the dissemination of the data.

Uncertainty remains about whether the data should be used for purposes other than developing safety protocols for AVs, including law enforcement and insurance underwriting.

INSURANCE

AVs will necessarily change the automobile insurance industry. Automobile liability insurance policies typically cover liabilities arising out of the insured's ownership, maintenance or use of a motor vehicle, and do not address the risks carried by AVs. When insuring AVs, insurers and their policies will need to address and focus on cybersecurity risks.

The use, ownership and maintenance of an AV will differ from conventional vehicles: AVs will increasingly rely on updated and secure software to not only operate safely, but to thwart cybersecurity attacks that could turn the AV into a weapon.

Moreover, the operation of an AV will require the human driver to disengage the autonomous technology when circumstances warrant, exposing AV owners and operators to liability not encountered with conventional vehicles.

ETHICAL IMPLICATIONS

AVs will inevitably confront circumstances in which a fatal accident cannot be avoided.

While many agree a utilitarian approach is best — selecting an outcome that maximizes the number of survivors and minimizes the number of deaths — the manner in which this approach will be applied is unknown.

First, it is not clear whether AVs are technologically capable of assessing risk of death or injury, at least presently. Current versions of AVs still struggle with sensing certain common external conditions such as fog, let alone the presence of other humans.

Even if AVs attain the technological ability to accurately assess risk, the utilitarian principle does not address qualitative considerations.

For example, should an AV try to save a child over an adult? Should an AV attempt to save its occupants at the risk of others?

These are only a few of the legal issues unique to AVs. As the technology develops, new issues will continue to arise, ensuring that the law surrounding AVs will be a significant emerging topic in the near future.



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