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An ALM Publication

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The Legal Framework for Self-Driving Cars

by ANNA EBY

In the very near future, auto manufacturers will sell vehicles that drop off their drivers in front of the office, restaurant, or store, locate a parking space and park themselves, then wait until they are summoned, at the push of a button, to retrieve their drivers.

TECHNOLOGY

Audi introduced such a technology, called Piloted Parking, all the way back in the technological stone age of 2013. In early January 2015, Audi demonstrated a related technology, Piloted Driving, by having a self-driving car drive itself from San Francisco to the Consumer Electronics Show in Las Vegas. Reportedly, no one, man or machine, was harmed on this autonomous trip.

Almost all major auto manufacturers, from Mercedes-Benz to General Motors, expect to sell vehicles with at least some autonomous driving features in the next few years. The technology exists, and it works. The law, however, significantly lags behind the technology. Who is at fault when the self-parking car hits another vehicle, or a person? Who gets the ticket when a self-driving car speeds or parks in a loading zone? Both the auto industry and state and federal governing bodies are asking these questions. However, until a legal framework is created, the age of autonomous driving will remain the Wild West of the law.

Four states (Nevada, California, Florida and Michigan) and the District of Columbia have passed bills relating to

Who is at fault when the self-parking car hits another vehicle, or a person? Who gets the ticket when a self-driving car speeds or parks in a loading zone?

autonomous driving, including legislation that allows Google and others to test self-driving cars on public roads. A few of these bills address manufacturer liability when a third party converts a car into an automated vehicle. But the main question remains unanswered: When a self-driving car makes a mistake, who does the law hold responsible?

For now, there are no answers, only opinions that lead to further questions.

In a July 2014 Slate essay, Boston attorney and author John Frank Weaver suggested that robots, including self-driving cars, should be treated as legal persons with rights and obligations, including the obligation to carry insurance. According to Weaver, an autonomous vehicle that carries its own insurance should shield the vehicle's owner from personal liability.

On the other hand, Google apparently thinks that it

should get the ticket if one of its self-driving cars is cited. In a May 2014 article in The Atlantic, Google claimed none of its self-driving cars had ever been ticketed, but if that were to ever happen, Google itself should pay the fine, since the owner was not making the decisions.

A self-driving car that parks next to a fire hydrant will not upend our legal system. But suppose an Audi with the Piloted Parking app drives through a parking garage wall or fails to stop at a crosswalk. Its owner is not even in the vehicle, but pushed a button to activate the app. Who is to blame?

In some of these instances, existing product liability law will likely catch up quickly to the state of technology. The widely publicized recalls for Toyota's unintended acceleration issue and General Motors' ignition switch defect illustrate how manufacturers are held responsible for design and manufacturing defects, even when, as in the General Motors case, some of the accidents were caused, at least in part, by driver error. It seems unlikely that similar issues in self-driving cars will be treated much differently.



Yet, counter-intuitively, the separation between man and machine seems murkier in the world of self-driving cars. Today, we—the humans—press the gas and the brake, operate the turn signals (or not), and react to the surrounding conditions, such as pedestrians and traffic signs. We make decisions and take actions, for which we are responsible. The car responds to us—or not, in which case the manufacturer might be responsible. When we hand over more and more responsibility to a machine, do we hand over a corresponding amount of liability?

Words matter, and lawmakers will grapple with all of these questions as they draft legislation for self-driving cars. Consider the definition of “operator” put forward in H.B. No. 2932, which was filed in the Texas House in 2013, but ultimately stalled in committee (the text is available on the Texas Legislature's website): “The operator of an autonomous motor vehicle operating with the use of autonomous technology is the person who causes the vehicle's autonomous technology to engage, regardless of whether the person is physically in the autonomous motor vehicle while the vehicle is operating.”

Using that definition, the operator of the self-parking Audi is the person who presses the button alerting the Audi to park itself. Is the “operator,” already in the elevator by the time the Audi enters the parking garage, really the operator?

Perhaps the biggest question of all is, as machines make more and more decisions for us, when do they become more than just machines? When do they start exercising judgment? And who is responsible for their inevitable bad judgment? Maybe the law will decide that question for us. But it hasn't yet.



Anna Eby practices business litigation and appellate law, and is the owner of Eby Law Firm in Round Rock. She writes about cars and the automotive industry on her blog, MotoristaBlog.com.