

# LAYING DOWN THE LAW

As in many cases of advances in technology, critics of connected and autonomous vehicles (CAV) have been quick to voice concerns about the adequacy of the legal framework and have fed the anxiety of the public by warning them of the risks of security breaches and vehicle hacking.

The reality is much more trivial and, as with any technological evolution, the legal system will not only adapt to such evolution, but will accompany it in a more seamless fashion than expected.

## Safety by design

One promise of CAVs is improved levels of safety for both their users and other road users. Liability issues surrounding the driving of CAVs can be sorted into three categories: civil liability or liability for tort, criminal liability and defective product liability.

In legal terms, civil and criminal liability require that the offender has some degree of knowledge of the difference between good and evil, or that it may be affected by the idea of guilt. One could observe that a CAV would never know the difference between good and evil, nor would it experience the sensation of guilt in a case of wrongdoing.

However, legal systems have already started abandoning the idea of sorting liability associated with traffic accidents on the basis of a characterized fault or thought. Courts and insurers are slowly but surely deviating from a guilt-based legal system toward an objective liability-based system.

## THE LAW WILL NEED TO ADAPT FOR VEHICLES OF THE FUTURE

*Connected and autonomous vehicles will have a considerable impact on the way we live, and legal systems will have to remain robust and resilient, while accommodating the changes they bring*

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“ With no human driver, autonomous technology raises liability questions in the event of an accident ”

Legislators have also begun amending substantive legal traffic regulations to move away from a guilt-based approach. In France and Belgium, for instance, certain so-called 'weak road users' are entitled to be indemnified by the insurers of the cars involved in a traffic accident, even though they committed a traffic offense and could be held liable.

This evolution in court and legislation paves the way for a legal system that should have no difficulty coping with traffic accidents involving CAVs. It will be sufficient in almost all instances to check which of the involved vehicles did not comply with traffic regulations in order to define the 'driver' that should therefore be held liable.

In the meantime, drivers of cars with varying degrees of autonomy could be held liable for violations on the assumption that the vehicles under their control are defective, which would be a sufficient ground under some legal systems to seek the civil liability of the driver or person in control of the vehicle.

In order to avoid exposing themselves to criminal liability, manufacturers of fully autonomous vehicles will not market their vehicles unless they are able to comply with traffic rules at all times. If, for example, it were possible for a consumer to program their autonomous vehicle so that it could exceed speed limits, this could result in the manufacturer being an accomplice to the traffic offenses, harm or danger caused by the vehicle.

So, when CAVs operate on our roads as the norm, they should not cause an increase in criminal violations of traffic regulations – it is very much the opposite, although when they are initially introduced, accidents may still sometimes happen.

During an expected interim period when road traffic adjusts to the introduction of CAVs, it may be tempting for critics to accuse vehicle manufacturers, designers and developers of being criminally liable due to homicide or injury by negligence, or for exposing persons to risk.

However, while defects in CAVs may come to light when they are first introduced – as they are in many newly launched products – it will be much more difficult to demonstrate the criminal negligence of the above-mentioned stakeholders.

#### Privacy by design

In the future, CAV technologies will raise a number of privacy questions. Car manufacturers, as well as original equipment suppliers, will have to take into account the increased legal constraints surrounding data protection legislation, such as the General Data Protection Regulation (GDPR), which will come into force in Europe on May 25, 2018.

The car industry has not yet taken into account the implications of such regulation. For instance, at present, GPS data for navigation systems is usually available to any driver. However, going forward, data from CAVs may be recorded and retained specifically for law enforcement purposes.

#### Mobility by design

Laws and standards will ensure that CAVs operate and, more importantly, interact in a safe manner. CAVs will be able to communicate with each other via vehicle-to-everything (V2X) Technologies, and this, in turn, will help road authorities to better manage intersections, highways and mobility. Eventually, CAVs will be able to communicate seamlessly and interoperably without having to belong to a fleet, or be made by the same manufacturer.

Overall, appropriate lawyering will be required to adapt laws, insurance contracts and notices to new realities. Hence, 'Ask a lawyer before you act' should be the stakeholders' motto.



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