



EMERGING AUTOMOTIVE TECHNOLOGIES

Insight on the Legal Issues
and Risks of Vehicle Related
AI and Data Collection

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WHAT'S GOING ON IN THE CAR TODAY?

A “Golden Age” of Technology?

Drivers complain of 'phantom braking' on some newer model vehicles, NHTSA investigating

by Cynthia Gould | Wednesday, May 25th 2022



Consumer Watchdog To Crack Down On Connected Car Tech In California

The Connected Car Is The Next Attack Vector

Class action lawsuit: Tesla isn't telling customers about sudden braking 'defect'

By Lurah Lowery on September 2, 2022
Legal

US government investigates 1.7 million Honda cars over phantom braking

March 6, 2022 Bojan Popic Honda Recalls



REUTERS/Heather Somerville. September 26, 2018.

GM startup Cruise recalls and revises self-driving software after crash

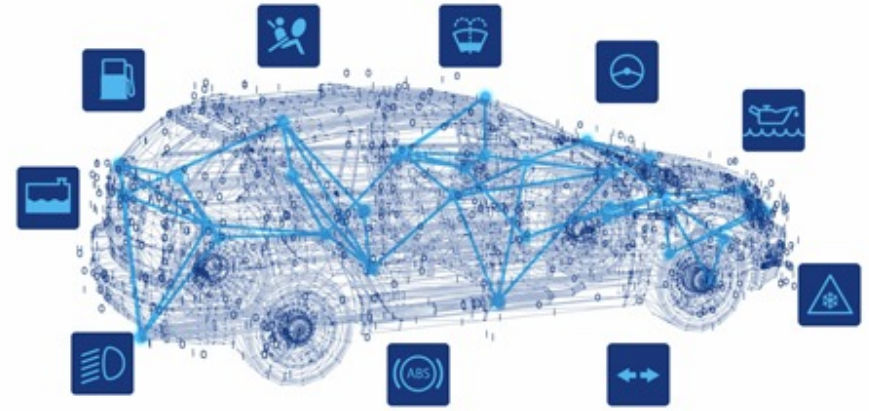
By David Shepardson



***I ALWAYS FEEL
LIKE...SOMEBODY'S
WATCHING ME:
DATA COLLECTION IN
THE VEHICLE TODAY***

The devices in our vehicles

- Event data recorders
- Insurance dongles
- Diagnostic systems
- Navigation and infotainment systems
- Cellular connections and hot spots
- Autonomous vehicles will likely generate more than 300 TB of data per year!



Source: <http://360.here.com/wp-content/uploads/2013/08/Sensors.jpg>



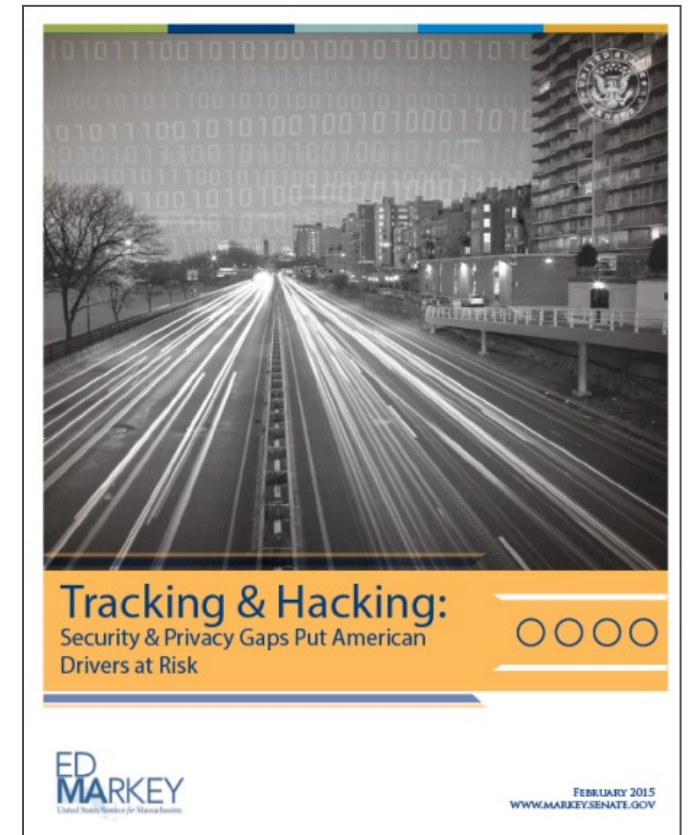
Source: IEEE Spectrum

The State of the Automotive Realm: Senator Markey Speaks

February 2015: Senator Ed Markey (D-Mass) issued a report titled “Tracking & Hacking: Security & Privacy Gaps Put American Drivers at Risk.”

The report accuses the industry of “lax” privacy practices and “inconsistent” and “haphazard” data collection. The findings include:

- Manufacturers collect large amounts of data
- Most transmit driving history to data centers
- Manufacturers use personal data in vague ways
- Consumers cannot opt out.



Industry Response: Consumer Privacy Protection Principles

November 2014

Alliance of Automobile Manufacturers & Association of Global Automakers

- Published “***Consumer Privacy Protection Principles***,” sent to the FTC
- Offers baseline privacy commitments for automakers
- Based on the Fair Information Practice Principles, which have served as the basis for privacy frameworks in the US and around the world for over 40 years

Seven Principles:

- Transparency
- Choice
- Respect for Context
- Data Minimization, De-Identification & Retention
- Data Security
- Integrity & Access
- Accountability

Mozilla's *Privacy Not Included Initiative

- On September 6, 2023, Mozilla's *Privacy Not Included initiative published an article titled "It's Official: Cars Are the Worst Product Category We Have Ever Reviewed for Privacy."
- Mozilla assessed 25 car brands in its study and had several unique findings along with recommendations.
 - One Original Equipment Manufacturer was "dinged" for untrustworthy AI that may have related to multiple crashes.
 - Two were directly implicated with collecting information on one's "sex life."
 - Six manufacturers note in their privacy policy that they are allowed to collect your genetic information or characteristics.

Mozilla's *Privacy Not Included Initiative

- Cars “collect too much personal data.” Mozilla discovered that vehicles collected information on how drivers interacted with the car, the connected services used, and locations drivers have been. Automakers then use the information to derive inferences – including driver’s abilities and interests.
- Most car companies sell or share data. The Mozilla study determined that 84% of car brands share a driver’s personal information with either service providers, other businesses, or even data brokers. Seventy-six percent (76%) of brands note that a driver’s personal data can be sold.
- Drivers have “little to no control” over their personal data. In Mozilla’s study, only Dacia and Renault provided drivers the right to have their personal data deleted, leaving 92% of drivers without an ability to manifest one of the traditional measures of control.

Sources of US Privacy Law



- Constitution
 - 4th Amendment and the “penumbra”
- Legislation
 - HIPAA, CAN-SPAM
- Rules, Regulations and Guidelines
 - FCC, FTC, NHTSA
- Case Law
- Consent Decrees
- Contracts
- Tort Law

Let's Talk Automotive Privacy Laws

Federal Drivers Privacy Protection Act

- prohibits any state or agent of that state from “knowingly disclos[ing] or otherwise mak[ing] available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record”

Driver Privacy Act of 2015

- give drivers more control over the data that is collected, limiting the purposes for which it can be used, and requiring a warrant to release the data without consent of the vehicle owner

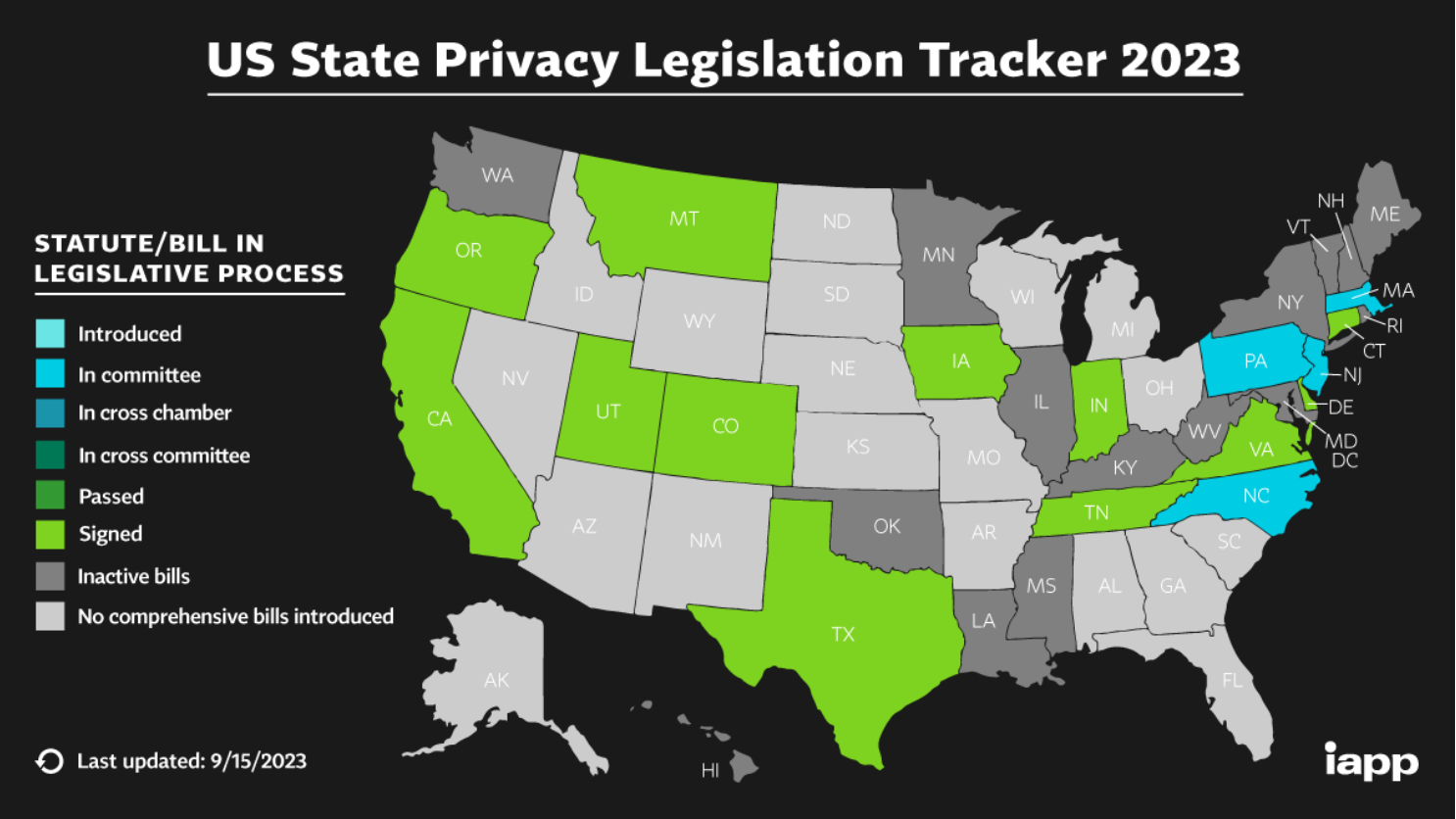
A Moving Target: State Privacy Legislation

Enacted State Comprehensive Privacy Laws

Only includes laws with comprehensive approaches to governing the use of personal information.



US State Privacy Legislation Tracker 2023



NHTSA and Data Privacy

“NHTSA takes consumer privacy seriously, diligently considers the privacy implications of our safety regulations and voluntary guidance, and works closely with the Federal Trade Commission (FTC) -- the primary Federal agency charged with protecting consumers’ privacy and personal information -- to facilitate the protection of consumer information.”



Automotive Privacy Risks and Reality

Mitigating Risks: EDPB Guidelines on processing personal data in connected vehicles

- Data relevance and minimization
- Protection by default and design
- Rights of data subjects

Facing Reality: Privacy Litigation

- *Cahen v. Toyota*, 147 F.Supp.3d 955
- *Flynn v. FCA*, Case No. 18-398 (S.D. Ill. Mar. 27, 2020)
- Recent trends in privacy litigation put these two favorable auto cases in question...





***I ALWAYS FEEL LIKE...
SOMEBODY'S DRIVING
ME: AI IN THE VEHICLE***

AI and Machine Learning Use Cases

- Voice Enabled Assistants
- Facial Recognition
- “Proactive” Listening Agents
- Computer Assisted Diagnosis
- Autonomous Sensing and Driving



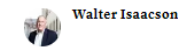
The Big Example: What's Elon Doing Now?

“Musk had used FSD hundreds of times before, but this drive was profoundly different, and not just because it was much smoother and more reliable. The new version he was using, FSD 12, was based on a radical new concept that he believes will not only totally transform autonomous vehicles but also ***be a quantum leap toward artificial general intelligence that can operate in physical real-world situations***. Instead of being based on hundreds of thousands of lines of code, like all previous versions of self-driving software, this new system had ***taught itself how to drive by processing billions of frames of video*** of how humans do it, just like the new large language model chatbots train themselves to generate answers by processing billions of words of human text.”



How Elon Musk set Tesla on a new course for self-driving

PUBLISHED SAT, SEP 9 2023 8:00 AM EDT | UPDATED SAT, SEP 9 2023 12:13 PM EDT



Walter Isaacson

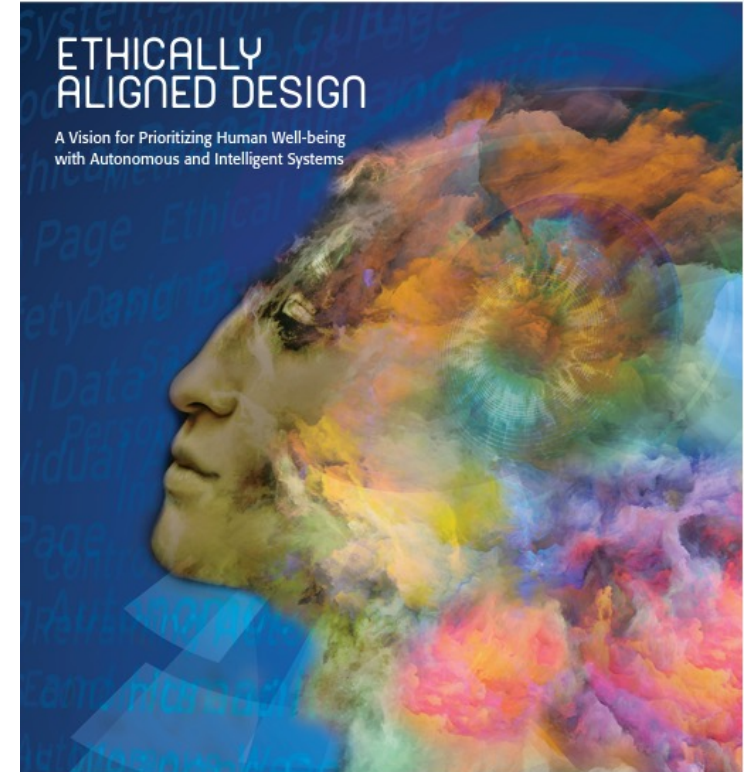
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Others Weigh In on AI Approaches

Even though there is movement afoot that will establish laws at the state and possibly even federal level, organizations aren't waiting!

- American Bar Association
- IEEE
- AI Standards Hub (Turing Institute)
- ISO/IEC 23894
- ISO/IEC 42001

Version 2 - For Public Discussion



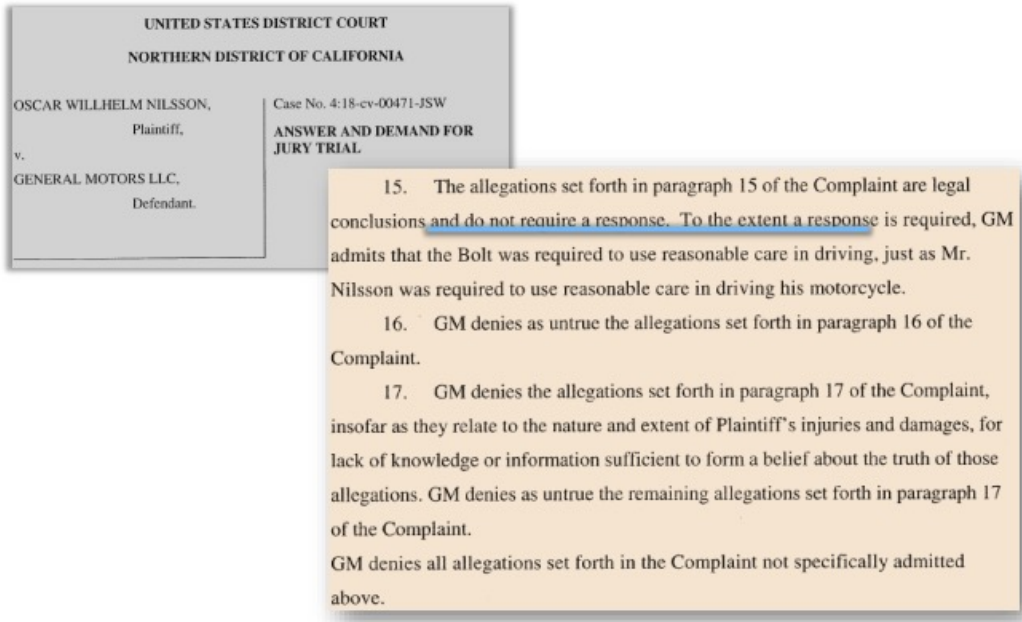
AI Driven Legal Claims: *Cruz v. Raymond Talmadge*

- *Cruz v. Raymond Talmadge d/b/a Calvary Coach*, involved a common AI-driven product: a GPS device. In *Cruz*, the plaintiffs were injured when a bus struck an overpass.
- At the time of the accident, the bus driver was using two GPS devices manufactured by different companies. The plaintiffs brought claims against those GPS manufacturers based on traditional theories of negligence, breach of warranty, and strict liability by asserting that the GPS:
 - Directed the driver to follow a route that required him to drive the bus under an overpass that was too low for the vehicle.
 - Failed to warn the driver of the dangerous situation created by driving underneath an overpass with inadequate clearance.

Nilsson v. General Motors

- *Nilsson v. General Motors LLC*, illustrates some of these complexities and hints at how product liability claims may evolve as AI technology develops.
- In *Nilsson*, a motorcyclist claimed that he was injured when an autonomous vehicle (AV) suddenly veered into his lane and knocked him to the ground.
- A backup driver was present in the AV at the time of the collision, but the driver was not operating the AV when it crashed.

Nilsson v. General Motors



- In his complaint, the plaintiff relied on a theory of **general negligence only** (and not, for example, defective design or warning), alleging that the AV manufacturer had breached its duty of care because the vehicle itself—and not the backup driver—drove in a negligent manner that caused the plaintiff's injury
- Perhaps even more surprising, though, is the **manufacturer's admission in its answer that the vehicle itself was required to use reasonable care in driving** (stating that "GM admits that the Bolt was required to use reasonable care in driving").

Post-*Nilsson*

- Where fault cannot be traced directly back to a human actor, is the AI product the actor? Is the applicable standard of care governing the AI a "***reasonable machine***" standard?
- Similarly, an AI product is intended to "behave" on its own accord and address issues that are ***foreseeable, raising questions about not only what is foreseeable for AI***, but also whether humans might eventually be held to a different standard, especially in cases where AI was available to perform the task.
- In assessing these ***unusual legal questions*** – what facts will be needed to satisfy the court?