

COMMENT:

Who will be liable for driverless cars?

By Sarah Croft

Following several successful trials, laws have been passed in the US and UK permitting trials of automated vehicles on public roads. However, it is not just this show of public acceptance that will determine how soon and to what extent driverless cars will become mainstream: the determination of liability risks for OEMs and insurers will play a crucial part too.

With past safety devices, for example seatbelts and air bags, liability laws were not reinvented to accommodate them, but rather regulatory systems have simply evolved with them; negligence laws have continually adapted to fit new circumstances since they are based on the concept of reasonableness. There have been court rulings about each new technology as it was introduced, and so liability has developed alongside.

Many claims in automotive cases are not brought solely on the basis of negligence. It is common for drivers to allege that the vehicle was defective. The European Product Liability Directive allows for 'strict liability' for defective products – i.e. a manufacturer can be found liable even without proof of any fault on their part. Under the Directive, a product is defective when it "does not provide the safety which a person is entitled to expect" – a requirement which is likely to be met unless the vehicle was operated contrary to its instructions or warnings. Under this regime, if an autonomous vehicle crashed and caused injury due to a defect, the manufacturer would be exposed to the risk of claims under strict liability imposed by statute and possibly in negligence too.

Consumer expectations are of particular importance: some claimant drivers may allege they did not fully appreciate the safety features on the vehicle, while others may have unrealistic expectations of what the technology is capable of. There are bound to be disputes about whether the driver intervened when they should have. The more complex the technology the more acute this problem potentially becomes. As technologies become more widely used and more familiar, the risks to manufacturers will diminish since reasonable consumer expectation will become better defined.

Interesting questions will arise too when apportioning responsibility for crash avoidance and contributory negligence in the case of a partially autonomous vehicle, which may contain safety features such as a collision avoidance system or lane departure warning. If the driver failed to take control when it was possible and reasonable to do so, they may be found to have contributed to the accident and could be allocated some or all of the responsibility.

In the future, the absence of certain drivers' aids could become an issue where it appears that an accident may have been prevented if a feature had been included as standard. Consequently, OEMs will need to be extremely cautious when designing such aids, including them in vehicles and drafting consumer warnings.

Some commentators have suggested that a paradigm shift in the law may be required, such as introducing 'no fault'

liability for collisions involving two fully autonomous vehicles. An alternative view is that legislative or regulatory change may be the better course, protecting OEMs from certain liabilities on the basis that the overall, hoped-for safety improvements and reduction in accidents and injury would be worth it.

When quizzed on the readiness of regulators to deal with new technology such as driverless cars, in May this year, NHTSA Administrator David Strickland said they had a "solid game plan", adding that current standards were sufficiently flexible. However, there is a lack of uniformity across US states allowing the technology to be tested: the Florida law protects the original manufacturer from liability for an alleged defect in the vehicle converted into a driverless car, as long as the defect was not present at the time of manufacture; the laws in Nevada and California do not contain an equivalent provision.

When considering an OEM's liability, legislators and regulators need to take into account two factors: autonomous and partially autonomous vehicles reduce the risk that driver error can cause an accident, which should in turn reduce the number of accidents; and autonomous vehicles are likely to be involved in less severe crashes. So far as road safety is concerned, human error plays a central role in many accidents, so reducing driver input has the obvious potential to reduce the number and severity of accidents.

The opinions expressed here are those of the author and do not necessarily reflect the positions of Automotive World Ltd.

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