Should Car Manufactures be Liable for Cyberattacks?

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So what are we going to talk about for the next 25 minutes?
Our topics for today

• Hacking into a car
• In-vehicle technologies
• Current liability regimes
• Justifications for manufacturer’s liability.
• Limitations and Ramifications of assigning liability.
This can really happen
(but doesn’t usually)
Two notes before we begin:

• Mainly relevant in the age of autonomous vehicles
  • Until now – rare and mainly insignificant.
  • Important where full control is passed on.

• Applicable when installed are only manufacturer-made or authorized parts.
Categorization of Technologies

- The Sensor Array
- The Algorithms
- Connectivity
- The Mechanical Vehicle
Unique aspects of algorithm self-driving

• The replacement of the human driver:
  • Most regulatory systems focus on the liability of the driver.
  • People inside the vehicle will be passengers (cargo?).
• Predictions that autonomous vehicles will be a “service”.
Connectivity

- Allows for coordinated action:
  - Essential for traffic control.
  - Cost Effective.

- Assists in accident prevention.

- Security Vulnerability:
  - Any system connected is potentially compromised.

  - Criminal and National Security.

- Privacy
Are they already liable? Maybe...

- **Negligence**
  - Duty – is there a standard? How do we analyze the relationship between car users and the manufacturer?

- Breach of duty – case by case? Is this practical?

Cravath, Swaine & Moore and Weil Gotshal & Mang
Are they already liable? Maybe

- **Product liability**
  - Is this a service or a product?
  - Manufacture flaw or design flaw?

- **Strict Liability**
  - Common with high-risk activities.
  - Requires legislation \ regulation.
Should manufacturers be liable?

• Cost Effective:
  • Manufacturers have the most knowledge.
  • Manufacturers are best suited to fix.

• Simple to implement.

• In autonomous vehicles there is no driver.

• Manufacturers do not control the vehicle or its usage.

• May create barriers to competition.

• Creating liability may harm private interests (property, privacy)
Establishing duties:

• Formalizing safety standards.
• Regulating licenses.
• Creating safe-harbors.
Predicted ramifications:

• Changing manufacturer-end user relations.
• Updating car software.
  • Security Vs. The right to property.
  • Maintaining standards (when is an update urgent).
• Updates that require new hardware.
• Post fact enforcement vs. preventative measures.
Thank You!