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Introduction Paper

Federal Policy at the Dawn of Autonomous Vehicles

Autonomous vehicle technology promises a reinvention of the American transportation landscape. Since the introduction of the personal automobile into American society in the early twentieth century, the federal government has played a central role in shaping just how this dominant force in modern life takes shape. Like the motor vehicles that changed American roads, bridges, land use and environment, autonomous vehicles (AVs) promise to be just as impactful. However, authorities at the federal level are only just starting to outline the laws that will shape the imprint that this technology will have on our society, for better and for worse. According to the US Department of Transportation, in 2015 there were 35,092 fatalities on US roadways, 94% of which involved human error. The promise of saving tens of thousands of Americans, while also potentially growing economic output, and increasing resource efficiency make this area of technological change an exciting possibility. Globally, the United States is leading the charge on the development of this technology, and regulators are keen on maintaining consumer safety while still preserving an environment of innovation that will allow entities not to be stifled in this crucial phase.

The legislative action that has been taken on autonomous vehicles is preliminary in form, but builds on many years of federal law on motor vehicle safety. President Obama, through his Fixing American Surface Transportation (FAST) Act, enacted legislation to promote the advancement of autonomous vehicle technology, with the express intent to “reduce costs and improve return on investments, deliver environmental benefits through increased mobility, improve transportation system operations, improve safety, improve collection and dissemination of real-time information, monitor transportation assets, deliver economic benefits, and accelerate deployment of connected/autonomous vehicle technologies.[[1]](#endnote-1)” This grant program made available $60 million in funding at a 50% federal match. Additionally, the FAST Act requires a GAO report on the status of Autonomous vehicle technology in under two years, with a special emphasis on consumer privacy policy.

Regulations regarding autonomous vehicles are also building on their driver-dependent counterparts. The National Highway Traffic Safety Administration is the regulating body for motor vehicle safety, per U.S. Code Title 49, Chapter 301[[2]](#endnote-2). Already the NHTSA is asking Tesla questions about a crash involving a Tesla vehicle and potential defects of its Autopilot feature that may have contributed to the incident[[3]](#endnote-3). NHTSA holds enforcement, interpretation and exemption authority over autonomous vehicles and how existing US Code on motor vehicle safety and monitoring applies or does not apply in this new arena[[4]](#endnote-4). Though more regulation may emerge in coming years, the current administration, through its latest Guidance document on Autonomous Driving Systems, has taken a notably non-regulatory approach, presumably to encourage private innovation on a rapid adoption timeframe[[5]](#endnote-5).

Legal challenges in the autonomous vehicle revolution are anticipated to be one of the many stumbling blocks to full incorporation of this technology into our everyday lives. At the forefront of this dilemma is the issue of liability in the event of a crash. Is it the responsibility of the manufacturer whose system was in control of the vehicle, in lieu of a driver? Will automakers be litigated against as such? In this issue, federal courts have already dealt with liability of autonomous technology in use already in rail travel. In the Federal District Court of Washington, D.C. the plaintiff alleged products liability, placing the burden of negligence on the Washington Metro Area Transit Authority that operates the train system and made operational decisions to make the sensors less sensitive[[6]](#endnote-6). The Court dismissed the claims of negligence on behalf of WMATA due to the operational decision being of a nature that is protected under the doctrine of sovereign immunity[[7]](#endnote-7).

Since this technology is in its development phases, private companies are competing to lead the way and set the standard in vehicle autonomy. Companies such as Alphabet’s Google Inc, Lyft Inc, Uber Technologies Inc, Tesla Inc, and General Motors Co are several of the major corporate players attempting to gain the edge by developing superior technology ahead of its competitors. This includes spending hundreds of millions of dollars in lobbying efforts in order to influence the federal regulators attempting to set the rules to the game. According to the National Law Review Journal, Uber Technologies Inc alone spent $370,000 in its first quarter of 2017 to lobby Congress on autonomous vehicle regulation and legislation[[8]](#endnote-8).

The AV revolution is not going to wait for the federal government to tell it how to operate. The technology, with all of its promise and challenges ahead, is coming at a rapid pace and officials will have to meet the technology head on in order to ensure consumer protections throughout the roll-out. Yet despite the unknowns, pushing the boundaries of vehicle autonomy should not be discouraged. Afterall, little more than a century ago Americans were still riding horses to get from place to place. The same spirit of American ingenuity will propel us through this transition, with legislation, regulation, and legal rulings to keep it in check.

1. https://www.law.cornell.edu/uscode/text/23/503 [↑](#endnote-ref-1)
2. https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/mvs01092008.pdf [↑](#endnote-ref-2)
3. https://www.nytimes.com/interactive/2016/07/12/business/document-NHTSA-letter-to-Tesla.html [↑](#endnote-ref-3)
4. https://www.transportation.gov/sites/dot.gov/files/docs/AV%20Fact%20Sheet%20-%20Current%20Regulatory%20Tools.pdf [↑](#endnote-ref-4)
5. https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0\_090617\_v9a\_tag.pdf [↑](#endnote-ref-5)
6. Colonna, Kyle, Autonomous Cars and Tort Liability (Fall 2013). Case Western Reserve Journal of Law, Technology & the Internet, Vol. 4, No. 4, 2012. Available at SSRN: <https://ssrn.com/abstract=2325879> or <http://dx.doi.org/10.2139/ssrn.2325879> [↑](#endnote-ref-6)
7. https://www.courtlistener.com/opinion/2473820/in-re-fort-totten-metrorail-cases/ [↑](#endnote-ref-7)
8. http://www.nationallawjournal.com/id=1202784940586/Tech-Giants-Carmakers-Rev-Up-Lobbying-on-Autonomous-Vehicles?slreturn=20170813174432 [↑](#endnote-ref-8)