

COPING WITH TECHNOLOGY – LEGISLATING REGARDING RECORDED DATA IN VEHICLES

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1. HISTORY OF EDR LEGISLATION

- California Veh. Code sec. 9951 (2004)
 - Disclosure of recording capacity
 - Identify owner of data
 - Technical description of recording devices
 - Others access (with permission, researchers, repairmen, process)
 - Excludes On-Star type systems from privacy
- Initially Consumer Protection lawmaking

2. CALIFORNIA'S FOLLOWERS

- 16 States have passed or considered legislation
- Most states followed CA's lead, some copied CA statute verbatim
- Interesting Deviations:
 - Ark preserves owners property right against later takers, e.g., lienors, insurers; addresses owners successors
 - CT prohibits law enforcement access to recorded data
 - NJ, ND require that devices have 'off' switch
 - PA seller must advise purchaser that recorded data is useable against them
 - TX penalty for violation of act is exclusion of evidence in civil matters, and, trial judge is required to hold evidentiary hearing re EDR data
 - US HR 5305 – notice by dealers, enable/disable switch from manufacturers

3. EDR BILLS IN VIRGINIA

- 2003 a notice bill
- 2004 -HB 2134 data is the personal property of the owner, access through owner permission or court order
 - HB 2135 prohibited insurers from issuing policies which provided them access to recorded data, penalized violations
 - HB 2168 notice of recording capabilities required
 - HB 2469 comprehensive bill re notice, ownership, access, responsibilities, duties, penalties
- Copy of suggested bill in handout, along with article on subject

4. WHY LEGISLATION CONCERNING RECORDED DATA IS IMPORTANT

- Important civil and criminal consequences
- Substantial opportunities for abuse
- Rules concerning trial use of such data demand careful handling of hardware and data
- Risks of inconsistent rulings, inequities if courts left to 'sort it out' without guidance

5. EXISTENCE OF DATA DOES NOT MEAN IT IS ADMISSIBLE

- To be admissible in court
 - Sensing, computing and recording hardware and software must be valid and reliable
 - Data and/or hardware must be properly extracted and preserved
 - Data must be properly interpreted

6. CURRENTLY THERE IS A LACK OF STANDARDIZATION

- To date, hardware, software and data recorded are proprietary
- Methods of access are proprietary or narrowly licensed
- Manufacturing, reliability is an issue- “Warranty claims for electronic components are high and expected to rise and unless development processes are improved, recalls associated with higher electronic content are also expected to rise” (SAEI, Jan. '05 pp 88-89)
- Many a slip between the cup and the lip-data/hardware preservation and chain of custody crucial to potential court use

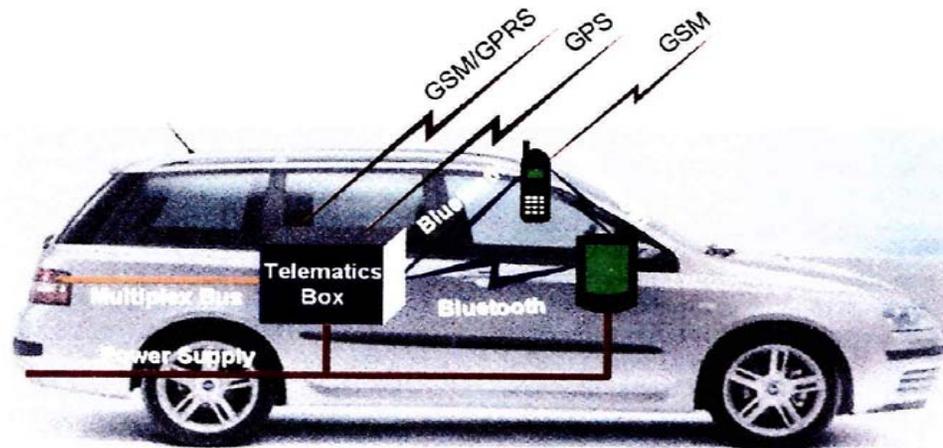
7. EFFORTS UNDERWAY TO STANDARDIZE

- NHTSA data points to record if you record
- IEEE and SAE some basic technical standardization

8. EXPANSION OF VEHICLE ELECTRONIC SYSTEMS GUARANTEED

- Often said that there is more computing capacity in modern vehicles than in the first spaceship to land on the moon
- Systems under study and development illustrate the scope of potential data collection and storage
- Innovation in electronics will be primarily centered around:
 - Customer convenience
 - Safety: active safety, smart airbags
 - Infotainment: telematics, smart navigation systems
 - Environmental requirements: low-emission vehicles (SAEI Jan. '05, p. 88)

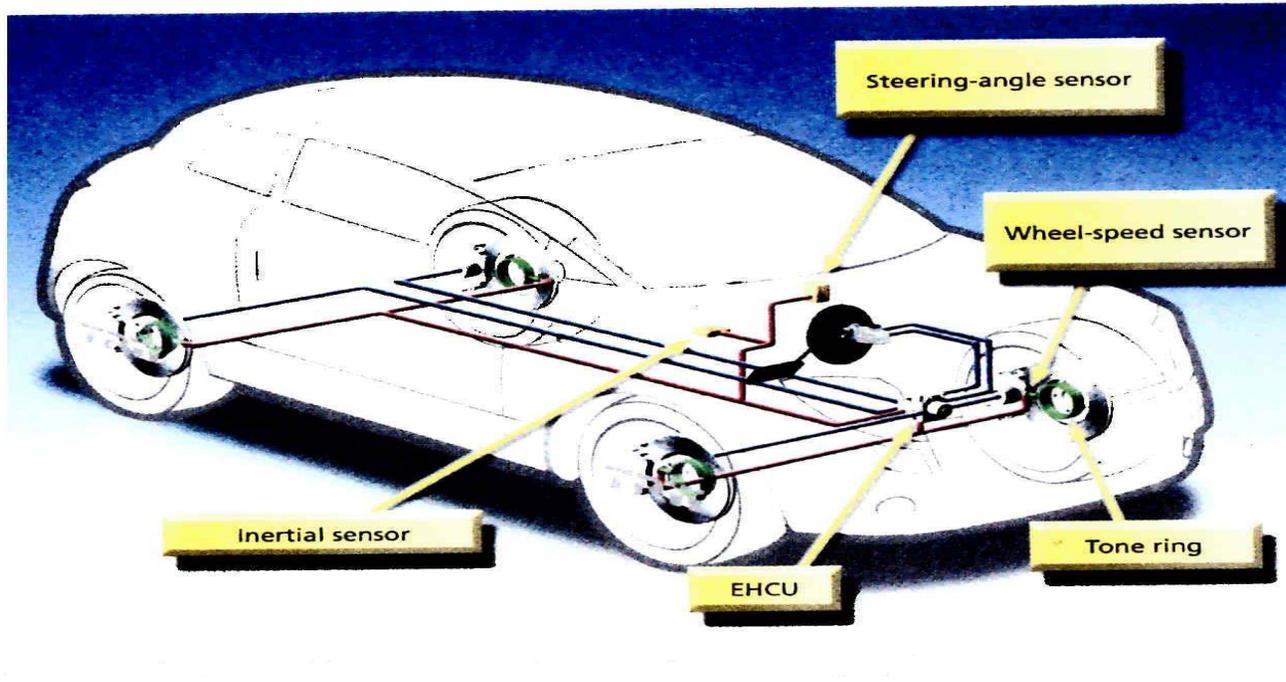
9. TELEMATICS



The new telematics solution from Fiat and Microsoft ABU is standardized to allow other automakers to base their telematics offerings on the same platform.

Microsoft/Fiat standardized telematic platform (SAEJ Jan. '05 p. 46)

10. SAFETY

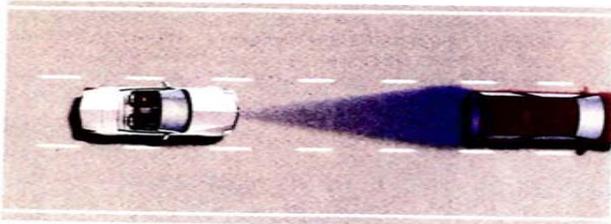


Stability control, brakes

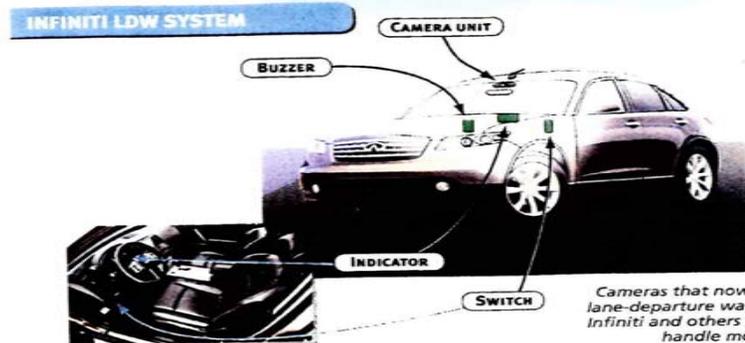
(SAEI Apr. '05, p. 65)

11. SAFETY-INTERVENING SYSTEMS

- Braking today, steering tomorrow
- Adaptive Cruise Control
- Lane Departure Warning



Legal concerns may arise when active technology is added to cruise control and other systems. Source: Delphi



Cameras that now provide lane-departure warning for Infiniti and others will soon handle more tasks.

(SAE1 June '05, pp. 66-67)

12. SAFETY – INTERVENING SYSTEMS

Cars that talk to each other?!?

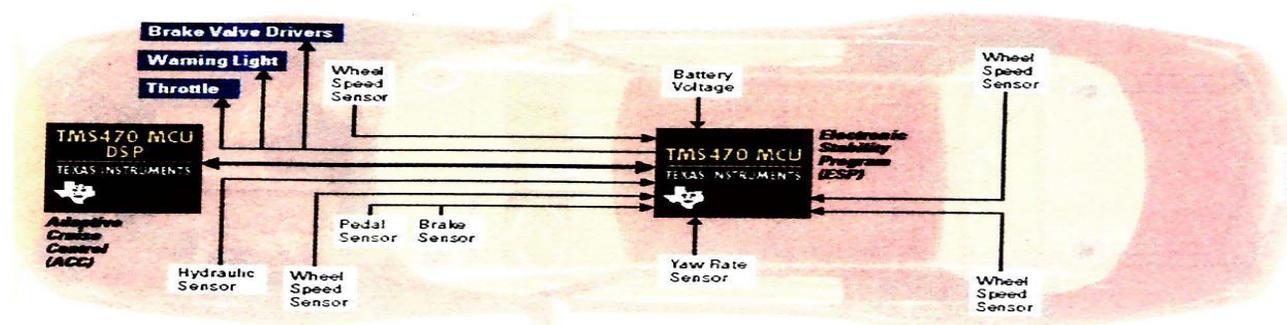


Getting active in safety **aei**
The Vehicle Infrastructure Initiative may let cars tell each other when they are entering intersections. Source: Siemens VDO

(SAEI June '05, p. 67)

13. SENSOR AND COMPUTER CAPACITY GROWTH

- Give me more data



In the future, a range of sensors will be shared by many safety systems. Source: TI

(SAEI June '05, p. 66)

14. WHAT WOULD YOU LIKE TO KNOW?

- Future prosecutor, adjustor, and litigant will want to know
 - GPS data regarding location, speed and direction
 - Infotainment system status, what was on, when last adjusted
 - Cell phone status
 - All auto systems status
 - Warnings given by, or interventions of ACC or LDW
 - Video from the 'drivers eye' camera, and radar data
 - Service condition of vehicle, tire pressures, etc.....
- This all within reasonably foreseeable future according to TRB,

See, *Use of EDR Technology for Highway Crash Data analysis*, 12/04, p.40, near term and future EDR technology

15. WHAT SHOULD AN EDR STATUTE ADDRESS?

1. Ownership must be clearly stated and practically based

- not too rigid, e.g. registered owner
- not too loose, e.g., “incidents of ownership”

Goal should be to mate data ownership with the practical user of the vehicle who also has a substantial ownership claim on the vehicle, also, address post wreck transfers and successorship where owner disabled or dies

2. Disclosure/Notice

- Must be substantive, identify uses of data, be understandable
- Must clearly state whose job it is to disclose, and mode of disclosure

16. MORE ISSUES TO ADDRESS

3. Provide for limited data access without normal court processes
 - Repairmen, Researchers, Medical, persons with owner's permission, etc.
 - Address the Insurance access issue; Recognize popular resistance to Insurer access, remember insured's duty to cooperate
4. Create responsibilities and duties for data accessors
 - Apply them to hardware and data
 - Chain of custody
 - Transparent access to down-loaded data by later users

17. MORE ISSUES TO ADDRESS

5. Punish sloppy and intentional violators
 - Civil and criminal penalties possible
 - Exclusion of data and resultant opinions
6. Address owner's duty to preserve
 - Does increase in data create greater expectation of preservation?
 - Leave to existing spoliation law?

18. AND FINALLY . . .

7. Assure that technical terms relate to what is being used, and are broad enough to cover foreseeable technology- not all recorded data may be in the EDR

19. WHERE DO I BEGIN?

- The model statute in the handout
 - Covers all the issues mentioned
 - Pro-personal property rights
 - Pro-responsibility
 - Premised on existing legal concepts, e.g., beneficial ownership, use of process and pre-trial procedures, evidence preservation
 - Goal to preserve data for court use
 - Consumer oriented, but not burdensome