Professor Jürgen Ensthaler
Chair of Commercial,
Corporate and Technology Law,
Technical University of Berlin

© Jürgen Ensthaler

Legislative Demands for Connected Driving

Problems have already arisen concerning access to the technology needed for autonomous and connected driving. A number of telecommunications companies, in particular some in the US, hold the patents for the networking technologies that are an essential element of fully automated driving and that will have to be implemented by vehicle manufacturers. These companies are demanding that the carmakers pay huge licence fees. Until an agreement can be reached about these charges, the European Court of Justice has made a fundamental ruling that clarifies the options available for making use of the technologies. This states that despite the dispute over the fees, the technologies can still be used. The companies involved also disagree about the way in which the fees are calculated.

The specific feature of these new technologies that relates to the law on vehicle registrations is that in future they will no longer be linked to the driver in many cases. Instead the systems will function autonomously. The technology must be able to fully replace a experienced driver. A system that performs less well than a good driver will not be implemented for ethical reasons alone. The next consideration is liability law. The relationship between the liability of vehicle owners, manufacturers and infrastructure operators needs to be redefined. In the context of the new technologies, car companies are now developing infrastructure facilities that should actually be the responsibility of the state. It is debatable whether consumers or drivers

can be held responsible for all the processes that constitute the car owner's liability, if they can no longer influence the way in which these processes function. The car owner's sole liability could continue to be a problem when considered that owners would have the right of recourse to manufacturers in the event of the failure of technical equipment. The right of recourse can only be exercised if the person making the claim knows who has caused the fault and what the fault is. This is very difficult to determine in connected systems. Many of these considerations will ultimately depend on the extent to which insurance companies want to retain the old model of owner liability. If the new technology performs as it is hoped, there will be fewer accidents. This argument may be enough to compensate for the damages that have not until now been the responsibility of the insurers.

Another issue that remains unresolved is the ownership of the data generated as part of the process of autonomous driving. Does it belong to the drivers who produced it or the manufacturers who enabled it to be produced? The data security concepts also remain problematic. One central difficulty is how to guarantee protection against attacks by hackers. The possible solutions have so far proved to be highly controversial. However, the legislative problems can be resolved. We need legal experts who understand the new situation and this will enable us to make use of the expertise of the law institutes.