

UAE: Avoiding Legal Liability Obstacles on the Road to Autonomous Driving

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“You can’t go on thinking nothing’s wrong. Who’s gonna drive you home tonight?” “Drive”, the Cars, Ric Ocasek

Autonomous (or driverless or self-driving) car technology is being tested in several countries including Singapore, the United States and Britain. In the UAE, the Roads & Transport Authority of the Government of Dubai is leading the transition to driverless mobility by implementing the Dubai Smart Autonomous Mobility Strategy launched by His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the UAE and Ruler of Dubai. That strategy envisions that 25% of all Dubai travel will be driverless by 2030.

According to SAE International (formerly the Society of Automotive Engineers), there are six levels of automated driving: where Level 0 is where you do all the driving and there is no automation and Level 5 is when the vehicle can handle all driving tasks and travel anywhere under any circumstances without any human intervention.

The commercially available technologies now approximately fall within Level 3, where driverless automation is available for limited periods in normal circumstances but still require the driver’s intervention under certain conditions.

Vehicles in current research and studies fall between Level 4 and Level 5, where some companies are currently testing driverless vehicles on pre-defined or non-defined routes.

Researchers estimate that autonomous cars could, by midcentury, reduce traffic fatalities by up to 90 percent (as studies show that most car crashes are caused by human error). According to the World Health Organisation there are some 1.2 million traffic fatalities annually worldwide. Earlier this year, UAE-wide figures published during GCC Traffic Week indicated that 725 people were killed in traffic accidents in 2016.

If autonomous cars can deliver on their potential to eliminate the vast majority of fatal traffic accidents, the technology will rank among the most successful public health initiatives in modern history.

Whether autonomous cars will replace conventional vehicles will depend not only on technical improvements, but also the laws that will need to be put in place. Those rules have only started to emerge.

A major legal issue facing the adoption of autonomous cars revolves around the issue of who is responsible when a self-driving vehicle gets into an accident.

With conventional human driven vehicles, the driver who is at fault for the accident is responsible for it. But what if there is no human driver to be held accountable?

Around the world government authorities, the courts and car manufacturers are all working to come up with answers to these liability questions. However the options for attributing liability are complicated. Let us consider the following scenarios:

1. The Owner of the Car is Liable

The default option is that owner of the vehicle is liable for incidents caused by their autonomous vehicles. Currently in many countries car owners are required to have third party liability insurance as a minimum.

However, what if the owner is not at fault and an accident occurs as result of an error or failure in the autonomous car's systems? Self-driving cars are controlled by software that tells the car how to behave in certain situations. What if there is an accident because the car made a choice that the driver would never have chosen. Traditionally the legal basis for liability in road accidents has been negligence. Accordingly it would present as unjust to attribute incident to the car owner if they are not at fault.

2. The Manufacturer of the Vehicle is Liable

The next alternative is to hold the company that produces the self-driving car responsible for accidents it causes. If that software that controls the car malfunctions and causes an accident, then the manufacturer should be liable.

The problem with this scenario is that it commercially discourages participants in the self-driving car industry. If every company that produces self-driving cars is legally liable for any accidents they cause, what company would be willing to take on that level of risk?

3. The Car is Liable as a Legal Person

A "legal person" is a distinct concept from the common understanding of "personhood." A notable example of non-human legal persons are companies. Indeed, recently a New Zealand river revered by the Maori people has recently been recognised as a legal person by law.

By recognising autonomous vehicles as legal persons they can be treated as insurable entities similar to companies and people. That way, the autonomous car's legal liability would be self-contained. This scenario would likely require expanding compulsory insurance to cover the autonomous vehicle to prevent avoidance of personal responsibility. For example, in the UK the government is considering establishing a single insurance model whereby the driver is covered when they have activated self-driving features.

Proposed Legislation – what next for the UAE?

It appears likely (based on laws that have already been enacted e.g. in California) that initially car owners will remain liable for incidents caused by their autonomous vehicles – but this presupposes that car owners and drivers retain some control and interaction and consequently retain some responsibility. This may be fine under legal principles where the level of automation still requires the driver's intervention under certain conditions, but when the technology becomes truly fully automated the attribution of liability to the car owner would really just be a pragmatic solution or social policy to balance the greater good of reduced fatal accidents that would need to be captured in specific legislation. It remains to be seen what approach the UAE government will take in balancing these interests.