

Legal Issues

William H. Widen



Autonomous Vehicles: Surviving Cyber Attacks

| IFIP | June 24, 2022

Liability for Cyber Attacks

- Focus on Negligence because behavior is manageable
- Negligence is the failure to exercise reasonable care
- In U.S law, this is given a definition under case law in terms of economic efficiency | Is the cost of a precaution $<$ likelihood of harm \times cost of harm

Liability for Cyber Attacks

- A person can be liable for harm caused by the criminal acts of another IF: the harm is reasonably foreseeable and preventable
- It is very difficult to perform a utilitarian analysis and this will be decided by a jury
- Failure to comply with law can be negligence per se
- Failure to comply with an industry standard is relevant, but not per se

Liability for Cyber Attacks

- ISO/SAE 21434 is not expressly followed in U.S.
- This standard contains required elements designated RQ
- Industry looks to its own AUTO-ISAC series of publications (not mandatory)
- Risk of promulgating standards which are not followed (seems general not just cybersecurity)

Liability for Cyber Attacks

- Failures that stand out: no blue team/cyber security team; no red team/pen testing team; no attention to risks posed by vendors and supply chain
- Regulations might take form of SOX
- Key is having CEO/CFO sign off on following identified procedures
- Audit by third party

Liability for Cyber Attacks

- Political risk from testing without reflection | Mindless opposition to regulation and standards
- Vulnerable communities bearing disproportionate risk of harm by high percentage of testing in those neighborhoods
- Automandering
- Feedback loop for jury pool.

Liability for Cyber Attacks

- Lessons from railroads
- Opposition to air brake and automatic coupler
- Slow adoption of steel cars versus wood cars
- Secret accident investigations.
- Pennsylvania RR changed with Ivey Lee
- Damage Done: ICC, hostility to RR

Liability for Cyber Attacks: Additional Materials

- Widen & Koopman, Autonomous Vehicle Regulation & Trust: Impact Of Failures To Comply With Standards, UCLA Journal of Law & Technology, <https://uclajolt.com/autonomous-vehicle-regulation-trust-the-impact-of-failures-to-comply-with-standards/>
- Widen, William H., Highly Automated Vehicle Testing & Discrimination Against the Poor (January 24, 2022). Available at SSRN: <https://ssrn.com/abstract=4016783> (forthcoming, Notre Dame Journal of Emerging Technologies)
- Widen, William H., Autonomous Vehicles, Moral Hazards & the 'AV Problem' (August 9, 2021). University of Miami Legal Studies Research Paper No. 3902217, Available at SSRN: <https://ssrn.com/abstract=3902217> (forthcoming, North Carolina Journal of Law and Technology)

