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Self-Driving Cars: Are You In or Out?

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Autonomous vehicle testing and development continues to accelerate. Problems and setbacks, however, have delayed technology advancement and assessment, and influenced public perception of this new transportation mechanism. Despite these challenges, various players involved in self-driving vehicle development are going all in while others have pulled out entirely at least for now.

California is all in.

The California Public Utilities Commission recently approved pilot programs for free self-driving car passenger rides.¹ This approval comes just months after the California Department of Motor Vehicles approved self-driving car test drives without backup human drivers. Before the Commission's eventual approval, months of negotiations took place between various stakeholders. This included:

1. Companies and some California government agencies that requested the Commission keep driverless crash and driving data anonymous; and
2. Companies lobbying to charge riders for the test drives.²

The Commission rejected both positions. The collected data will be shared to help the public and others assess the viability and safety of the program. The data will likely include:

- collision reports;
- total vehicle miles traveled;
- miles traveled during passenger service; and
- total number of rides accessible to the disability community.³

The Commission asserted that the “free” ride program would help users “differentiate . . . from any final program [the Commission] accept[s].”⁴ Although this seems like a subjective difference between the testing and implementation phases that will not directly influence user safety, it is a difference that users will be able to note and consider as they decide whether their safety is worth a free ride. As further evidence that California is moving forward, a Commission member stated “[w]e will set a date to hold a workshop for full deployment . . . for early 2019.”⁵ It seems that the future of fully-deployed autonomous vehicles will arrive soon.

Waymo—one of Google's Alphabet spinoffs—is also all in.

The company recently announced the expansion of its self-driving car fleet by greater than 60,000 units, which is 100 times current fleet numbers.⁶

The deal with Detroit-based Fiat Chrysler Automobiles could alone be worth about \$1 billion.⁷ Delivery of at least some of these cars has been promised by the end of 2018.⁸ Additionally, earlier this year Waymo announced a partnership with Jaguar Land Rover for 20,000 all-electric vehicles to be added to its fleet.⁹ As evidence from just one company—albeit one of the leaders in this field—more than 80,000 new autonomous vehicles will soon be on the road and deployed in one way or another.

On the flip side, Arizona is out.

In March 2018, a crash by an self-driving car in Tempe took the life of a pedestrian despite having a backup human driver present.¹⁰ Just a few days after the accident—and even before the NTSB report about the accident was released—Arizona ordered Uber, the company that owned and operated the vehicle, to cease testing of its autonomous vehicles on all Arizona roads based on its “unquestionable failure” to prioritize public safety as it tested the technology.¹¹ The NTSB report about the accident later highlighted that, as part of its testing, Uber disabled emergency braking maneuvers while the car was in the self-driving mode to “reduce the potential for erratic vehicle behavior.”¹² The NTSB report further found that Uber’s test system relied on the backup human vehicle operator to intervene and take action, which occurred too late to prevent the fatality in this case.¹³ Despite Arizona’s human driver fatality rate rising 7.3% in 2016 to 962 deaths,¹⁴ for now Arizona is squarely out of the autonomous vehicle expedition.

Questions Remain.

Although some states and companies appear to be going all in or out on autonomous vehicles, various issues still remain. Some groups appear to be unsure about fully embracing self-driving vehicles as an alternative to human drivers that cause numerous automobile accidents and fatalities per year, or whether to stick with the human-driven status quo we know. Will other states follow California’s strategy or Arizona’s ban based on the recent tragedy? Will states or cities prospectively legislate to ban or regulate these vehicles categorically or, more specifically, legislate to ban or regulate the safety measures enabled/disabled during testing or deployment? Was Arizona’s ban a knee-jerk reaction to an unfortunate tragedy that it will later regret as human-driver fatalities seem to be increasing or an appropriate response given the circumstances?

Of course, given that self-driving cars will each contain computers, and be connected in a variety of ways to a network and operating system, the cybersecurity and privacy implications for self-driving cars are also considerable. Several years ago experts demonstrated how self-driving cars can be attacked over the internet and some basic functions can be disabled. For this reason, the federal government has issued a series of best practices and guidelines through the National Highway Traffic Safety Administration. Many states including Utah, Colorado, Nevada, and Montana have also enacted legislation regarding use of the data that can be retrieved from self-driving vehicles. Despite these and other obstacles, the autonomous vehicle experiment seems likely to become a reality sooner rather than later—at least in some areas—and we’ll further analyze

new developments as part of Holland & Hart's Hi-Tech Hub.

Phil Harris is an experienced intellectual property attorney who emphasizes in patent prosecution and protecting innovation, including drafting patents and advising clients on matters related to autonomous vehicles and related technology. Romaine Marshall is an experienced litigation and trial attorney specializing in cybersecurity and privacy litigation.

¹<http://www.sfexaminer.com/driverless-cars-okd-carry-passengers-companies-cant-charge-ride/>

²<http://www.sfexaminer.com/driverless-cars-okd-carry-passengers-companies-cant-charge-ride/>

³<http://www.sfexaminer.com/driverless-cars-okd-carry-passengers-companies-cant-charge-ride/>

⁴<http://www.sfexaminer.com/driverless-cars-okd-carry-passengers-companies-cant-charge-ride/>

⁵<http://www.sfexaminer.com/driverless-cars-okd-carry-passengers-companies-cant-charge-ride/>

⁶<https://www.reuters.com/article/us-fiat-chrysler-waymo/waymo-to-get-more-than-60000-cars-from-fiat-chrysler-for-robotaxis-idUSKCN1IW2BC>

⁷<https://www.reuters.com/article/us-fiat-chrysler-waymo/waymo-to-get-more-than-60000-cars-from-fiat-chrysler-for-robotaxis-idUSKCN1IW2BC>

⁸<https://www.reuters.com/article/us-fiat-chrysler-waymo/waymo-to-get-more-than-60000-cars-from-fiat-chrysler-for-robotaxis-idUSKCN1IW2BC>

⁹<https://www.usatoday.com/story/money/cars/2018/03/27/waymo-acquiring-20-000-electric-suvs-driverless-ride-hailing-service/461537002/>

¹⁰<http://money.cnn.com/2018/05/23/technology/uber-arizona-self-driving/index.html> ;

<https://www.nts.gov/investigations/AccidentReports/Pages/HWY18MH010-prelim.aspx>

¹¹<https://www.cbsnews.com/news/arizona-governor-doug-ducey-suspends-uber-autonomous-testing-letter-today-2018-03-26/>

¹²<https://www.nts.gov/investigations/AccidentReports/Pages/HWY18MH010-prelim.aspx>; https://www.washingtonpost.com/news/dr-gridlock/wp/2018/05/24/ntsb-self-driving-uber-did-not-have-emergency-braking-turned-on/?utm_term=.0713c4067cac

¹³<https://www.nts.gov/investigations/AccidentReports/Pages/HWY18MH010-prelim.aspx>

¹⁴<https://www.azdot.gov/media/News/news-release/2017/06/21/arizona-motor-vehicle-crash-deaths-rose-to-962-in-2016>

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