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ESSENTIAL CALIFORNIA LEGAL CONTENT

Coming up With Rules for the Driverless Road

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SACRAMENTO — When Governor Jerry Brown and Sergey Brin rolled up to Google headquarters in a driverless Prius last year, it seemed like a scene ripped from a California Chamber promo.

Here were two big thinkers, a young innovator who had turned the stuff of comic books into reality alongside a veteran politician signing legislation that would someday make these robo-vehicles the Valley's next must-have product.

"This self-driving car is another step forward in the long march of California pioneering the future and leading not just the country, but the whole world," Brown boasted.

One year later, the high-tech hoopla and sweeping proclamations have given way to the nitty-gritty slog of rule-making and with it one nagging, long-unanswered question. When a driverless car crashes — and even their biggest fans say that's a "when" and not an "if" — who's going to pay?

Answering that question is not nearly as fun as imagining commuters legally checking emails and chatting on cell phones while a system of lasers, global-positioning devices and sensors deliver them safely to work. But solving the liability dilemma is key to determining when autonomous cars go to market. And it most likely will decide whether California's rules become the benchmark for the nation — or whether unhappy manufacturers seek preemptive federal standards.

The new technology promises to all but eliminate the threat of drivers' mistakes, a change that potentially shifts significant risk to auto manufacturers and upstream suppliers. Maybe a self-driving car won't run a red light. But would it break the speed limit to keep up with traffic? Would it veer on to a sidewalk or into another traffic lane to avoid a collision with another errantly driven car?

There is a blizzard of "what ifs." But the risk doesn't seem to be scaring anyone away from the market. While flashy Google and its fleet of converted Priuses get most of the public's attention, Nissan, General Motors, Volkswagen and other manufacturers have all announced plans to roll out some type of self-driving car by 2020.

"The safety benefit that's going to accrue from having autonomous vehicles is large enough and such a significant game-changer that they're completely on board with that," said Scott Paxton, a partner in Bowman and Brooke's Minneapolis office who has defended auto manufacturers in numerous product defect cases.

California lawmakers flirted with the liability issue during negotiations over the autonomous vehicle bill last year. But amid heavy lobbying from Google and car manufacturers, they punted the question — and many others — to the Department of Motor Vehicles. The DMV was charged with developing public road-testing rules by the end of this year and far more sweeping operations regulations by Jan. 1, 2015.

(Google and other companies are already test-driving autonomous cars on public roads. There's nothing in state law right now that says they can't. State lawmakers want some standards, however, so they sent the issue to the DMV.)

The legislative order marked a huge undertaking for the DMV. The 24-lawyer agency best known for issuing driver's licenses does promulgate regulations, but they usually involve much smaller issues, like fee charges for vehicle code books and rules for high-occupancy vehicle lanes.

"This is new territory for us," said DMV deputy director Bernard Soriano. "We've had to come up to speed very quickly."

The department has held two public hearings on the proposed regs that were well-attended by auto industry representatives and insurers. A third hearing is in the works. And private meetings between the DMV and Google, Bosch and Nissan have taken place or will soon. Google and the car manufacturers all have paid lobbyists working on the issue.

The DMV has contracted with UC-Berkeley's Institute of Transportation Studies for help, especially in developing the operations rules. But department leaders admit that issues like liability, privacy and vehicle security — how do you keep it out of the hands of hackers — may be out of their realm of expertise.

The DMV, for example, is set up to protect consumer data like license information and social security numbers. But what about data that tracks where a self-driving car has been or how it operated?

"With autonomous vehicles, it's not data that we own," Soriano said. "Is that something the DMV should take on? Or is that something that should be taken on by another agency? That's an issue we have to address."

Most of the ideas about autonomous vehicle liability have emerged from the frequent political salons and law school symposia convened on the topic. There are those who say little or nothing needs to be done, that laws and insurance will adapt to emerging technology, much as they have done with the advent of safety features like anti-lock brakes and vehicle crash-avoidance systems.

"I'm not aware of any consensus on the way to address this issue, or frankly whether it's an issue that needs addressing," said James Anderson, an attorney and a behavioral and social scientist at the RAND Corporation. "It's possible that the consumer demand for [autonomous vehicles] will be so great that the additional liability the manufacturers may have to take on will be manageable."

Others, including Bryan Walker Smith, a fellow at the Center for Internet and Society at Stanford Law School, say a so-called service model could be the answer to liability concerns. Customers would "subscribe" to the driverless-car provider, allowing the developer to retain control of the technology and to make the necessary updates and changes without having to rely on the consumer to do so. This

theory gained some credence last month when Google Ventures invested \$258 million in ride-sharing app Uber, leading industry watchers to surmise Google may launch its self-driving cars in a hire-for-service operation.

Still others say that the societal benefit of slashing the number of car accidents — 80 percent to 90 percent of which are attributable to driver error — and increasing people's efficiency would be so great that autonomous vehicle manufacturers should receive special legal immunity akin to vaccines or nuclear power.

But that's a move that risks launching a political war with tech companies and car manufacturers on one side and consumer groups and trial lawyers on the other.

"I don't like our chances of going up against the power and wealth of Google," said Steven Gursten, the Michigan-based president of the [Motor Vehicle Trial Lawyers Association](#).

Gursten said he's not being pessimistic; he said he actually likes the idea of being made obsolete by a lack of car accidents. He's just pragmatic in watching the various tort-restraint measures and court decisions happening around the country.

His organization hasn't taken an official position on the liability issue, although Gursten said he'd like to see federal agencies set minimum standards for the autonomous technology.

"The answer is to still require insurance for owners and operators and probably allow claims against manufacturers and operators but have appropriate limits in place that protect both sides," he said.

California's plaintiffs bar has been largely silent on the issue and the DMV's regulations development.

"Our organization ... embraces positive advancements in technology," Eric Bailey, communications director for the Consumer Attorneys of California, said in an email. "We also believe that motorist safety and the protection of individual liberties and legal rights must be a top priority. We have faith that California will lead the way on this front in terms of both progress and protection."

Technology advocates have been cagey about both their development plans and how they're thinking about the liability issue. A Google spokeswoman declined to comment. But the company's director of safety for the self-driving car program, Ron Medford, told a Stanford University workshop audience in July that developers want a uniform but light touch from government.

"For the most part regulatory agencies that have sufficient regulatory authority don't need any more help from legislators," said Medford, former deputy administrator of the National Highway Traffic Safety Administration.

"One of the things we worry about is that there will be a patchwork of state legislation that would really make it difficult for operating continuously in the United States with [one agency] imposing more strict requirements than we would have in certain other places," Medford said. That "would really be a difficult thing for everybody."

