

Who Owns Data on a Vehicle?

BY ALEX TIMMONS

Technology these days is capturing more and more data. A modern car is no different with event data recorders, navigation, Bluetooth and other devices capturing gigabytes of data. Our vehicles tell us where to go and how to get there, answer our phone calls, read us our texts and collect data on how we drive. The data can be used for marketing, traffic and urban planning, accident reconstruction, optimizing performance of the vehicle and many other uses. The data is important to car manufacturers, government organizations, insurance companies and car owners. Most modern vehicles have EDRs and other on-board diagnostic information tools. The newer technology included or available in new cars provides location information through navigation, external information gathered by cameras, in-cabin information from sensors used to provide information about occupants, user recognition through physical characteristics used in seat positioning and even tracking eye movement to determine if a driver is falling asleep, and apps through third-party systems.

In this article we are going to focus on one aspect of the data being collected, Event Data Recorders (“EDRs”). EDRs, also known as “black boxes,” record a vehicle’s dynamic time-series data during the time period just prior to, during and after a crash event, but does not include audio or video data. The information collected by EDRs include speed, accelerator and brake position, seat belt usage, airbag deployment and other information. This information is critical to governmental crash investigators, car manufacturers, accident reconstruction experts and others. The critical questions following an accident are who owns the data that is being collected by the EDR and who has access to the information.

The Federal Standard

The Driver Privacy Act of 2015 tried to provide some clarity on the ownership of the information collected by the EDRs². The Act sets forth that any data retained by an EDR is the property of the owner or in the case of a leased vehicle, the lessee of the vehicle. Only the owner or the lessee may access the information recorded or transmitted by the EDR unless one of the following exceptions apply: (1) a court or other judicial authority authorizes the retrieval of the data, subject to the standards for admission into evidence required by the court; (2) the owner or lessee of the motor vehicle provides written, electronic or recorded audio consent; (3) the data is retrieved pursuant to an investigation or inspection authorized by federal law, subject to limitations on the disclosure of the personally identifiable information and the vehicle identification number; (4) the data is retrieved to determine the need for, or facilitate, emergency medical response to a motor vehicle crash; and (5) the data is retrieved for traffic safety research without the disclosure of the personally identifiable information of the owner or lessee and the vehicle identification number. The federal standard considers the owner to be the person who owns the vehicle at the time of the download not at the time of the accident. The Driver Privacy Act is narrow in its scope and only applies to EDRs and not other data repositories in the vehicle.

State Standards May Differ from the Federal Standard

A number of states have their own statutes that are similar or more restrictive in addressing the privacy of the information collected on EDRs. The state laws have varying exceptions state to state and before

[2] Driver Privacy Act of 2015, pub. L. No-114-94, § 24302 (2015).

any information is collected from an EDR a search for a state statute must be conducted in order to confirm compliance with the statute before accessing the data.³ State legislation is being introduced every year in states that do not currently have statutes, so it is important to do a search for current or newly enacted statutes.⁴

States such as Arkansas, Oregon and several others have restrictive statutes concerning the EDR data. Arkansas requires the consent of all owners in writing whether it is a single owner or multiple owners.⁵ They further hold that the owner of the vehicle at the time of the collision holds the exclusive ownership of the data and such ownership does not transfer to a lienholder or insurer who takes ownership after a collision such as a salvage situation. Oregon is similar to Arkansas in that it also requires the written consent of all owners and retains the ownership of the data to the owner at the time of the collision.⁶

What Does this Mean for the Employer?

Because most monitoring programs apply to employees operating vehicles owned or leased by the company, the company has access to the EDR information because of their ownership of the vehicle. Although it is not required, notifying an employee of the monitoring may deter abuse of the company vehicle. In situations where the employee operates their own vehicles or rental vehicles, the federal and specific state statutes must be followed to obtain EDR information from the employee-owned or rented vehicle.

Where Do We Go From Here?

As technology continues to improve and vehicles become more autonomous and “smarter” they will generate more data. Although the data may be utilized in many societally beneficial ways, it can also create many privacy concerns for the consumer. The law and statutes surrounding this data is continuing to evolve. With the ever-changing landscape of vehicle data and technology, it is important that anyone retrieving EDR or other vehicle data be aware of the current applicable federal and state laws.

In this case, the Georgia Court of Appeals makes clear that there is a requirement for the insurer to issue a formal reservation of rights directly to the insured before defense counsel undertakes any substantive action on behalf of the insured.

[3] <https://www.ncsl.org/research/telecommunications-and-information-technology/privacy-of-data-from-event-data-recorders.aspx>.

[4] An example of this is that in South Carolina a bill regarding EDR data has been introduced in 2007, 2009, 2011, 2013, 2015 and 2017 but has failed to be approved.

[5] A.C.A. § 23-112-107.

[6] ORS § 105.925 through § 105.945.