

You AUTO KNOW®

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ELECTRONIC INFORMATION

In May 2010, this writer authored a *You Auto Know* article entitled "GPS Finding Your Way Home." In that article, the scenario illustrated a situation where a customer traded in her vehicle which had a factory installed GPS device as an option. Subsequently, the dealership sold the vehicle and it was stolen. Thieves used the information in the GPS to find the prior customer's home and burglarize it. I asked the question, "What is the dealership's responsibility?"

Recently, this question was raised again via a more obvious set of circumstances. In this situation, the dealership's "get ready" shop did not adequately prepare the vehicle and left some prior service records in the glove box of the vehicle. The vehicle was sold and the previous owner was contacted by the new owner to inquire about the vehicle's history. The old owner contacted the dealership and was not pleased that the new owner had her home address.

Again, the question is what is the dealership's responsibility for safe-guarding the personal information of a customer? In the previous article, I indicated that the New York State legislature raised the question as to what to do with the data left on a GPS in a traded-in vehicle. At this time, the New York State legislature has not resolved the issue. Further, at the writing of the 2010 article, the primary concern was merely a GPS device installed by the manufacturer. Obviously, a non-factory GPS which can be easily removed from a vehicle is solely the responsibility of the customer. But, in today's market, when manufacturers, such as Ford, are marrying high-tech devices with plastic, metal and tires, the ability to protect the non-public information of a consumer can become quite challenging. The primary question is: How far does the safe-guarding go? Obviously, non-electronic information left by a consumer in a vehicle should be collected and disposed of. But, what about electronic information? As one of my colleagues in another part of the country indicated, if the vehicle is traded in on a transaction, then the trade-in could be considered part of a credit transaction, thereby falling under the realm of the Gramm Leach Bliley Act (GLBA) which invokes a safe-guard requirement to credit transactions.

Under the GLBA, the information contained in the vehicle's high-tech toys could come under its Financial Privacy Rule. As of this writing, to the best of this author's knowledge, there has been no litigation regarding this point. However, it is suggested the dealership perform reasonable due

diligence in removing, not only the obvious materials left in a vehicle, but erasing and removing as much information on the electronic devices in a vehicle.

Quite frankly, it may be to the dealership's benefit to inform a consumer prior to the time he or she delivers a trade-in that they are responsible to remove any and all information contained on any electronic devices in the vehicle. If a consumer is unwilling to do so, the dealership should advise the consumer that the dealership is not responsible for any personal information left in a vehicle or any electronic content. At some point, it may also be wise to have a customer sign a disclaimer that the dealership is not responsible for any electronic information contained in any electronic devices contained in the vehicle.

I know this may require another piece of paper for a consumer to execute; however, since the myriad of state and federal laws overlap, it may be to the dealership's benefit to have such a document executed by a consumer.

This could be a new source of litigation and/or legislation. I believe it is always better to be proactive than reactive.

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As always, these are highlights of the law and are not to be construed as containing the entire law. This is not to be construed or relied upon as a legal opinion. If you are presented with this problem, contact your legal counsel for advice.

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Having been a Chevrolet dealer, Robert A. Poklar's business background and experience in the automotive industry aid him in his representation of numerous Ohio automotive dealerships. He also represents after-market service companies, trade organizations, dealers, advertising associations and corporations. Pursuant to certain ethical standards, this may be construed as advertising.