

You AUTO KNOW®

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INTELLIGENT CARS

Scenario: Your customer trades in her vehicle which is one of the new generation intelligent vehicles with multiple Wi-Fi, Internet and computer connectivity. She had downloaded her list of contacts, phone numbers and other personal information such as addresses into the vehicle. The dealership sells the vehicle and the vehicle is stolen. The thieves access the information downloaded to the vehicle, locate the prior owner's address, travel and work schedules, and other personal information. Subsequently, not only is the prior owner's home burglarized, but some of the personal information has been used in an attempt to compromise her personal identity. After investigation, the police determine the thieves had utilized the prior owner's personal information located in the vehicle she traded in. The prior owner sues the dealership. What are the dealership's responsibilities?

The primary question is, whether the dealership is liable for not deleting the information in the vehicle's computer system. This is not the first time *You Auto Know* has addressed this type of scenario. Specifically, in May of 2010, *You Auto Know* dealt with "*GPS Finding Your Way Home*" and in May of 2008, "*Identity Theft, Protect Your Customers and Business*", addressed various scenarios regarding customer information.

As of this writing, there are no cases in Ohio addressing the specific fact pattern in the scenario. However, I believe at some time in the future, a consumer will file a complaint against a dealership with facts resembling those in the scenario.

As you know, it is a dealership's responsibility to protect a customer's confidential information; any breach of that duty can lead to serious legal and financial consequences.

The fact situation in this scenario could include several theories of law, including but not limited to, negligence, right to privacy and bailment. In the negligence scenario, the consumer plaintiff would allege that the dealership knew, or should have known, that a subsequent owner of the vehicle would, or could, access the customer's personal information in the vehicle computer and the dealership had the duty and responsibility to "wipe" the vehicle's computer system clean of any personal information. The consumer plaintiff could also allege she had a right to privacy and the dealership knew, or should have, honored that right to privacy and not allowed the confidential information to remain in the vehicle's computer system. Further, the consumer plaintiff could allege a breach of bailment in that she provided a product or item to the dealership and the dealership did not properly protect and secure that product.

Obviously, the dealership's legal counsel should argue that the consumer plaintiff was contributorily negligent in that she should have wiped the information from the vehicle's computer before trading it in to the dealership and she knew, or should have known, that her right to privacy was gone as soon as she legally transferred ownership of the vehicle to the dealership. Although there is no precedent, I firmly believe there will be litigation regarding the confidential information that may be stored in a consumer's vehicle; therefore, I suggest that the dealership have a policy that a trade-in's computer memory, if so equipped, be wiped of any information.

The next situation can be more of an issue. As you know, the electronic data recovery system (EDR) in vehicles provide an abundant amount of information to service technicians when they are servicing a vehicle. The EDR also provides a snapshot of the vehicle's operation prior to and after an accident and even permit insurance companies, with the permission of the customer, to access the vehicle's usage and performance in order to rate the customer for liability and billing purposes. Eventually, the interface between a vehicle and Apple, Google, Facebook, Pandora, or any other type of technology will store personal information in that vehicle.

As you can imagine, many of these technology companies are salivating at the fact that they can follow the vehicle and provide real time advertisements to the driver for food, gas, lodging - the examples are endless.

The situation arises if you have an unscrupulous employee who has the ability to access the personal information in a vehicle while it is being serviced and/or cleaned after servicing. Obviously, this may not be too different than an unscrupulous employee stealing something from a customer's vehicle while in service; however, the ramifications can be more extensive due to the ability for identity theft. It could even be possible that the unscrupulous employee could access a customer's cell phone, if the Bluetooth connection is still open between the vehicle and the customer's phone.

Again, it is suggested that the dealership have a policy which, in essence, states that employees are prohibited from accessing a customer's personal information in a vehicle computer system. While this will not prevent the advent of a lawsuit, it will provide, at least, a defense that policies and procedures were in place to stop this type of criminal activity.

While it is generally assumed the information contained in a vehicle's computer system is the property of the vehicle owner, the law has not quite caught up to codifying this fact. There are several states that do have laws indicating the EDR information is owned by the consumer and it is a violation of that consumer's privacy if it is accessed without their permission. Further, a driver privacy act was introduced earlier in the United States Senate to address this specific information.

In essence, think security for your customers and yourself - have policies and procedures in place to address, what this author believes, will be significant legal issues in the future.

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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.