The ‘SELF DRIVE’ Act—what does it mean for the autonomous vehicle industry?

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TMT analysis: The US House of Representatives has passed a Bill intended to establish a federal framework for the regulation of self-driving cars. Lucy McCormick, a commercial barrister at Henderson Chambers, considers the practical implications for practitioners in this area.

What proposals are contained in the US SELF DRIVE Act?

The SELF DRIVE Act stands for ‘safely ensuring lives future deployment and research in vehicle evolution’—as the name implies, it is aimed at regulating autonomous cars.

Essentially, the Bill makes it possible for developers to bypass some safety standards that currently apply to human-driven cars, including requirements such as steering wheels and pedals.

It also requires manufacturers:

- to submit more data to regulators
- to publish policies on their handing of data obtained from users, and
- to maintain plans to addresses cybersecurity threats

What are the next steps and when might the Bill become law?

After a measure passes in the House, it goes to the Senate for consideration. The Senate can propose amendments, in which case the matter goes back to the House for approval and possibly further amendments. This ‘back and forth’ process can take a long time. It is only if the Bill passes both bodies in the same form that it can be presented to the President for signature into law.

In the present case, the matter is complicated further as the Senate has been debating a similar but unrelated self-driving Bill. How these two drafts will be reconciled, if at all, is difficult to predict. Nonetheless, the SELF DRIVE Act has an enormous amount of political will behind it, unusually, it was supported through the House by both Republicans and Democrats. It is accordingly likely that one way or another some form of federal legislation for automated vehicles will make it into law in the next couple of years.

What effect is this likely to have on autonomous vehicle testing in the US?

Importantly, legislation at federal level would ‘trump’ local standards, making testing across state lines much more straightforward. Indeed, it is likely to substantially reduce the ‘red tape’ overall. At present, for example, New York requires autonomous cars undergoing real world testing to be overseen by state police, at the cost of the developer.

If the Act was passed, states would no longer be able to unilaterally set standards like these. This is likely to make the US a much more attractive jurisdiction in which to develop autonomous cars. Indeed, it is no coincidence that the Act was supported by an industry lobbying group composed of Waymo (Google’s driverless car arm), Uber, Lyft, Volvo, Ford and others.

Does it create any additional risks?

Probably the most controversial element is the proposal that cars would be permitted on the road without steering wheels or pedals, leaving a human unable to take back control in the case of malfunction. While it might seem common sense to have a steering wheel available as a back-up, the picture is not that straightforward. Many manufacturers are uncomfortable with vehicles which switch back and forth between computer and human control.

Their concerns include the possibility for the human driver to be confused about whether they or the computer are in control, how quickly the human driver could realistically take control in a pressured situation, and misunderstandings of what conditions the ‘robot driver’ could safety deal with. Hence some manufacturers, notably Google, have considered a car with no steering wheel to be the safer option.

How does the US approach differ to proposals in the UK and Europe?

Autonomous vehicles create similar problems in each jurisdiction, and are prompting similar solutions. For example, as referred to above, the US SELF DRIVE Act would require manufacturers to have a cybersecurity plan in place. This is

matched in the UK by the Department for Transport (DfT) August 2017 guidance 'The key principles of vehicle cyber security for connected and Automated Vehicles'.

However, in some respects the US is a little behind the UK. The US does not yet have any national framework in place for testing, for example, while the UK government first issued a code of practice for testing automated vehicle technologies back in July 2015. Similarly the UK is now pressing ahead with unprecedented legislation intended to govern consumer insurance of driverless cars.

Is it likely that the UK might fall behind the US in the race to be the world leader in this area?

Certainly there is fierce jurisdictional competition to be attractive to developers—it has been anticipated that the connected and autonomous vehicle (CAV) industry will be worth £900bn a year globally by 2025. The UK has historically been successful in attracting development and innovation, but the US has the advantage of the geographical location of Silicon Valley. If the US manages to catch up on the legislation front, it will certainly be the jurisdiction to beat.

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