

June 27, 2017

The Honorable Robert Latta, Chairman
The Honorable Janice Schakowsky, Ranking Member
U.S. House Committee on Energy & Commerce
Subcommittee on Digital Commerce and Consumer Protection
2125 Rayburn House Office Building
Washington, DC 20515

RE: Hearing on “Self-Driving Vehicle Legislation”

Dear Chairman Latta and Ranking Member Schakowsky:

We write to you regarding the hearing on “Self-Driving Vehicle Legislation.”¹ We appreciate the Subcommittee’s request for comments from EPIC on the proposed legislation.

EPIC has previously testified before Congress on “The Internet of Cars” and will be participating in the joint FTC / NHTSA workshop this week on “Privacy, Security Issues Related to Connected, Automated Vehicles.”²

EPIC appreciates the Subcommittee’s interest in the privacy and cybersecurity risks of automated vehicles, as well as the effort to ensure that the safety and privacy of American consumers is protected. EPIC also supports the role of state regulators in crafting strong privacy regulations to safeguard consumers. At present, more than 18 states have adopted legislation concerning “self-driving vehicles” to safeguard consumers.³ At the outset, we recommend federal baseline legislation that allows states to regulate upward as new privacy and security risks are identified.

Let NHTSA Enforce Autonomous Vehicle Driving Regulations (LEAD’R) Act

¹ *Self-Driving Vehicle Legislation*, 115th Cong. (2017) H. Comm. on Energy & Commerce Sub. Comm. on Digital Commerce and Consumer Protection, <https://energycommerce.house.gov/hearings-and-votes/hearings/self-driving-vehicle-legislation> (Jun. 27, 2017).

² Statement of Khaliah Barnes, hearing on *The Internet of Cars* before the House Committee on Oversight and Government Reform, November 18, 2015, <https://epic.org/privacy/edrs/EPIC-Connected-Cars-Testimony-Nov-18-2015.pdf>; *Connected Cars: Privacy, Security Issues Related to Connected, Automated Vehicles*, FTC, <https://www.ftc.gov/news-events/events-calendar/2017/06/connected-cars-privacy-security-issues-related-connected> (hereafter “FTC/NHTSA Workshop”).

³ *Autonomous Vehicles: Self-Driving Vehicles Enacted Legislation*, National Conference of State Legislatures, Jun. 26, 2017, <http://www.ncsl.org/research/transportation/autonomous-vehicles-self-driving-vehicles-enacted-legislation.aspx>.

EPIC has long opposed federal preemption where privacy interests are concerned.⁴ States are the “laboratories of democracy,” and their right to develop new protections above a federal baseline is well established.⁵ However, the proposed legislation preempts states from issuing any rule, regulation, or law that is not identical to a previously issued Federal Motor Vehicle Safety Standard (“FMVSS”) issued by NHTSA, including in the areas of software and communications systems.

While there may be a need to ensure uniformity for vehicle design and mechanics, preempting states from issuing rules and regulations for software and communications systems will effectively prevent states from developing innovative privacy safeguards. This stands in contravention to the historic role that states have played in the privacy arena.⁶ EPIC recommends that this bill be revised to allow states to issue privacy and security regulations that do not conflict with federal standards.

Automated Driving System Cybersecurity Advisory Council

EPIC supports the creation of an Automated Driving System Cybersecurity Advisory Council. The task of protecting the privacy and security of drivers will be more effective with the input of experts from outside of the government. EPIC recommends that independent experts and representatives from privacy and consumer organizations be added to the Cybersecurity Advisory Council. Such groups bring additional expertise and a unique view that cannot be obtained by those whose companies have a financial interest in the development and deployment of automated vehicles. Additionally, representatives of consumer and privacy organizations can express the interests and concerns of consumers and provide a voice for the general public in this process.

Sharing Automated Vehicle Records with Everyone for Safety Act

EPIC believes that this bill needs substantial revisions. The purpose of this advisory committee appears to be to keep the public in the dark about how autonomous vehicles are being developed. The public has a right to know whether the vehicles being marketed to them are safe and have gone through rigorous testing. Information sharing among manufacturers of highly automated vehicles is important as sharing such information will ultimately produce a safer

⁴ *Privacy Preemption Watch*, EPIC, <https://epic.org/privacy/preemption/>.

⁵ See e.g. Electronic Communications Privacy Act; Right to Financial Privacy Act; Cable Communications Privacy Act; Video Privacy Protection Act; Employee Polygraph Protection Act; Telephone Consumer Protection Act; Driver’s Privacy Protection Act; Gramm-Leach-Bliley Act.

⁶ See *Hillsborough County v. Automated Medical Laboratories*, 471 U.S. 707 (1985) (there is a “presumption that state or local regulation of matters related to health and safety is not invalidated under the Supremacy Clause”). Privacy is included in the category of health and safety issues as an area of regulation historically left to the states. For instance, in *Hill v. Colorado*, the Supreme Court upheld a law protecting the privacy and autonomy of individuals seeking medical care, as the law was intended to serve the “traditional exercise of the States’ police power to protect the health and safety of their citizens.” 530 U.S. 703 (2000).

product. However, the public has a right to be aware of the problems that may be associated with these vehicles.

Transparency in automated vehicle development will likely improve consumer trust and confidence. Despite the industry's rush to produce these vehicles, consumer confidence in automated vehicles is low.⁷ Encouraging manufacturers to intentionally keep secrets from the public will only serve to harm consumer trust.

Finally, as with the Automated Drivers Cybersecurity Council proposed legislation, if an advisory committee is formed to help facilitate information sharing, the committee should include non-profit consumer advocacy groups.

Guarding Automakers Against Unfair Advantages Reported in Public Documents Act

While EPIC respects the need of manufacturers to protect some information, not all information related to autonomous vehicles is a trade secret. Reports relating to crash data, cybersecurity, and object detection should not be considered proprietary information. Releasing such information to the public and sharing it with other manufacturers is vital to ensure consumer confidence.

EPIC is a leading advocate for algorithmic transparency.⁸ The need for transparency in automated vehicles will only increase in importance as algorithms make decisions for vehicles. This is especially true if the cars are designed in a way where the decision they make regarding how to respond to unexpected objects in the road may be different than that of a human driver. Algorithmic transparency is necessary to allow for consumer trust in automated vehicles. Instead of paving the way for companies to allow these companies to keep their algorithms secret, Congress should encourage transparency. The algorithms used in autonomous vehicles may have severe consequences for the safety of the driver, passenger, and individuals in the vicinity of autonomous vehicles. Consumers deserve to know what their car is programmed to do, and our roads will be safer if they do.

Managing Government Efforts to Minimize Autonomous Vehicle Obstruction Act

Autonomous vehicles fall into the regulatory jurisdiction of several agencies. We support efforts to combine NHTSA's engineering expertise with the FTC's expertise in the fields of data privacy and data security. We note also the important collaboration this week between NHTSA

⁷ Melissa Burden, *J.D. Power: Consumer Trust in Self-Driving Cars Drops*, The Detroit News, Apr. 18, 2017, <http://www.detroitnews.com/story/business/autos/general-motors/2017/04/18/jd-power-consumer-trust-self-driving-tech-drops/100603780/>; Zeninjor Enwemeka, *Consumer Don't Really Want Self-Driving Cars, MIT Study Finds*, WBUR, May 25, 2017, <http://www.wbur.org/bostonmix/2017/05/25/mit-study-self-driving-cars>; Tracey Lien, *Consumers Aren't As Excited As The Auto Industry About Self-Driving Cars*, Los Angeles Times, Sep. 28, 2016, <http://www.latimes.com/business/technology/la-fi-tn-kbb-self-driving-car-survey-20160927-snap-story.html>.

⁸ *Algorithmic Transparency: End Secret Profiling*, EPIC, <https://epic.org/algorithmic-transparency/>.

and the FTC in the joint workshop on “Privacy, Security Issues Related to Connected, Automated Vehicles.”⁹

Conclusion

We ask that this letter be entered in the hearing record.

EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitríona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

/s/ Kim Miller
Kim Miller
EPIC Policy Fellow

⁹ FTC/NHTSA Workshop.