

## New privacy principles for connected vehicles

Hogan Lovells is leading the efforts of the automotive industry to develop a set of privacy principles governing the use of data from “connected cars.” This article describes the policy environment leading to the drafting of privacy principles and the resulting work.

For many, the 2014 Consumer Electronics Show – typically a showcase of in-home entertainment technology – was an event about vehicle technologies and services. Consumers and tech writers praised the announcement of 4G connectivity for vehicles and marveled at the demonstrations of autonomous vehicles.

But the excitement about connected vehicles has been tempered, for some, by privacy concerns. In late 2013, the U.S. Government Accountability Office (“GAO”) published a report finding that the privacy practices of some providers of in-car location-based services were “unclear.” That report led U.S. Senator Al Franken to call for a location privacy law. The California legislature considered a bill that would have required automobile manufacturers to provide owners with broad access to and control over the information that vehicles record, generate, store, or collect. The Detroit Free Press reported that automotive industry and legal experts thought of auto data privacy as “the industry equivalent of the Wild West.” Even Volkswagen Chairman Martin Winterkorn stated that “[T]he car must not become a data monster.”



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By the spring of 2014, automakers were increasingly concerned that California and other states might soon pass hastily-drafted and overly-broad laws regulating the collection, use, and sharing of information collected from vehicles. Some of the bills considered by state legislatures would have substantially impacted manufacturers’ business models and design practices. The auto industry recognized that it needed to act swiftly.

So, the Alliance of Automobile Manufacturers, later joined by the Association of Global Automakers, and their members (23 automakers) decided to develop a set of principles for vehicle technologies and services that would directly address privacy concerns and address the calls for hasty legislative action. To assist in the development and release of these privacy principles, the car manufacturers turned to Hogan Lovells.

Throughout the spring and summer, a Hogan Lovells team from the firm’s Privacy and Information Management Practice met with the Alliance, Global, and their members and drafted a set of principles that demonstrates a commitment to responsible stewardship of the information collected by connected vehicles. The result of those efforts is the Privacy Principles for Vehicle Technologies and Services (“Principles”), which automakers and other participants in the auto industry can choose to adopt when offering innovative vehicle technologies and services. In drafting the Principles, we turned to the Fair Information Practice Principles, the White House’s proposed Consumer Privacy Bill of Rights, and guidance from the U.S. Federal Trade Commission (“FTC”). We also drafted the Principles with an eye to ensuring that they would support the evolution and development of innovative technologies and services.

The resulting Principles contain fundamental commitments to:

**Transparency:** Companies that adopt the Principles must provide clear, meaningful notices about how they will collect, use, and share covered information. The Principles do not, however, establish rigid requirements for the format, presentation, or timing of notices.

**Choice:** The Principles establish a commitment to providing vehicle owners with certain choices about the collection, use, and sharing of covered information. But choice is not required where information practices are essential to vehicle operations, safety, compliance, or warranty purposes. Participating companies must obtain affirmative consent prior to 1) using precise location information, biometrics, or information about

driving behavior for marketing; and 2) sharing such information with unaffiliated third parties for their own use.

**Respect for Context:** Participating companies commit to using and sharing covered information in ways that are consistent with the context in which the information was collected, taking account of the likely impact on owners and registered users of vehicle services. This allows companies to engage in adaptive and innovative uses of data while helping ensure that consumer privacy is taken into account.

**Data Security:** Participating companies commit to implementing reasonable security measures, and the Principles do not establish inflexible security standards.

**Integrity and Access:** Participating companies commit to taking reasonable steps to ensure that the personal information they hold is accurate. Owners and registered users of vehicle services are entitled to access their registration information. And companies commit to exploring additional means of access, taking into account privacy and security concerns.

**Accountability:** Participating companies commit to establishing reasonable policies and procedures to help ensure their own adherence to the Principles. Companies also commit to taking reasonable steps to ensure that service providers receiving covered information adhere to the Principles. The Principles do not contain a built-in enforcement mechanism nor do they prescribe specific accountability measures. However, participating companies that do not live up to their commitments risk facing enforcement actions brought by the FTC or state attorneys general.

The Principles reflect an important self-regulatory structure through which subscribing automakers commit to having policies and practices implementing the commitments contained in the Principles. In that way, the Principles are binding public commitments enforceable through Section 5 of the Federal Trade Commission Act, requiring companies to fulfill their publicly stated commitments such as those in the Principles.

An important part of the roll-out of the Principles was outreach to policymakers and public policy advocates. Meetings were held with academics, privacy advocates, and regulators to brief those parties on the advances contained in the Principles. The response to the self-regulatory principles was very positive, with one FTC Commissioner commenting that they could serve as a model for the Internet of Things community.



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The Principles reflect a major step in the protection of personal information collected through in-vehicle technologies and provide guidance on how privacy may be promoted in the Internet of Things ecosystem. We are proud to have had the opportunity to help the auto industry build consensus around the Principles and help the industry demonstrate to consumers, regulators, and policymakers that the industry takes its privacy commitments seriously. And we look forward to taking the Principles on the road. ■



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