

Still No Agreement On 'Black Boxes' for Cars

Privacy, intellectual property issues complicate safety efforts

01/05/2011 | Truman Lewis | ConsumerAffairs.com

Automobile safety advocates for years have been pushing for "black boxes" in cars – event data recorders (EDR) that would collect information that would help engineers ascertain the cause of highway accidents and spot design shortcomings and mechanical failures.



But although many cars already gather a great deal of data, there is still no federal requirement mandating that auto manufacturers install the recorders in all of their vehicles. The [National Highway Traffic Safety Administration](#) (NHTSA) has issued regulations for EDRs that manufacturers must follow if they decide to install the devices but those regulations. Those regulations take effect in 2012, a year later than originally scheduled, but don't mandate the installation of EDRs in every car.

Why not?

The problem has nothing to do with mechanical or engineering difficulties. Rather, it's turned into an intellectual property and privacy issue. No one can agree on who should own – and have access to – the data gathered by the devices.

- The automakers say the data should be theirs, so that they can identify and correct shortcomings in the design and durability of their vehicles.
- Safety regulators say they should have unfettered access to the data so that they can spot those same shortcomings and order recalls.
- Law enforcement and insurance companies say they should have access to the data so they can determine not only what caused an accident but who, if anyone, was at fault.
- Personal injury and product liability lawyers say they should have access to the data so they can sue manufacturers, drivers and anyone else implicated by the EDR's data.

Toyota did little to build public support for manufacturers when it reportedly used EDR data from 2,000 cars involved in [unintended acceleration](#) incidents. The company then proclaimed proudly that in none of the cases was the car's electronic throttle found to be at fault.

Critics said that Toyota should not be permitted to get away with quoting the results without opening all of the data to inspection by others.

Engineers frustrated

All of this frustrates engineers no end. [Perry J. Zucker](#), a Philadelphia consulting engineer who has testified widely in court cases and before legislative and regulatory bodies, argues that the various camps are trying to use the EDRs in ways that were never intended.

"The EDR is intended to be used for diagnosing vehicle-related issues, including the performance of brakes and such safety equipment as airbags during the time period just prior to and during a crash event," Zucker told ConsumerAffairs.com.

Attempts to compare the EDR to an airplane's "black box" are misleading and have contributed to the lengthy controversy that has stalled widespread adoption and standardization of the devices, he said.

It is "the furthest thing from the truth" to portray the EDRs as comparable to the highly sophisticated data collection systems used in modern aircraft, Zucker said.

While the EDRs might contribute some information about a specific auto accident, information such as impact data, skid marks and resting positions of the vehicles are essential and will remain so, whether or not the issues regarding EDRs can be worked out, he said.

Privacy issues

While the issue is sometimes painted as safety-conscious consumers versus the all-powerful automobile industry, consumers are hardly united in their desire for the devices and many have written regulators and Congressional representatives objecting to requiring the devices in all cars. Joining in the criticism are some privacy advocates who claim the devices would allow government to spy on citizens.

Privacy objections come all parts of the political spectrum.

"Consumers, not the government, should decide if they want their cars to collect such data, and if they want to share it with others," said Jim Harper, director of information policy studies at the conservative [Cato Institute](#), writing in the American Spectator in December 2010.

"There is no question that aggregated EDR data can provide important safety benefits. If traffic accidents and deaths can be averted by improving automobile safety, these safety advances should be pursued. But they should be pursued in a way that unites the interests of drivers with the interests of the community." Harper said.

In the absence of federal action, 12 states have stepped in to regulate who owns the EDR data and to regulate access to it.

As this graph prepared by Zucker illustrates, all of the states except California and Connecticut have decreed that the EDR data belongs to the vehicle owner. All of them restrict access to the data without a court order and all but Connecticut and Oregon restrict insurers' access to the data.

	(1)	(2)	(3)	(4)
Arkansas	X	x	x	x
California		x	x	
Colorado	X	x	x	
Connecticut		x		
Maine	X	x	x	
Nevada	X	x	x	
New Hampshire	X	x	x	
New York	X	x	x	
North Dakota	X	x	x	x
Oregon	X	x		x
Texas	X	x	x	
Virginia	X	x	x	x

* Source: Senate Commerce Committee Staff (+) Florida State Senate 10/09

(1) specify the vehicle owner as the owner of EDR data; (2) restrict access to EDR data, unless procured via a warrant or court order; (3) restrict insurers' access to, and use of, EDRs; (4) require manufacturers or dealers to provide notice or make certain disclosures to consumers about EDRs, consistent with federal law. Copyright 2011 [Offices of Perry J. Zucker](#)

Florida does not specifically address EDRs but has a computer trespass statute that some analysts say could cover EDRs but Florida law does not address who owns the data or has access to it.

Is there an EDR in your car? There probably is. Most vehicles that have an airbag have an EDR as part of the computer system that controls airbag deployment. But for now, there's no standardized methodology for knowing what information is being collected or how to access it. Whether this is good or bad depends on how you view the controversy over who should own and have access to such data.

Spies welcome

Some consumers welcome devices that provide limited information to third parties.

General Motors' popular [OnStar](#) system is popular with motorists who want to security of knowing that they can summon help in the event of an accident or illness. OnStar uses a GPS system to provide subscribers' exact location to emergency personnel if they are injured in a crash or become ill.

Some insurance companies offer discounts to drivers who agree to install a devices that monitors your driving habits.

And many rental car companies have installed devices that monitor the location of each of their vehicles; some also monitor speed and other variables. Some have the ability to shut your rental car down if the system detects that you are speeding or driving into Mexico or Canada if you have not purchased insurance that covers you and the car in a foreign country.