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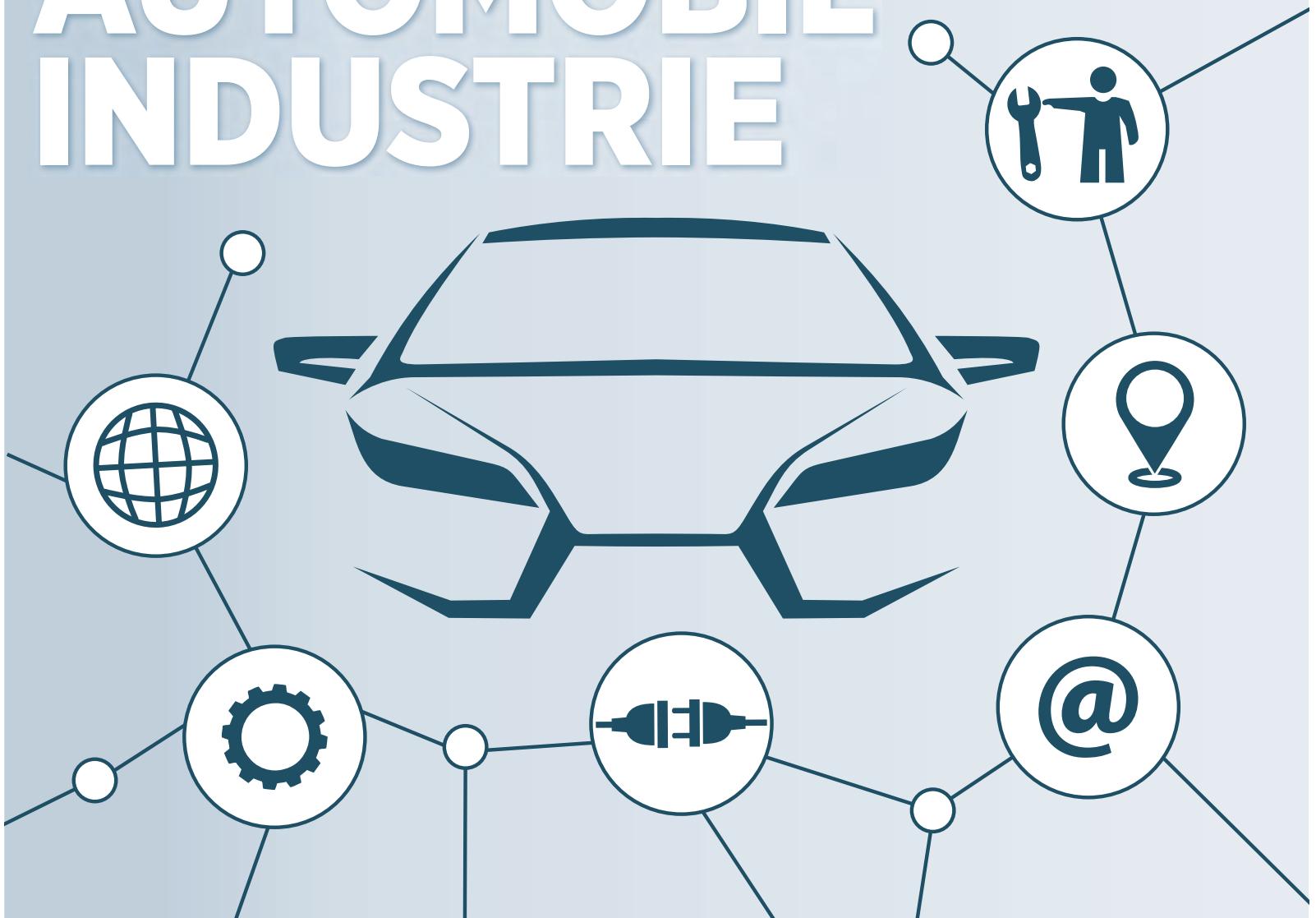
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## DIE ZUKUNFT DER **AUTOMOBIL INDUSTRIE**



Special „Recht & Automotive“

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# Car Wars

by Christian M. Theissen

**B**uzzwords like "connectivity" and "autonomous driving" are the harbingers of a new era that we will be facing in the next 5 to 10 years. The traditional business of car manufacturers and their suppliers will become even more closely connected with companies in other areas, such as software and sensor technology, providing a fully integrated "mobility experience". Similar to the cell phone, which is now to a large part used for purposes other than voice transmission, in the future, cars will not only provide transportation. In addition to improving traffic safety, autonomous driving is intended to provide additional recreational time for passengers. As a result, the communication and entertainment industry is pushing into the market, with any eye on becoming involved in the design of the vehicle interior (and much more).

These disruptive developments will result in new partnerships and company acquisitions, as currently shown by examples such as map services and automation technology. Such partnerships do, however, also involve the risk of a loss of know-how: If a partner is bought, a knowledge drain to competitors may be unavoidable. Moreover, the continuous automation of cars

involves a multitude of novel legal questions in areas such as liability, system security and data protection. An expert panel dealing with these questions was established at White & Case as early as in 2012. As these subjects cannot be looked at from a purely German perspective, White & Case has set up a global group focusing on autonomous driving. Lawyers from 39 offices, from the Silicon Valley to Tokyo, are discussing fundamental questions and details related to autonomous driving. This allows us to provide clients with insights into new developments and ideas at an early stage. We would like to share the ideas of some of our experts with you on the following two pages.

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# The Car of the Future

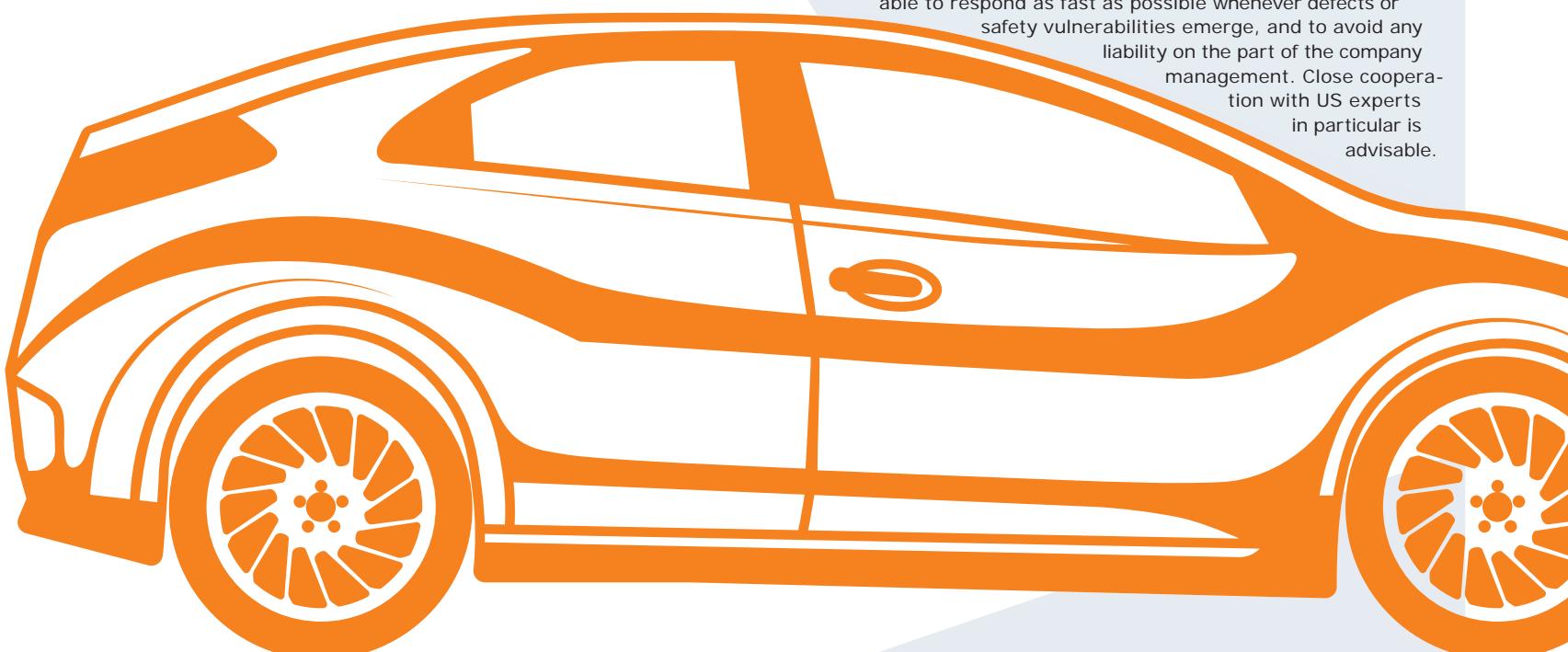
Legal Aspects in a Connected World

## Liability

by Dr. Markus Burianski

- What is the current state-of-the-art in science and technology? And what is a reasonable safety expectation? Which risks are knowingly being accepted?
- Is the monitoring of live data part of the product monitoring obligation? How far does the product monitoring obligation with regard to apps and other user-dependent software go?
- Does "autonomous driving" need to be disabled when driving in countries with a different legal situation?
- Is the driver still in the "liability loop"? Is oversteering possible? What happens if a "driver" is in no state to drive?
- Full voluntary assumption of liability on the part of the OEM vis-à-vis the end-customer? Recourse against suppliers?
- Does the car choose petrol stations, garages and hotels? Violations of competition law?

These are only some of the novel issues that need to be clarified. German companies must develop a strategy to limit their liability and product monitoring obligations at an international level. This could be achieved, for example, by separating hardware (e.g. the car) and software (e.g. "autonomous driving" as a separate service). Companies will also have to optimize their organization and documentation to be able to respond as fast as possible whenever defects or safety vulnerabilities emerge, and to avoid any liability on the part of the company management. Close cooperation with US experts in particular is advisable.



## The Transparent Driver?

by Dr. Markus Munz

- Who owns the data?

Autonomous driving requires the processing of comprehensive real-time-generated data that originate from the vehicle itself as well as from other traffic participants. This is an absolute requirement for anticipatory driving behavior, adjustments to driving style and risk prevention. Generally, these data will be attributable to certain drivers, enabling the creation of comprehensive personality profiles that are potentially of great interest to other industries (such as the insurance sector, travel, marketing), the government (criminal prosecution, secret service agencies) and even hackers. To ensure the protection of privacy, autonomous driving must meet strict requirements: drivers must be comprehensively informed, free choice when using autonomous driving, data economy, and the highest level of security through encryption to protect against unauthorized use. European providers are well aware of these challenges. However, a global solution requires the coordination of the, sometimes, highly divergent requirements that apply within the various jurisdictions.

## Acquisitions and cooperations

by Markus Hauptmann

- Do cross-sector transactions require an adjustment of contents and processes?
- Do these transactions reduce the risk of delineation between the liability of OEM and IT provider?
- Are the risks associated with mergers controllable across various industries, some of which are regulated?

"Autonomous driving" leads to increasing competition and a more complex relationship between OEMs, suppliers and IT companies, i.e. cross-industry competition. The race to position oneself as the first mover is intensifying, with the traditional understanding of the roles of manufacturer and supplier shifting. IT companies are developing their own fully automated vehicles, in some cases in cooperation with traditional automotive manufacturers. Cross-industry corporate acquisitions are increasingly replacing cooperations between companies within the same industry. These acquisitions are intended to provide greater protection of IP and development know-how. To this end, new alliances between competing OEMs are no longer off-limits, as the current projects of various OEMs illustrate. Going forward, detailed NDAs, tiered due diligence processes, comprehensive IP clauses and new assessments under anti-trust law will shape the cross-sector M&A practice.

With the adoption of the IT Safety Act, the German legislature has already imposed greater responsibility on internet providers.

## Rising U.S. Litigation Risks

by Scott Weingaertner

- Heightened scrutiny by U.S. regulators following complex scandals in the industry will lead to increased U.S. litigation risks.
- New competition across technology sectors will drive industry dislocation and the risk of intellectual property disputes.

Already under scrutiny by NHTSA regulators, auto makers and their suppliers will face new claims with the rise in automation. It is to be expected that the long arm of U.S. jurisdiction will affect automotive and technology companies globally to enforce U.S. laws and standards. While cooperation and standardization will remain goals, global communications networks and different regimes for cybersecurity and data privacy in the main auto markets will lead to complex risks that will need cross-border experts to navigate. Increasing employee mobility, trade secret and international patent enforcement, and expanded software copyrights in the U.S., will add to the growing risk of complex disputes.

## Regulatory Perspective

by Prof. Dr. Norbert Wimmer

- Automation as a challenge for government authorities in charge of type approval and market supervision?
- Support of automation through traffic planning?
- Ensuring safe communication with connected cars?

The automation of processes that were previously controlled by the driver triggers a shift from road traffic law, with its focus on driver behavior, towards type approval law. As a consequence, government authorities are faced with significant challenges with regard to technological developments: the programming of self-driving vehicles is even more complex than that of large-scale technologies, as they must be aligned with a much greater number of different operational situations. Until now, this challenge has been somewhat mitigated by the fact that the legal presumption is that the driver will maintain control over the car and can resume command of the steering wheel at any time. However, current developments will have an impact on product safety law. As a result, external inspection and certification authorities will grow in importance, which also gives rise to new liability issues. The market success of self-driving vehicles may be boosted by installing intelligent traffic systems on public roads and streets. This would require a safe and reliable communication infrastructure. Legislators will have to establish standards, with these standards being such that traffic participants can rely on these standards being complied with, also with a view to the interaction between conventional and self-driving vehicles.

by Bijal V. Vakil

- Expands definition of "driver" to include self-driving cars
- Opportunity to create new policies and legislation because of perceived safety benefits of self-driving cars
- Creation and protection of intellectual property is critical to moving forward

The United States is currently one of the world's largest markets for autonomous vehicles. There has been a significant amount of investment in research and development to transform the automobile industry into an electronics industry. These efforts will necessarily produce intellectual property issues relating to technological protection and data privacy. It is likely that traditional rules relating to the protection and defense of intellectual property will hit this industry. Data privacy rules and regulations relating to the Internet may be imposed in the United States to address some of these issues. Recently, the National Highway Traffic Safety Administration ("NHTSA") interpreted the Federal Motor Vehicle Safety Standards to include self-driving/autonomous vehicles as "drivers" under the existing legal framework so new technologies may be developed and adapted with government approval. This is a remarkable step up from existing laws which require human interaction for vehicle functions (i.e., cruise control, stopping, braking, etc.).

Looking forward, trends in intellectual property, data privacy and from the NHTSA will move this industry forward.

## United States – Encouraging Development

