

Look Ma, No Hands: Self-Driving Vehicle Capabilities and Malfunctions.

In modern times, automobiles have become more and more technologically advanced. In 2013, the idea of having a Bluetooth sound system was exciting and new. Now, automobiles have enhanced features including assisted braking, adaptive cruise control, and advanced self-driving capabilities. Automobiles today are more technologically equipped and more intelligent when it comes to driving on the road. Drivers now have additional safeguards to help ensure that, in the event the driver is not paying attention, an accident will be prevented. With all of these added features, have automobiles become more trustworthy than the driver? How much reliance should a driver have on an automobile to perform in unexpected situations?

Tesla pioneered the way for car companies to start incorporating a version of self-driving capabilities into their own vehicles. Models that currently have some type of autonomous driving functions include the 2022 Cadillac Escalade, the 2022 Mercedes-Benz E-Class, the 2022 Volvo V-90, and the 2022 Audi A7.¹ Some self-driving functions allow the vehicle to communicate with other vehicles or roadside sensors about road obstacles, traffic, and other conditions.² Tesla models include a self-driving function that performs lane-changes, monitors speed limits, ensures safe distancing from other vehicles, and alerts the driver when they need to regain control of the vehicle.³

What happens when a vehicle in self-driving mode has a malfunction or doesn't perform properly in a given situation? The New York Times reported that the Federal Government's top auto-safety agency reported that nearly 400 crashes in the United States in a 10 month period involved cars using advanced driver-assistance technologies.⁴ These results come after the National Highway Traffic Safety Administration's (NHTSA) order for automakers to submit crash data -- which was prompted partly by crashes and fatalities over the last six years that involved Tesla's operating in Autopilot.⁵ NHTSA has continued to widen its investigation into whether Autopilot has technological and design flaws that pose safety risks.⁶

When our high expectations of a vehicle's self-driving capabilities fail, who is liable for those failures? Tesla currently claims that since its self-driving system is in Beta mode the liability is going to be placed on the driver to pay attention, and to take control in the event the car fails to perform its supposed functions.⁷ Additionally, some insurance companies incentivize drivers to make sure they pay attention and always maintain control of their vehicle. Tesla does this by giving drivers the ability to opt into an insurance policy that monitors your real-time driving behavior.⁸ A driver will receive a score out of 100 which determines how much a driver is likely to pay for their monthly premium. The closer to 100, the cheaper the rate.⁹

¹ Joel Patel, *Cars That Are Almost Self-Driving in 2022*, U.S. NEWS: CARS (May, 23, 2022), <https://cars.usnews.com/cars-trucks/advice/cars-that-are-almost-self-driving?slide=7>.

² *Id.*

³ *Id.*

⁴ Neal E. Boudette, et al., *Tesla Autopilot and Other Driver-Assist Systems Linked to Hundreds of Crashes*, N.Y. TIMES: BUS. (June 15, 2022), <https://www.nytimes.com/2022/06/15/business/self-driving-car-nhtsa-crash-data.html>.

⁵ *Id.*

⁶ Neal E. Boudette, *Crashes Involving Tesla Autopilot and Other Driver-Assistance Systems Get New Scrutiny*, N.Y. TIMES: BUS. (Sept. 1, 2021), <https://www.nytimes.com/2021/06/29/business/tesla-autopilot-safety.html>.

⁷ Fred Lambert, *Tesla Releases New Full Self-Driving Beta Update with High-level Changes*, ELECTREK.CO (Nov. 1, 2022), <https://electrek.co/2022/11/01/tesla-releases-full-self-driving-beta-update/>

⁸ *Tesla Insurance Using Real-Time Driving Behavior*, TESLA (last visited Nov. 20, 2022), <https://www.tesla.com/support/insurance/real-time-insurance>.

⁹ *Id.*

Tesla released a statement regarding how much reliance should be placed on the vehicle's self-driving capabilities, and who is responsible for system malfunctions.¹⁰ Tesla states that the self-driving capabilities in their vehicles are "to give you [the driver] more confidence behind the wheel, increase your safety on the road, and make highway driving more enjoyable ... The driver is still responsible for, and ultimately in control of, the car."¹¹ By making this statement, Tesla makes it clear that any accidents resulting from a vehicle's self-driving malfunction are going to be the sole responsibility of the driver of the vehicle. In order to deny liability, Tesla urges that the driver should always maintain control of their vehicle.¹²

Alternatively, a report published by the Scottish Law Commission states that liability should be placed on the vehicle and its manufacturer, not the driver.¹³ Shifting liability to the car company or manufacturer "would build public confidence in self-driving technology that could make everyday travel safer and more environmentally friendly."¹⁴

The realm of self-driving technology has only been introduced within the last decade and has continued to advance at a rapid rate. The law is always slow to catch-up to the current events of reality, as shown by the slow response addressing who is liable for self-driving vehicle malfunctions.

¹⁰ Emily Rosenthal, *When a Tesla on Autopilot Kills Someone, Who is Responsible?*, N.Y.U NEWS (Mar. 9, 2022), <https://www.nyu.edu/about/news-publications/news/2022/march/when-a-tesla-on-autopilot-kills-someone--who-is-responsible--.html>.

¹¹ *Id.*

¹² *Id.*

¹³ Zachary Snowdon Smith, *Self-Driving Car Users Shouldn't Be Held Responsible For Crashes, U.K. Report Says*, FORBES: BUS. (Jan. 27, 2022, 10:32 AM), <https://www.forbes.com/sites/zacharysmith/2022/01/25/self-driving-car-users-shouldnt-be-held-responsible-for-crashes-uk-report-says/?sh=6631827c37c9#open-web-0>.

¹⁴ *Id.*