

Court Rulings and Legislation Shake Up Auto Privacy Landscape

November 12, 2023 - In a recent turn of legal events, the US 9th Circuit Court of Appeals upheld the dismissal of a class action lawsuit against major automakers, including Honda, Toyota, Volkswagen, and General Motors. An almost identical case against Ford was dismissed last month. The dismissed suits alleged that these automakers unlawfully collected and recorded car owners' text messages and call logs through their vehicles' infotainment systems. The court ruled that the claims did not meet the statutory injury requirements of the Washington Privacy Act (WPA), stating that a mere violation of the WPA is insufficient to satisfy the statutory injury requirement.

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Privacy advocates have raised concerns about automakers not doing enough to protect user data as they enhance their infotainment systems to handle calls and text messages. A 2022 report revealed that car manufacturers not only collect data about the car but also send it to data hubs for processing. That data is stored in perpetuity, even if the owner of the vehicle deletes the actual text messages or call logs from their cell phone. Furthermore, the data collected can't be accessed by the owner of the vehicle but it can be made available to law enforcement without the need for a search warrant and without the permission of the vehicle owner.

The rulings in these cases assert that storing text messages and call records from connected smartphones is legal and that the intercepted data, although stored without the owner's access, doesn't necessarily constitute an actual privacy violation. But the fact is that auto manufacturers aren't just collecting this data to provide a database for the police. They are also using the data to actively market to consumers, and that fact alone means that owners are having their privacy violated.

It is no wonder that the Mozilla Foundation labeled modern cars as a "privacy nightmare," asserting that leading brands, including Ford, Toyota, Volkswagen, BMW, and Tesla, failed to meet minimum privacy standards.

Adding another layer to the privacy debate the 2021 federal infrastructure bill included a provision requiring automobile manufacturers to include a "kill switch" in new vehicles. That same bill also requires manufacturers to start monitoring the air in passenger cabins for alcohol use, rendering cars inoperable if they suspect that the driver has been drinking. Of course, there is now telling how this will work when a passenger has been drinking but the driver is simply the "designated driver."

Representative Thomas Massie of Kentucky warns that the kill switch allows vehicles to monitor driving performance and potentially disable the vehicle if it deems the driver is not driving well. Despite Massie's attempt to remove the provision, it survived a House vote. Massie argues that this provision goes beyond typical safety measures, likening it to a "backseat driver and nanny" that could lead to dangerous situations, such as a shutdown in the middle of an emergency.

As the legal landscape evolves and government actions impact personal privacy in automobiles, questions arise about the extent to which manufacturers and legislators are safeguarding the private information of car owners and passengers. The debate underscores the need for comprehensive regulations to address the growing concerns surrounding data collection, privacy invasion and nanny government involvement in the automotive industry. But for now, the best way to protect yourself may be to purchase a used car, without all of the newer bells and whistles.
by Jim Malmberg

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