Department for Transport

Lord Davies of Gower
Minister for Maritime, International and Security

Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 0300 330 3000
E-Mail: Lord.davies@dft.gov.uk

Web site: www.gov.uk/dft

Baroness Bowles of Berkhamsted
Baroness Brinton
Baroness Randerson
House of Lords
London
SW1A 0PW

1 February 2024

Dear Sharon, Sal, and Jenny,

Automated Vehicles Bill data roundtable – Follow Up Letter

Following our meeting on the Automated Vehicles Bill held on 26 January, I am writing to expand on some of the points that were raised on the protection of personal data and of commercial interests.

I would firstly like to reiterate that we take these issues very seriously. I can confirm that this Bill does not seek to replace or change existing legislation on personal data protection or on IP rights (including copyright), patents or trade secrets, nor does it enable us to contravene this legislation.

The purpose of the Bill is to create a comprehensive and effective safety framework for self-driving vehicles. The sharing of information may be necessary in order to achieve this; public safety and security must come first.

We will not be looking to share or use any information gathered indiscriminately. This would only be done where a need has been identified in order to fulfil the safety aims of the Bill. Any regulations made under the powers in the Bill that permit further sharing or use of information would be developed in discussion with stakeholders, subject to consultation and would then be laid in the House before coming into force. This provides multiple opportunities for input to, and scrutiny of, proposals.

<u>Personal data protection: application of existing legislation to the self-driving vehicle industry</u>

Data protection legislation continues to apply to personal data collected and processed by organisations in the self-driving vehicle industry – the Bill does not change this. Indeed changes to Data Protection Legislation are not in

scope of the Bill. Self-driving vehicles will therefore be subject to existing data protection laws in the UK, which means developers, manufacturers and operators will have to continue to ensure personal data is protected and processed in accordance with existing obligations.

Key principles within data protection legislation include ‘data minimisation’ and ‘storage limitation’ so only the minimum set of data should be collected for the purpose, and it should only be kept in a form which permits the identification of an individual for as long as is necessary for the purpose.

As you noted in your speeches at committee stage, and at our meeting last week, it will be important for the industry to fully understand their duties. We are planning to develop specific guidance on the application of data protection law to the self-driving vehicle industry. We will consult with the Information Commissioner's Office (ICO) on this guidance as it is developed.

The issues raised in our discussions on data protection have also touched on issues that are not specific to self-driving vehicles, for example personal data used by sat-nav and infotainment systems in existing vehicles. These issues are outside the scope of the Bill, but I thought it might be helpful to take the opportunity to confirm that these are already subject to data protection legislation.

<u>Personal data protection: application of existing legislation to future regulations made under the Bill that may require personal data to be shared</u>

As you have identified, Clauses 14 and 42 enable regulations to be made which could require personal data to be shared with identified persons for specified purposes. Regulations would only be made if considered necessary for the purposes and functioning of the safety framework.

If considered necessary, the regulations could create a legal obligation that would amount to a lawful basis under Article 6(1)(c) of the UK GDPR and so would enable processing of personal data for new specific purposes. However, there are already two important restraints on the scope of the power:

(1) The legal obligation must meet an objective of public interest and be proportionate to the legitimate aim pursued. This requirement is set out in Article 6(3) of the UKGDPR.

(2) In addition, compliance with Article 8 of the European Convention on Human Rights requires that the measure must be necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The rights and freedoms of others

include the right to life under Article 2 of the ECHR which creates an obligation on the State to set up a regulatory regime for road safety.

If regulations made under Clauses 14 and 42 require personal data to be processed they will be subject to consultation with the ICO since the Secretary of State already has a duty under Article 36(4) of the UK GDPR to consult the ICO on proposals for new legislative measures relating to the processing of personal data The regulations will also be subject to a Data Protection Impact Assessment (DPIA) and consultation with the public.

Protection of commercial interests

You raised concerns in relation to intellectual property and commercially sensitive information. It is not the intention to undermine intellectual property (IP) rights. We agree that a robust IP framework is important for commercial entities, and you are right to highlight how important it is to ensure that IP rights are considered.

The purpose of Clauses 14 and 42, and the regulations made under them, is to enable the sharing of information in order to meet the objectives of the Bill, in particular to ensure public safety. They are not intended to undermine commercial interests in this information. As such, we believe they are justified and compliant with the flexibilities provided in intellectual property law, at the domestic and international level.

Moreover, in making regulations under these clauses, the Secretary of State must of course act lawfully and take into account the principles underlying the domestic IP framework, as well as any international obligations. For example, we recognise that regulations that permit the reproduction of copyright works without permission of the rights holder would need to comply with the three-step test set out in the Berne Convention. In relation to copyright, there is no policy intention to create a compulsory licensing scheme.

In relation to patent rights, patents are public documents so there is no need to authorise sharing of the information contained in them or the use of that information. The Bill does not enable use of patented inventions, only use of information.

You have raised a concern that Clause 95 weakens the protections for intellectual property or trade secrets but the provisions in Clause 95(4)(a) and (b) only apply to information that has been properly disclosed in accordance with the regulations. Any unauthorised use of such information is an offence under Clause 42(4). However, Clause 95(4) does not override statutory protections for intellectual property, for example it does not override section 60 of the Patents Act 1977.

I would like to reassure you that dealing appropriately with commercially sensitive information is already standard practice in our Motoring Agencies. For example, under its operational capacity as our vehicle type approval authority, the Vehicle Certification Agency (VCA) has long established procedures for dealing with the confidentiality of the information provided by applicants. The VCA acknowledges that disclosure of intellectual property may prejudice the commercial interests of the applicant and takes the appropriate safeguarding steps.

Third party ownership of information: Notification of use

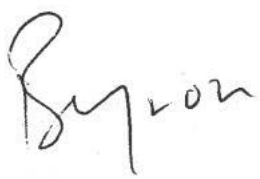
You requested that the owner of any information be notified if their information is used for other purposes.

Where the provision of information is an authorisation or operator licensing requirement, Clause 14(4) requires that regulations that require the sharing of information shall state the purpose for which it is to be used. It will be for the party who is applying for authorisation or operator licensing to obtain any necessary licences or consents for the use of third-party intellectual property rights.

If information that is obtained from regulated bodies using the Secretary of State's other regulatory powers is the intellectual property of a third party, as we have noted above, the Bill does not enable use of patented inventions, only use of information. The Secretary of State must of course act lawfully and take into account the principles underlying the domestic IP framework, as well as any international obligations.

I hope that this information helps to address the issues that you have raised. Once again, I thank you for your interest and engagement on these issues. Please do not hesitate to get in touch with my office if further information or discussion would be helpful.

I will place a copy of this letter in the Library of the House.



LORD DAVIES OF GOWER