

AI, AV AND ADR: A Partnership for the Future

by Paul Rafferty

A new frontier approaches. It will arrive on four wheels and be driven by artificial intelligence. It will then head down an uncertain highway of undefined product liability, squabbles over intellectual property, trade secret theft, problematic technology, failed promises, consumer liability and privacy violations, and hacking debacles. At the same time, inconsistent laws and indecisive governments add further risk and uncertainty for these rolling marvels. In countries throughout the world, developments conflict with the inventions of others elsewhere, creating international conflicts that must be addressed promptly and capably or momentum will be lost. Welcome to the emerging world of the fully autonomous vehicle (“AV”) and the growing importance of artificial intelligence (“AI”).

It was not long ago that AVs were just a fantastical notion that stretched one’s imagination. The rapid development of AI has changed the mix. Using complex algorithms consisting of mathematical frameworks, AI now offers to take the wheel from humans, promising a dramatic reduction in human deaths and injury, as well as substantial improvement in the efficiency of our roadways. Quietly, companies perfecting and testing their AVs have logged millions of miles on these public roadways. And steadily, AVs have improved as humans work tirelessly to assist AI in getting better and better. Technologies throughout the world have followed suit. Lidar has advanced to incredible levels, thereby helping AI to sense and to see as it motors down the road. Circuitry has improved AI’s ability to think, to stay cool, and to preserve power. Machine learning capability has dramatically increased so that AI can teach itself, and AI’s neural pathways now offer AI deep learning capability that isn’t always understood. Finally, throughout the world, AV and AI businesses are forming and flourishing, yet each has one thing in common: The need to zealously protect and preserve the end product(s) of their efforts.

AVs and AI are thus fueling a worldwide explosion of new business, technology and ... disputes. Utility and design patents abound, drawing battle lines around the world. Computer-implemented inventions are often left without protection as the law drags its weary bones into the 21st century, requiring businesses to protect their work in other ways. WiFi battles are inevitable. Cyber-Security problems are certain, as will be the battle to protect consumer information gathered by AVs, or worse, to protect hacking by naughty people that wish to terrorize societies by commandeering these vehicles to all turn left at the same time. Contract disputes, arising from failed joint ventures, supply agreements, technology-sharing agreements, funding arrangements, NDAs, binding LOIs, etc., will add to the mix. AV accidents will also fuel a new breed of product liability lawsuit, where the AI, and perhaps the programmers behind the AI, will stand trial for the “planned” operation of an AV that causes injury. Trade secrets, unavoidably stored in the heads of talented employees who move from company A to company B, will encourage A to sue B to protect the same. Even copyright issues, derived from non-expressive communication, may be fodder for suit.

Where then will industry turn to avoid and/or resolve legal problems arising from all of this subject matter. When it comes to deciphering AV product liability issues, in the United States, there remains no clear governmental answer. In June of 2017, the House Energy and Commerce Committee considered more than a dozen pieces of proposed self-driving vehicle legislation to foster regulations for the AV industry. The result, the Self Drive Act, took the first baby steps to bar individual states from passing inconsistent laws that may hinder economical development and technology advances of AVs. By the late fall of 2017, the Senate offered its AV Start Act, supporting the development of highly

automated vehicles. The National Highway Traffic Safety Administration (“NHTSA”) offered “guidance.” But then, in March 2018, an AV accident occurred in Arizona that shook the world, and the politicians who had been pushing for AVs, seemed to run for cover. To this day, AV manufacturers still await regulatory guidance from the federal government, and anything that happens on the road is left for industry, and a patchwork of inconsistent state regulations, to figure out.

But, product liability issues are the tip of the iceberg for AVs and AI, as the list of troublesome areas for AVs set forth above show. Ultimately, the AV and AI industries must efficiently, and promptly, resolve disputes that otherwise will drain vital cash from available capital, disincentive investors from coming on board, mire technology with an uncertain future and value, and distract executives from staying ahead of competitors in Silicon Valley, Dubai, Germany, China, Israel, Russia, and so on. Where can industry turn to solve disputes and stay on track? Enter the AV/AI Technology mediator and/or arbitrator associated with the American Arbitration Association and its partner, the International Centre for Dispute Resolution (collectively, the “AAA/ICDR”).

Who doesn’t know the AAA---a consistent presence in dispute resolution provisions found in business contracts throughout the world. AAA/ICDR is a non-profit organization, created in 1926 to provide a prompt, cost-efficient framework to resolve business disputes. Throughout the years, it has attracted some of the best arbitrators (and mediators) around the world to accomplish its mission. As for AVs and AI, AAA/ICDR maintains a Technology Roster, filled with knowledgeable people that are ready to help, and where needed, put boots on the ground promptly to get things done with the utmost confidentiality. What the AV and AI world will really like is the speed in which AAA/ICDR effects its mission. Unlike certain “for profit” entities that are more interested in new work as a profit center, AAA/ICDR employs a strict procedural framework to move a matter to conclusion promptly and efficiently. It even maintains an operations department that keeps disputants and their chosen ADR specialist on track. Conspicuously, AAA/ICDR does NOT condone parties turning its efficient ADR processes into litigation. That is inconsistent with its mission and not the reason why AV and AI companies (or any companies for that matter) choose ADR in the first place. While AAA was built on arbitration, its technology mediators are just as good, some with twenty or more years of experience solving emerging technology (and other) disputes for private parties, federal and state courts, and particular industries.

The AV and AI industry need look no further, and likely will find nothing better, than the AAA/ICDR to resolve a dispute via mediation or arbitration. Simply to go AAA’s website, then head to “Cybersecurity & Technology,” and then select “Technology Dispute Capabilities” to learn more. Click “Contact Us” for further information, or just call using the numbers provided. Finally, click “Panel” across the top to learn even more on how arbitrators are chosen, or search specifically for a mediator with desired experience.

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