

SELF-DRIVING VEHICLE LAWS EXIST ONLY IN THE FUTURE

Category: Technology Law

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When then South African Minister of Transport, Blade Nzimande, was asked when self-driving vehicle (“**SDV**”) regulations would be introduced during a parliamentary Q&A session, he answered that there are currently no self-driving cars on the country’s roads, and that government has plans for their introduction but not in the immediate future.^[1] This begs the question of how government and business leaders think about the ways they deal with this sector.

What is a driverless vehicle?

An SDV is a motor vehicle which is considered to be ‘driving itself’, operating in a mode in which it is not being controlled, and does not need to be monitored, or driven by a human. In understanding the degree of automation, the Society of Automotive Engineers, a professional association which often sets motor industry guidelines, has developed a classification system of what it truly means to be an SDV.^[2]

SDVs’ have various categories that outline the level of control the human retains. Some SDVs’ operate at partial automation, and the driver must supervise the driving environment and perform some of the driving tasks. Some SDVs are fully autonomous and do not require any human interaction.^[3] Generally, fully driverless vehicles aim to help smooth traffic flow and reduce congestion by automating transportation across the ever-advancing telecommunications network. This means that safety is improved and this leads to less motor vehicle collisions.

The environment that an SDV would have to assimilate into in South Africa is based on the current baseline founded in National Road Traffic Act (“**the Act**”) which provides broadly for what it means to be a legal driver in South Africa. These include having written and passed your K53 learners license examination and your K53 road test. The definition of a “driver” according to this Act means “*any person who drives or attempts to drive any vehicle or who rides or attempts to ride any pedal cycle or who leads any draught, pack or saddle animal or herd or flock of animals, and “drive” or any like word has a corresponding meaning*”. Based on the Act, the definition of driving leaves us with SDVs in a legislative loophole.

RECOMMENDATIONS

When we examine the prospect of the introduction of SDV legislation, it becomes important for the legislature to consider the fact there must be a move towards a more sensible and expanded definition of a “legal driver” and “driving”, which is not fully defined in the Act. There must be consideration of how the legislature will empower organisations seeking to test SDVs by addressing the current legislative loophole in road testing. SDVs seek to make driving statistically safer for humans, in the hopes that it will reduce accidents that lead to serious injuries. This forces the legislature to consider the possibility that the introduction of SDVs will reduce the, on average, 14 000 fatalities that occur annually on South African roads.[4]

There also needs to be greater clarity regarding legal liability, data protection, and legislation to punish prospective malicious disruption of future SDVs on our roads. Currently legal liability is based on whether one can prove that another person was to blame for the loss or injury for which compensation is being sought. However, if an accident occurs with an SDV, the question which rises is whether the manufactures may be held liable as they would be behind the wheel.

Presently, though it's important that keep track of what is happening in other countries and examine the way in which they are undertaking SDV pilot projects.[5] Perhaps even asking SDV production companies how to best prepare for the SDV market.[6] As consumers appetite for SDVs is awakened, it is clear that currently, South African legislation is not ready for the issues SDVs bring with them.

For now, one must ensure that a legal driver occupies the car whilst driving as operating a SDV remains an illegal action:[7]

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[1] Blade Nzimande's parliamentary meeting statement can be accessed on https://www.parliament.gov.za/storage/app/media/Docs/exe_rq_na/38bde9be-018e-4095-a052-6800c1226261.pdf. This statement was also recorded on 7 April 2019 in <https://businesstech.co.za/news/motoring/309052/south-africa-has-plans-for-self-driving-cars-but-the-law-needs-to-change-first/>

[2] <https://www.cnet.com/roadshow/news/self-driving-car-guide-autonomous-explanation/>

[3] Hancock, P. A., Nourbakhsh, I., & Stewart, J. (2019). On the future of transportation in an era of automated and autonomous vehicles. *Proceedings of the National Academy of Sciences of the United States of America*, 116(16), 7684–7691. doi:10.1073/pnas.1805770115) Accessed on 25 August 2019 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6475395/>

[4] https://www.wheels24.co.za/News/Guides_and_Lists/sa-road-deaths-a-national-crisis-134-000-killed-over-10-years-aa-20180424. Analysis from http://www.rtmc.co.za/images/rtmc/docs/traffic_reports/fqyr/Quarter%204%20Road%20Traffic%20Report%20march2018.pdfhttps://www.thedti.gov.za/news2019/SA_Auto_Masterplan.pdf

[5] <https://services.parliament.uk/bills/2017-19/automatedandelectricvehicles.html>; http://cyberlaw.stanford.edu/wiki/index.php/Automated_Driving:_Legislative_and_Regulatory_Actionhttps://hsfnotes.com/cav/2019/10/01/china-advances-passenger-carrying-road-tests-of-self-driving-vehicles/#page=1(Last accessed 13 September 2019)

[6] <https://sloanreview.mit.edu/article/self-driving-companies-are-coming/> (Last accessed 27 July 2019). This article outlines features of preparation for autonomous decision making.

[7] Administrative Adjudication of Road Traffic Offences Amendment Bill signed by the President on 13 August 2019. Set to be in full effect from June 2020. Examine analysis of this Act on

<https://businesstech.co.za/news/motoring/196526/5-proposed-changes-to-sa-driving-laws-you-need-to-know-about/> (Last accessed 27 July 2019)