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Who Owns Tesla Vehicle Performance Data?

By Susanne Sclafane (<https://www.insurancejournal.com/author/ssclafane/>) | March 11, 2022

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At the end of [an interview with the founder of Quantiv Risk \(https://www.carriermanagement.com/features/2022/03/09/232747.htm?bypass=57c3c\)](https://www.carriermanagement.com/features/2022/03/09/232747.htm?bypass=57c3c) make sense of performance data from vehicles with advanced driver assistance systems, *Carrier Management* posed a big picture question:

Who owns the data—the consumer or the car maker?



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Mike Nelson, who has decades of legal experience in insurance and regulatory matters, and whose technology startup is specifically engaged in i persists for all types of car data, “it’s almost not the right way to think about it.”

“Ownership is just one facet,” he said. “Other facets are, ‘Who has access to it? How much of it can be accessed? Can it be repurposed? Can it b

Sharing a [link to a recent article about “Right to Repair” legislation \(https://www.reuters.com/world/us/us-lawmakers-introduce-right-repair-bills-spt\)](https://www.reuters.com/world/us/us-lawmakers-introduce-right-repair-bills-spt) lawmakers are responding to fights about data access—independent repair shops want access to the data so they can fix cars, while car manufac

Fourteen states already have “Right to Repair” laws, he said, explaining that the issues are more settled for EDR data, accident data buried on ev years. “Case law has developed and statutes have been created that say that EDR data is owned by the consumer,” he said.

“I don’t see the difference between VPD and EDR data,” he added, offering his own opinion. “Think about some judge in a Tesla case 10 years fr defend himself, and you’re telling him he can’t have it because you own it? That’s baloney,” he said, imagining the judge’s reaction to the facts at

“This will all work out the same way,” Nelson said.

Currently, in the situations where consumers have been granted access to the VPD, Nelson confirmed that if that consumer is an insurance policy there’s a lot of voices saying the insurance industry should have it too without having to go through the customer. That’s another fight.”

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In this vein, the National Transportation Safety Board, in reports emanating from its investigation of a California accident involving a Tesla (the Mc vehicle car logs in NTSB reports) and takes the position that people charged with investigating accidents should have access to it. (See, for exam (<https://www.nts.gov/Advocacy/safety-topics/Documents/2021-Comments-to-NHTSA-Framework-for-ADS-Safety-ANPRM.pdf>),” calling for the st NTSB investigators and NHTSA regulators at a minimum.)

Related article: “[Lawyer-Turned InsurTech Founder Looks Into Cloud to Settle Tesla Auto Claims](https://www.carriermanagement.com/features/2) (<https://www.carriermanagement.com/features/2>)

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Sclafane is Executive Editor of Carrier Management, a publication of Wells Media Group serving property/casualty insurance carrier e including 25 years as editor and reporter for trade magazines, online news services, digital journals. Her prior experience includes 14

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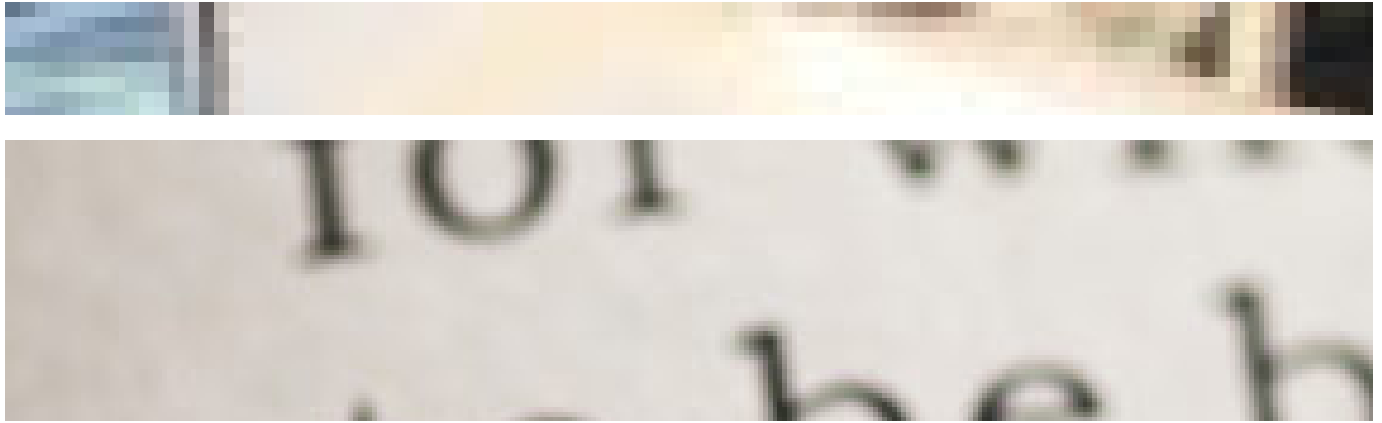
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Illinois Court: Insurer Must Defend IT Company in BIPA Suits

By Ezra Amacher (<https://www.insurancejournal.com/author/ezra-amacher/>) | March 30, 2022

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An insurer must defend an information technology company facing a pair of Biometric Information Privacy Act (BIPA) lawsuits, the U.S. District Court ruled in *Citizens Insurance Company of America v. Wynndalco Enterprises, LLC et. al*, the court disagreed with Citizens' claim that a Statutory Violator



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The underlying litigation in this case involves Wynndalco allegedly selling access to data obtained by Clearview AI, an artificial intelligence company. Wynndalco filed class action lawsuits against Wynndalco, alleging that the Addison, Illinois-based company violated BIPA by selling Clearview's database and

Wynndalco purchased a policy from Citizens that provides coverage for personal and advertising injury arising out of "[o]ral or written publication,

The policy contains an exclusion entitled "Distribution of Material in Violation of Statutes" that states insurance does not apply when personal and advertising injury arises out of the Fair Credit Reporting Act, or any other statutes that "address, prohibit, or limit the printing, dissemination, disposal, collecting, recording, sending, or

Citizens argues that BIPA falls under the final subsection catchall, because it is unambiguously a statute engaging with matters of information and

In rejecting Citizens' claim, Judge John Z. Lee asserts that Citizens gives an overly expansive reading to the exclusion.

"To interpret the exclusion to cover every statute that concerns a person or entity doing practically anything whatsoever with "information" would read

Lee compares the exclusion to other provisions of the policy, such as coverage of slander and libel claims, false advertising claims, and claims for damages under which slander, libel, false advertising, and copyright claims arise. This reading would effectively "swallow the rule."

"The Court refuses to adopt such a nonsensical reading of the Policy," Lee writes.

Citizens' second argument relies on the interpretive tool of *ejusdem generis* (of the same kind or class), which requires the general term to share

Ejusdem generis fails here, Lee states, because BIPA is not like the TCPA or CAN-SPAM Act, which do not regulate the collection or dissemination of

The court denied Citizens' motion, ruling the insurer has a duty to defend Wynndalco with respect to BIPA claims and to the common law claims in

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