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TECHNOLOGY

Phone Makers Could Cut Off Drivers. So Why Don't They?

By MATT RICHTEL SEPT. 24, 2016

The court filings paint a grisly picture: As Ashley Kubiak sped down a Texas highway in her Dodge Ram truck, she checked her iPhone for messages. Distracted, she crashed into a sport utility vehicle, killing its driver and a passenger and leaving a child paralyzed.

With driving fatalities rising at levels not seen in 50 years, the growing incidence of distracted driving is getting part of the blame. Now a lawsuit related to that 2013 Texas crash is raising a question: Does Apple — or any cellphone maker or wireless company — have a responsibility to prevent devices from being used by drivers in illegal and dangerous ways?

The product liability lawsuit, filed against Apple by families of the victims, contends that Apple knew its phones would be used for texting and did not prevent Ms. Kubiak from texting dangerously. The suit is unlikely to succeed, legal experts said, and a Texas magistrate in August preliminarily recommended the case's dismissal on grounds that it was unlikely that lawyers could prove that the use of the iPhone caused the fatal accident.

Ms. Kubiak was convicted of negligent homicide and sentenced to five years on probation. Her lawyer, Jason Cassel, said she now keeps her phone in the back seat.

"The mere fact she's putting her phone in her back seat in her purse shows she realizes how tempting it is to look down when we get a beep, chime, vibration," Mr. Cassel said. "She never wants to be near the possibility" of being tempted to answer it.

The product liability case has brought to light a piece of evidence that legal and safety experts say puts Apple in a quandary — one it shares with other wireless companies. In Apple's case, the evidence shows, the company has a patent for technology designed to prevent texting while driving, but it has not deployed it.

Apple, Verizon, AT&T and other companies caution about the risks of distracted driving — and they acknowledge that laws and public education aimed at curbing the behavior are not working. It suggests to legal experts that they can foresee that their product can be used for illegal, dangerous and sometimes deadly activity.

AT&T even suggests that the behavior has addictive qualities, meaning drivers cannot help themselves. But the companies — though they offer manual ways to shut down texting on the road — do not deploy technology that takes the decision out of drivers' hands altogether.

"The technology exists — we just don't have the stomach to implement it," said Deborah Hersman, the president of the National Safety Council and the former chairwoman of the National Transportation Safety Board. In 2012, the safety board sent a letter to the wireless industry association urging the companies to prevent drivers from using their phones while driving.

"Technology got us into this situation. Technology will get us out," she said. However, she added, "We're so afraid to tell people what they should do that you can kind of get away with murder under these conditions."

Generally, companies have taken the position that text-blocking technology is embryonic and unreliable. They argue that they cannot shut down a driver's service without the potential of mistakenly shutting off a passenger's phone or that of someone riding on a train or bus.

Instead, companies have taken the approach of simultaneously warning and enabling, a mixed message that underscores a complex swirl of economic, technological and social factors. Perhaps the most pointed question is this: Even if the technology worked to perfection, would people accept having their service blocked? After all, the idea of mobile phone service is to let people communicate on the go.

David Teater, formerly of the National Safety Council and now a private consultant on road safety, who lost his own son to a distracted driver, said companies clearly feared the consequences of cutting off service for their paying customers. It's an industry, he said, in which one of the most frightening words is "churn" — meaning the loss of a customer to a competitor.

"If you're at Apple or you're at Samsung, do you want to be the first to block texting and driving?" he said. "A customer might say, 'If Apple does it, then my next phone is a Samsung.'"

But to Mr. Teater, that's just an excuse. "If Apple had deployed this technology 10 years ago, there would be more people alive today," he said. "Think about it from a parent's perspective: How would you feel knowing Apple had the ability to prevent your teen from ever texting and driving, and they chose not to?"

Apple's Lockout Patent

In the Apple case in Texas, lawyers who brought the suit had unearthed a fascinating document: a patent filing that Apple made in 2008, which the lawyers said was granted in 2014, for technology that would "lock out" a driver's phone by using sensors to determine if the phone was moving and in use by a driver. If so, it would prevent certain functions, like texting.

In the patent, Apple says such technology is necessary because: "Texting while driving has become so widespread that it is doubtful that law enforcement will have any significant effect on stopping the practice," and "Teens understand that texting while driving is dangerous, but this is often not enough motivation to end the practice."

It is unclear whether Apple has developed the lockout technology.

While texting is on the rise, people are increasingly driving and using Snapchat and Instagram, or taking selfies, or playing Pokémon Go. The phone is at the center of all the activity.

Apple says it has taken other steps to address distracted driving. Its CarPlay integrates with some cars so drivers can use voice commands to control some functions of the car and the phone, including letting them orally compose text messages and listen to incoming ones. The technology, Apple says, "allows you to stay focused on the road."

"We discourage anyone from allowing their iPhone to distract them by typing, reading or interacting with the display while driving," Apple said in response to questions. The company did not directly address whether it could or should shut down phone functions. Rather, it indicated that the responsibility was with the driver.

"For those customers who do not wish to turn off their iPhones or switch into Airplane Mode while driving to avoid distractions, we recommend the easy-to-use Do Not Disturb and Silent Mode features," the statement said.

These approaches put the onus on drivers to make decisions each time they enter a car or receive a message. In addition, voice-activated systems raise other concerns, said David Strayer, an expert on driver attention at the University of Utah, who said he had studied CarPlay and the feature allowed drivers to perform some functions that could take their attention off the road.

"It does not eliminate driver distraction — not even close," Dr. Strayer said.

Technology is already on the market that can block a driver from having to make a decision. One company, Cellcontrol, sells a device that mounts on the dash and that uses high-frequency sound waves to identify a phone's location. If the phone's user is in the driver's seat, the device can lock out prohibited services.

The $129 device, which looks like a small turtle shell, "is very accurate," said Cellcontrol's chief technology officer, Joe Breaux. The hiccup is that the technology

can sometimes turn off the phone of a passenger sitting behind the driver.

Apple, in its patent, said it was developing "a process in which hand-held computing devices can provide a lockout mechanism without requiring any modifications or additions to the vehicle." It would use motion and scenery sensors to determine if the phone was moving, and its location.

By not putting the technology in place, Apple has "failed in their social responsibility," said Christopher Kutz, a professor at the University of California, Berkeley, School of Law, who specializes in the moral and legal principles of liability. "They should've done it, and even done it at a market risk."

He likened the situation to that of gunmakers who could stop selling high-capacity magazines but choose not to.

At the same time, Mr. Kutz said, there was little precedent for companies to shut off communications services for safety reasons. In other industries, he said, companies have taken such precautions — for instance, some manufacturers have technology that will shut down a machine if a worker does not keep two hands on it.

Addicted to the Ping

In the case of distracted driving, Apple is not the only tech giant recognizing the dangerous behavior and not preventing it. Verizon, like Apple, suggests that current laws are insufficient. "While text messaging is banned for drivers in 46 states and the District of Columbia, many people continue to do it, despite knowing the dangers," Verizon says on a site that promotes free apps and other services available for iPhone and Android that can detect if a phone is being used by a driver and prevent texting.

The Verizon messaging app has a driving mode that, when in use, detects if someone is connected to a car's Bluetooth system and delivers an automatic response to the sender that the recipient is driving, said Kelly Crummey, a Verizon spokeswoman. However, the message still arrives on the recipient's phone, allowing the opportunity to check it, Ms. Crummey said.

That technology suggests it is possible to identify a driver and apply the technology more broadly — to, say, social media — but Ms. Crummey said Verizon didn't have the same kind of control over Facebook, Twitter or other functions. Further, she said, it wouldn't make sense to turn off all phone functions, like maps or navigation, that drivers rely on.

AT&T encourages the use of a free app, Drivemode, that can stop incoming texts. "Everyone knows texting and driving is dangerous, yet when a text message comes in, it's difficult not to respond," AT&T says in promoting the app.

Of course, services like these must be activated by the user and can be bypassed. And AT&T may have identified the reason such solutions don't work: People find themselves so drawn to their devices that elements of addiction are at play.

In fact, AT&T commissioned research by an addiction expert who, in an AT&T news release in 2014, said that using a phone sets off releases of a neurochemical called dopamine that makes it hard to resist the ping. "If that desire for a dopamine fix leads us to check our phones while we're driving, a simple text can turn deadly," David Greenfield, who founded the Center for Internet and Technology Addiction, said in the AT&T news release.

But if the behavior has addictive qualities, can drivers really be expected to police themselves? And should automated blocking be the answer?

"Distracted driving is never O.K.," AT&T said, adding that it had promoted "It Can Wait," a public service campaign to discourage texting and driving.

CTIA — the Wireless Association, in its response to questions, said, "Laws, consumer education and technology are pivotal, and we've seen this three-prong approach work to stop people from this dangerous practice."

It hasn't worked well enough, some say.

Apple, as one of the great cultural influencers, might have the power to change the conversation — to make it fashionable to choose safety over the rush of an incoming text, Mr. Kutz said.

“They’ve made themselves a norm maker,” he said. “With great power comes great responsibility.”

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