Vehicle data controls:
Balancing interests under The Trade Secrets Directive and the GDPR.

As vehicles are becoming more connected and increasingly autonomous, new opportunities emerge using the data vehicles generate. Telematics is an example of how data generated through vehicle use, enables insurers to develop more accurate risk profiles and adequate premiums. Having access to vehicle data provides those who hold the data with a competitive advantage which in addition to increased concerns over privacy, have led to initiatives to control vehicle data access. The European Parliament has called upon the Commission to publish a legislative proposal that ensures a level playing field on access to in-vehicle data and resources, protecting consumer rights and promoting innovation and fair competition.1 To contribute to the discussion, this paper analyses the potential of trade secrets to control vehicle data access by vehicle manufacturers.

Looking at the requirements for protection under the Directive on Trade Secrets (The Directive) the data generated through the use of vehicles could fall under trade secret protection if it is kept secret, has economic value because it is kept secret and the holder has taken reasonable steps to keep it a secret.[2] The analysis of vehicle data, however, is complicated given that vehicle data is considered personal data under the General Data Protection Regulation (GDPR). [3] The GDPR provides data subjects the right to access (article 15) and right to data portability (article 20) which raises the question of prevalence in case of conflict between the legitimate interests of the trade secret holder to keep vehicle data secret versus the right of the driver to obtain access to their personal data. Neither the trade secrets holders' rights nor the data subjects access rights under the GDPR are absolute and there is no clear prevalence or guidance on how to decide in case of conflict. The paper is structured as follows after introducing Telematics, the analysis of the requirements for trade secret protection is presented before assessing the consequence of the right to access and/or data portability right for trade secret protection. The paper concludes with an interpretation of these legal frameworks how to decide in case of conflicting interests for discussion.

Based on primarily doctrinal research this paper addresses the question whether trade secrets protection can be used by vehicle manufacturers to control access to vehicle data taking into consideration data access rights under the General Data Protection regulation. Empirical research consisting of small scale semi-structured interviews was conducted to gain additional insight into the practice of using trade secrets in the context of Telematics.

References

[1] European Parliament resolution of 13 March 2018 on "A European strategy on Cooperative Intelligent Transport Systems", document A8-0036/18/ P8_TA -PROV(2018)0063

[2] Article 2 (1) of the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

Aplin T, *A critical evaluation of the proposed EU Trade Secrets Directive'* 2014, 4 *Intellectual Property Quarterly* 257

Article 29 Working Party *Guidelines on the right to data portability* (WP 242), revised 5th April 2017: > http://ec.europa.eu/newsroom/document.cfm?doc_id=44099< accessed September 2018

Commission communication; *A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility,* COM/2016/0766 final

European Commission: *Access to in-Vehicle Resources and Data*. Final report > https://ec.europa.eu/transport/sites/transport/files/2017-05-access-to-in-vehicle-data-and-resources.pdf< Accessed September 2018

Drexl, J; Hilty, R; Desaunettes, L; Greiner, F; Kim, D; Richter, H; Surblyte, G; Wiedemann, K; *Data Ownership and Access to Data - Position Statement of the Max Planck Institute for Innovation and Competition*, 2016, Max Planck Institute for Innovation & Competition Research Paper No. 16-10. https://ssrn.com/abstract=2833165 , Accessed September 2018

Diker Vanberg, A. and , Ünver, MB., "The right to data portability in the GDPR and EU competition law: odd couple or dynamic duo?", in European Journal of Law and Technology, Vol 8, No 1, 2017.

Graef I; Verschakelen J; Valcke P, *Putting the Right to Data Portability into a Competition Law Perspective,* The Journal of the Higher School of Economics, Annual Review, 2013, pp. 53-63

Hustinx, P; *Opinion of the European Data Protection Supervisor on the proposal for a directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure,* Bruxelles, 12 March 2014, § 15–22.

Malgieri, G; *Trade Secrets v Personal Data*: a possible solution for balancing rights, *International Data Privacy Law*, Volume 6, Issue 2, 1 May 2016, Pages 102–116,

Osborne Clarke, *What EU Legislation Says about Car Data Legal Memorandum on Connected Vehicles and Data,* 2017 https://www.fiaregion1.com/wp-content/uploads/2017/06/20170516-Legal-Memorandum-on-Personal-Data-in-Connected-Vehicles-www.pdf,< Accessed September 2018