

Isabelle Wildhaber, Full Professor for Private and Commercial Law, University of St. Gallen

Robots that are self-learning systems could be given an electronic legal entity in the future.

If a fully autonomous vehicle without a steering wheel, accelerator or brake pedal is involved in an accident, the person using the vehicle can no longer be held liable. And the robot itself controlling the vehicle is not responsible for its actions. So that only leaves the manufacturer (apart from countries where the holder is strictly liable and has a compulsory liability insurance). However, the problem is as follows: If the autonomous vehicle is a self-learning system, then conventional liability law which is based on the predictability of the damage has reached its limits. Retrospectively, it is almost impossible to ascertain whether the robot's action that caused the accident was the result of its original programming or of what it later learned independently (training through use). Identifying a linear and predictable causality for a liability of the manufacturer proves to be very complex. For this reason, and because our current road traffic law assumes that there is a human driver, the liability system must be revised for Level 5 automation.

The suggestion is often made that a self-learning system could be held liable in a similar way to a legal entity. A stock corporation is not human but it is also legally capable of taking action. In a similar way, a self-learning system could be deemed an electronic legal entity and could be made legally capable of its own actions. It would then have to be registered with a public authority and be given its own assets, it could further be subject to compulsory liability insurance. We will have to think more about such an electronic personhood when there will be an increasing number of situations in which existing liability law is no longer sufficient. An electronic personhood is also being suggested in the draft report of the European Parliament to the EU Commission of May 2016 about new civil law rules for robots.