

Law and Technology

By

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Introduction

Technology is an important part of our everyday lives. Whether we ask Alexa to start the coffee, or check our phones for the traffic report, we increasingly interact with technology. As much as we may enjoy and rely upon technology, it is not without its challenges, including the inability of the law to keep pace with technological developments and the ethical issues that arise. For example, tort law is impacted by technology. For example, the proliferation of drones requires a new look at the law of trespass, and video Zoom meetings can impose direct liability on employers.

Technology paved the way for global advertising, expenditures for which are on the rise. Social media supports an increasing share of all advertising and endorsements and is subject to regulation, by the Federal Trade Commission (“FTC”), of which influencers are often not aware. Existing truth in advertising laws were insufficient, so the FTC established the “Guides Concerning the Use of Endorsements and Testimonials in Advertising,” to regulate advertising to ensure that promotional content is honest and not misleading, and that material connections between the advertiser and the endorser are disclosed.

With ubiquitous social media and corporate websites as integral components of our professional and personal lives, businesses large and small leave themselves vulnerable to issues related to reputational risk, employer liability for intellectual property infringement, false advertising, regulatory breaches, defamation, unfair competition, and disclosure of trade secrets. Global advertising expenditures on various internet and social media platforms also drives the need for a change in right of publicity law. In the United States, the right of publicity is governed by state rather than federal law, so there is no uniform approach. State law is inconsistent among the states, making it difficult for holders and acquirers of these rights to act definitively. One chapter of this book includes a survey of the law of each state and proposes a new federal statute.

The global pandemic led us to use technology in ways that we had not previously imagined. We found ways to work from home and students were educated at home. However, that created additional legal issues that the law was not yet ready to address. For example, employees showed up to Zoom meetings using video Zoom from their cars, risking liability for their employers for any resulting car crashes.

Finally, as the law must change, so must the teaching of law. As of March 2018, there were over three million digital applications (“apps”) available in branded app stores.¹ More apps are added every day, and it seems that with our increasing demand and consumption, so, too, grows the supply, all designed to meet the needs of our ever-expanding dependence on the new-and-improved apps and tech tools. Most often, when we reach for a cool new tech toy or one of those well-used three-million-apps, it is because, in one way or another, the technology does help us with our busy lives. It is important that teachers keep this in mind since most of today’s students have “never known a non-digital world—one without smart devices and the internet....”.² A case study and a group exercise are included to guide teachers to address some of these law and technology issues in the classroom.

* * *

¹ *Number of Apps Available in Leading App Stores as of First Quarter 2018*, STATISTA, <https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/><https://www.statista.com/statistics/> (last visited July 31, 2018).

² B. Denise Hawkins, *Here Comes Generation Z. What Makes Them Tick?* NEATODAY (July 13, 2015), <http://neatoday.org/2015/07/13/here-comes-generation-z-what-makes-them-tick/>.

Chapter 1

Raising Corporate Consciousness of Employer Liability for Video Zoom While Driving

Imagine that you have logged onto a video Zoom meeting, and you notice that one of the participants is driving. He fumbles with the phone, trying to align the camera with his face, looking from the phone to the road ahead. Other participants on the call either say nothing or thank him for being willing to participate from his car. That is distracted driving, and if he collides with a car or pedestrian due to that distraction, each of those meeting participants could be held liable for distracting the driver. In addition, they would be witnesses to his distracted driving in the lawsuit that would likely result in his employer being held liable. This article summarizes the risks of employer liability arising from distracted driving and proposes policies to reduce the risk of that liability.

Introduction

“Police caught an idiot driver in the middle of a Zoom video call while behind the wheel as he made his way to work yesterday.”¹ That is an inflammatory statement, but many might feel the same way. “It beggars belief that a driver could think it’s safe to have a Zoom call while being in control of a car,” commented RAC road safety spokesman Simon Williams.² Police officers spotted the car and pulled it over, finding that the driver had only a provisional license and no insurance.³ While this story led only to head-shaking, it could have been so much worse.⁴ The leading cause of injury and death in the workplace, according to the National Safety Council, is motor vehicle collisions.⁵ Employers need to have policies in place prohibiting employee participation in video Zoom⁶ calls while driving or employers could end up liable for the resulting crash.⁷

Distracted Driving

Distracted driving has become an even larger concern during the pandemic, and part of the problem may be all of the virtual meetings

engaged in by people working out of the office.⁸ Phone usage while driving is up by thirty-eight percent during the pandemic.⁹ According to the American Automobile Association (“AAA”), when drivers take their eyes off the road for just two seconds, it doubles the risk of being involved in a crash.¹⁰ The National Highway Traffic Safety Administration’s Driver Distraction Program defines three types of distractions:

Visual distraction: Tasks that require the driver to look away from the roadway to visually obtain information;

Manual distraction: Tasks that require the driver to take a hand off the steering wheel and manipulate a device; and

Cognitive distraction: Tasks that are defined as the mental workload associated with a task that involves thinking about something other than the driving task.¹¹

Some suggest that a fourth type of distraction is auditory, when the driver is hearing something unrelated to driving, such as passenger noise, an overhead helicopter, or another car backfiring.¹² Video Zooming while driving involves all four types of distraction.¹³ It is visual because the driver will glance from the road to the device; manual because the driver will need to log onto the meeting and adjust the controls; cognitive since the meeting subject matter will distract the driver from focusing on the driving task; and auditory since the driver will be hearing various people in the meeting.¹⁴

The sources of distraction can be:

1. Associated with the vehicle—controls, displays, navigation systems
2. Brought into the vehicle—cell phones, computers, food, animals, grooming aids
3. External to the vehicle—signs and displays, scenery, roadside features¹⁵
4. Internal to the driver’s mind—daydreaming, “lost in thought”¹⁶

Sometimes, trying to solve one distraction can lead to another.¹⁷ For example, traffic congestion and long commutes can lead to stress and discomfort, which can be improved by a car seat massager as it relieves pain and triggers endorphins that improve mood.¹⁸ Some argue that a car seat massager is a valuable feature not only in luxury vehicles, but in any car as the seat massager can improve circulation, prevent muscle fatigue, and improve mood, all of which can make for a safer driver.¹⁹ However, such seat massagers could also lead to cognitive distraction.²⁰ While stressed drivers are not desirable, neither are those who are not alert having been lulled to sleep by a massage.²¹ In addition, seat massagers could be a manual distraction from the numbness or pins and needles resulting from the massage, even hampering reflexes to respond quickly to a dangerous condition on the road.²²

Frankenmuth Insurance has created a list of safety tips in an effort to help delivery drivers to avoid distracted driving that includes “keep your eyes on the road, keep your hands on the wheel, and store gear properly.”²³ All three of those would apply to driving while in a video Zoom meeting since the driver’s eyes would be on the video screen rather than the road, her hands would be off the wheel while joining the meeting, and the device used for the meeting would not be properly stowed.²⁴

Everyone is busy and often thinks that multitasking is the answer, including working while driving.²⁵ However, Neuroscientist Marcel Just, director of the Center for Cognitive Brain Imaging, conducted a study funded by the Office of Naval Research regarding brain activity associated with driving, and found that “[d]rivers need to keep not only their hands on the wheel; they also have to keep their brains on the road.”²⁶ He concluded that “the clear implication is that engaging in a demanding conversation could jeopardize judgment and reaction time if an atypical or unusual driving situation arose. Heavy traffic is no place for an involved personal or business discussion.”²⁷ The driver begins with attention focused on driving, but each additional input, whether seeing a helicopter or hearing construction noise, consumes some brain capacity, and reduces resources for monitoring the vehicle’s surroundings.²⁸ Just asserted that his “study demonstrates that there is only so much that the brain can do at one time, no matter how different the two tasks are.”²⁹

Cell Phone Use

One of the leading sources of distraction is cellphone use.³⁰ An astonishing 97% of Americans own a cellphone, including 85% who own smartphones.³¹ The Centers for Disease Control and Prevention (“CDC”) estimates that crashes involving a distracted driver kill eight people a day in the U.S.³² One survey reported that “48% of drivers admitted to reading a text, while one in four said they update social media, take pictures or videos while driving.”³³

Cell phone makers have made an effort to reduce cell phone distraction while driving.³⁴ One such example is Apple’s “Do Not Disturb While Driving” feature on its iPhones that mutes notifications to the driver and sends a message to texters or callers to let them know that the intended recipient is driving and cannot respond.³⁵ AT&T also has a “DriveMode” app to mute notifications.³⁶

Texting

The Supreme Court of the United States recognized that “[c]ell phone and text message communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification.”³⁷ However, texting while driving is dangerous and not advisable.³⁸ “All but two U.S. states have banned texting and driving, including Washington D.C., but only 21 states and D.C. prohibit drivers from holding their cellphones.”³⁹ Executive Order 13513, issued on October 1, 2009, banned text messaging while driving by federal employees and requires federal agencies to encourage federal contractors to follow suit.⁴⁰ “The Federal Motor Carrier Safety Administration prohibits texting by commercial motor vehicle drivers while operating in interstate commerce.”⁴¹

Some people may think that glancing at a phone is not a long enough period of time to be a problem.⁴² However, “the average driver takes his eyes off the road for 5 seconds at a time while texting. At 55 miles per hour, that is like driving the length of a football field with your eyes closed. At 70 miles per hour, that [is like] driving blind for almost 2 football fields!”⁴³

Even the State Bar of Michigan notes in its policy that texting should be prohibited.⁴⁴

Law enforcement struggles to enforce no texting while driving laws, and looks to technology for assistance.⁴⁵ Textalyzer was created with technology from mobile forensics company Cellebrite, who assists law enforcement with unlocking mobile devices when needed to solve a crime.⁴⁶ The Textalyzer, named similarly to the Breathalyzer, could allow a law enforcement officer to connect a driver's phone to the officer's laptop solely to detect the operating system logs.⁴⁷ This would tell the officer if the driver was using the touchscreen at the time of a crash, but would not disclose the content of any such texts.⁴⁸ Evan's Law, named in honor of college freshman Evan Lieberman who was killed when the driver of the car in which he was a passenger was distracted while texting, was introduced in the New York legislature in 2016, to permit use of the Textalyzer.⁴⁹ While it failed in 2016, New York continues to consider legalizing the use of the Textalyzer, and Nevada is considering it as well.⁵⁰

ComSonics is developing a radar gun for use by law enforcement that will detect cell phone radio frequencies to identify drivers who are texting while driving.⁵¹ In addition, some state law enforcement agencies use unmarked SUVs known as Concealed Identity Traffic Enforcement (CITE) vehicles, that allow officers to be able to look down into passenger vehicles to determine whether drivers are using distracting devices.⁵²

Texting is not just manually distracting, but also cognitively distracting.⁵³ Some might argue that hands-free texting permitted by some devices reduces the distraction.⁵⁴ For example, there was an attempt by Google with its Google Glass to keep drivers focused on the road by merely looking through their eyeglasses for services that would typically be managed on a phone.⁵⁵ In addition, a San Francisco startup, Navdy, "claims its Heads Up Display (HUD) would permit drivers to text and tweet safely while driving because the product projects images in the forward visual field of the driver so the driver does not need to look away from the road at his or her smartphone."⁵⁶ However, just keeping one's hands on the wheel is not enough.⁵⁷

Video Screens

It should seem obvious that one should not watch a video while driving, but apparently that is not the case. For example, a truck driver was watching an NFL game on his phone while driving and struck and killed a motorcycle driver.⁵⁸ In Pelham, New Hampshire, a 20-year-old woman forced a Jeep Wrangler into a rock wall when she was engaged in a FaceTime call while driving.⁵⁹

In most states, having a video display within the driver's view while the vehicle is in motion is illegal.⁶⁰ While parents may enjoy the distraction videos provide to their children in the backseat, those videos cannot be in the driver's view.⁶¹ Laws do permit GPS-based navigation systems, provided they do not interfere with the driver's line of sight. Additionally, auto manufacturers typically prevent the use of navigation systems while driving by disabling them when the car is moving.⁶² Video dashcam recorders are also permitted since there is no video screen to be viewed by the driver while driving.⁶³

The state of Georgia acted on July 1, 2018 to prohibit drivers from streaming video on their phones while driving, and crashes fell eleven percent in the first six months thereafter.⁶⁴ Washington enacted the Driving Under the Influence of Electronics Act, in January 2018, the first state to do so, which called out video on phones.⁶⁵ Jennifer Ryna, director of state relations for AAA's national office commented, "We are seeing a trend of states amending distracted driving laws to address functionalities of smartphones."⁶⁶

Zoom

The pandemic brought about a new form of distracted driving—Zoom.⁶⁷ With more people working from home, the number of people using Zoom skyrocketed.⁶⁸ People who had never heard of Zoom were suddenly spending hours each day on Zoom meetings.⁶⁹ Unfortunately, just as people conduct business by cell phone calls while driving, some of them decided to Zoom while driving.⁷⁰ University Hospital's Trauma Medical Director Dr. Mark Muir said, "[w]e've seen a few folks here [and] there who have been injured while trying to participate in some sort of remote

meeting.”⁷¹ He went on to admit that “I’ve even had unfortunately some of the meetings I’ve been on where I’m pretty sure some of the participants were driving and trying to navigate the roads while Zooming or WebEx chatting those types of things.”⁷²

Kyle Close, a student at the University of Mary Washington (UMW) shared that “[o]ver the past month I have noticed two different students driving while in class and on Zoom.”⁷³ He asserts that “UMW not only has a moral and ethical responsibility to keep students off the road while in class, but potentially a legal obligation as well,” referring to pending Virginia House Bill 874 that will further restrict cell phone usage while driving in Virginia.⁷⁴

Irish politician, James O’Connor, shocked his colleagues and community by joining a thirty-person group Zoom call while driving.⁷⁵ Another participant on the call said “I couldn’t believe it when I saw him. At first I thought someone had put in a video of James Corden in his Carpool Karaoke sketches.”⁷⁶

One of the problems is that no one says anything to stop such dangerous behavior.⁷⁷ Realtor Pat Kapowich admitted to seeing four leaders in the real estate industry participating in Zoom calls while driving.⁷⁸ The moment a meeting participant sees another participant engaging while driving, they should immediately end the call or instruct the driving participant to exit the meeting until the car is parked. And it may seem so obvious not to do it, that people think it does not need to be said.⁷⁹ In an article about things to avoid doing on Zoom, things like “don’t be wiggly” and “don’t avoid the camera” were included, but “don’t drive” was not included in the list of thirteen things to avoid.⁸⁰ Consequently, employers must instruct employees to not participate in video Zoom meetings while driving in order to avoid liability.⁸¹ It is inattention that causes accidents, and if the employer causes the inattention, the employer should be liable.⁸²

Most agree with the dangers of drunk driving, but many often try to argue that using cell phones is not as dangerous.⁸³ However, that is not the case.⁸⁴ According to the National Highway Traffic Safety Administration,

distracted driving, whether from intoxication or cell phone use, can be deadly since it interferes with the driver's ability to focus on safe driving.⁸⁵

Case law is clear that a passenger can be held liable for interfering with a driver's operation of a vehicle.⁸⁶ In addition, a passenger has a duty not to distract a driver, and if a breach of that duty causes an accident, that passenger may also be liable for resulting damages.⁸⁷

While liability for distracted driving was initially placed on the driver, it has been expanded to include others (passengers or remote communicators) who distract the driver.⁸⁸ Today's technology provides opportunities for someone to distract a driver even when they are not physically present in the car.⁸⁹ In addition, employers of employees engaging in distracted driving during their employment can be held liable.⁹⁰

Third Party Liability

Individuals

In 2013, the court in *Kubert v. Best* held, for the first time, that the sender of a text to a driver distracted by receiving that text, can be held liable to a third party injured in an automobile accident caused by the distracted driver.⁹¹ Kyle Best was driving a pickup truck and texting with his friend, Shannon Colonna.⁹² While looking at Colonna's text, Best hit Kubert's motorcycle.⁹³ The court held that Colonna could be held liable for negligence if she "knew or had special reason to know that the driver would read the message while driving and would thus be distracted from attending to the road and the operation of the vehicle."⁹⁴ Consider the *Buchanan* case that occurred prior to *Kubert*, where a court found liability for a remote caller.⁹⁵ Candice Vowell was drinking in a bar with her mother, Shannon, who agreed to follow Candice home to make sure she arrived safely.⁹⁶ On the way, Shannon talked to Candice on the cell phone, allegedly to keep her alert, however, apparently it distracted her and she struck and permanently injured Jerry Buchanan.⁹⁷ He sued Candice, the bar where she drank, and Shannon, alleging that Shannon negligently distracted Candice.⁹⁸ The court held:

that Shannon owed a duty of reasonable care to those that shared the road with her, both motorists and pedestrians. Shannon, as an individual, may have breached this duty by calling and distracting a person she knew was operating a vehicle while under the influence of alcohol. Thus, Shannon may be found liable for Jerry's injuries even if she did not gratuitously assume a duty or act in concert with Candice.⁹⁹

In *Kubert*, Colonna did not know that Best was driving, so she was not held liable, but the case sends a strong signal to other texters as well as their employers.¹⁰⁰ Since the *Kubert* court expanded negligence to include the remote texter, finding that along with the text recipient, the remote texter has a duty to others on the road, that would mean that under respondeat superior, an employee texting someone who they know is driving could be found to be committing a tort, and therefore, their employer would be liable under respondeat superior.¹⁰¹ The *Kubert* court used the Supreme Court's full duty analysis, which holds that in certain circumstances, a remote texter could be held liable should that individual be in a position to exercise considerable control or authority over the recipient and their actions.¹⁰² According to one Ohio law firm, "[w]hile this is a New Jersey case, it provides potent precedence of concern for the devastating consequences of distracted driving in Ohio and elsewhere in the U.S."¹⁰³

Kubert v. Best arose from a 2009 crash when eighteen-year-old Best crossed the center line of the road when distracted by his texting.¹⁰⁴ Linda and David Kubert, who were riding a motorcycle when Kyle Best's truck hit them head-on and were severely injured, both lost their left legs.¹⁰⁵ They settled with Best for \$500,000, the maximum recovery under his insurance policy.¹⁰⁶ The Kuberts also sued Best's seventeen-year-old friend, Shannon Colonna, who sent Best a text message immediately before the crash.¹⁰⁷ The court found that in this case, there was insufficient proof to overcome the motion for summary judgment in favor of Colonna because there was no proof that Colonna knew Best was driving or urged him to respond while driving, however, the case still had a powerful impact.¹⁰⁸ In New Jersey, drivers are prohibited from using a cell phone while driving that is not "hands-free" unless there is an emergency situation.¹⁰⁹ The New Jersey legislature, finding a \$100 fine for violation of such prohibition insufficient,

enacted the ‘Kulesh, Kubert and Bolis Law’ to provide criminal penalties for those who are distracted by use of a cell phone while driving and injure others. The new law explicitly permits a jury to infer that a driver who was using a hand-held cell phone and caused injury in an accident may be guilty of assault by auto, a fourth-degree crime if someone was injured seriously, thus exposing the driver to a potential sentence in state prison.¹¹⁰

Employer Liability

Vicarious Liability

Numerous courts have held that an employer is vicariously liable in cases where an employee has an accident while driving and using their cell phone for their employer’s business.¹¹¹ For purposes of analyzing the scope of employment, location may extend beyond the office to the car,¹¹² and time may extend beyond typical business hours.¹¹³ The key focus instead may be whether the employee was serving the purpose of the employer at the time of the tort.¹¹⁴

A parallel can be drawn to social host liability laws, which impose liability on the host of a gathering when a guest becomes intoxicated and causes injury to a third party.¹¹⁵ This is similar to dram shop laws which impose liability on sellers of alcoholic beverages, such as bars, liquor stores, and restaurants.¹¹⁶ Most dram shop laws will use a “visibly intoxicated” test; in other words, if a server knew or should have known that a customer was intoxicated and could cause danger to others, that customer should not be served, and the bar could be held liable for any injury caused by the intoxicated customer.¹¹⁷ While defendant hosts might try to argue about what “should have known” means, there is no such argument in a video Zoom meeting.¹¹⁸ If a meeting host can see that a meeting participant is on video Zoom while driving, that meeting participant is distracted and that meeting host should be held liable.¹¹⁹

An employer has “special reason to know”¹²⁰ that the driver will be distracted because it is the employer distracting the employee.¹²¹ Proof of the distraction would also not be a challenge since the employer can see

that a device is being used to participate in the video Zoom meeting and can see that the driver is driving.¹²²

Direct Liability

While employers may be vicariously liable for their employees' torts, in the case of video Zoom meetings, employers could be held directly liable under a theory of negligence.¹²³ Negligence is the breach of a duty owed to a plaintiff to protect them from a foreseeable risk of harm.¹²⁴ The negligence analysis requires "an examination of the reasonableness of the risk created by the defendant's conduct. This in turn depends upon a panorama of considerations such as the magnitude of the harm, the likelihood and foreseeability of its occurrence, weighed against the utility of the defendant's conduct."¹²⁵ If the defendant employer permits or encourages video Zoom meetings while driving, then the employer can be held liable for negligence.¹²⁶ "An act is negligent if the actor intends it to affect, or realizes or should realize that it is likely to affect, the conduct of another, a third person, or an animal in such a manner as to create an unreasonable risk of harm to the other."¹²⁷

Applying that standard to participating in a video Zoom meeting while driving, the magnitude of the harm is high as it could result in a deadly crash, the likelihood and foreseeability is high given that watching a video while driving is very distracting, and the utility of the driver's participation in the video Zoom meeting is low.¹²⁸ There is no meeting that is important enough to risk someone's life, whether that of the driver or passengers in another car or a pedestrian on the road. And, the risk is so easily mitigated by simply pulling off the road, to a safe location, and participating in the meeting while safely parked.¹²⁹

Policies, Training, and Tools

Policies

Employers are generally aware that their employee's actions can expose the employer to liability.¹³⁰ To reduce that risk of liability, employers have a variety of policies, ranging from nondiscrimination to confidentiality.¹³¹

Often those policies specifically cover the employer's premises, like policies to comply with OSHA, but sometimes policies need to extend beyond the workplace, such as what is permissible to post on social media.¹³² To reduce the risk of being liable for an employee's distracted driving, employers should have clear policies prohibiting employees from participating in company video Zoom meetings while driving.

Employers need to state their expectations in policies, or they will not be able to rely on them in court.¹³³ For example, the *Ellender* court noted that while the employer may not have expected or intended for its employees to talk on their cell phones while driving, it provided no factual information that such expectations or intentions were conveyed to its employees or enforced.¹³⁴ The National Safety Council emphasizes the importance of employee support of the policy, noting that commitment from the employer's leadership is key.¹³⁵

According to David Teater, a nationally recognized leader on the issue of distracted driving, once companies hear the research about the dangers of distracted driving, they typically move forward to ban distracted driving on the part of their employees.¹³⁶ "A new survey of more than 2,000 employers conducted by the National Safety Council found that 58 [%] had some type of cell phone usage policy in place, and roughly one-quarter of those surveyed prohibit both hand-held and hands-free devices while driving for some or all employees."¹³⁷ However, Jim Noble of Zurich Insurance, makes that point that "If you have a policy but your internal practice encourages cell phone use while driving, the policy is essentially without merit. That's probably wors[e] than not having a policy."¹³⁸ For example, Noble recommends not scheduling conference calls (which could be audio or video) at a time when it is likely that employees would be in their cars (e.g., during the morning or evening commute).¹³⁹ Pund-IT analyst Charles King opined that "it makes sense for companies to have a policy in place that establishes a layer of discretion between themselves and employees that may break the law," by driving distracted.¹⁴⁰

While there are plenty of tips on video conferencing etiquette, most of them mention avoiding driving while doing so.¹⁴¹ Tips include testing hardware and internet connection, changing backgrounds, not playing with filters,

having a quiet space, and of course, dressing beforehand.¹⁴² Since video presence has a magnifying effect, experts recommend avoiding “fidgeting, moving around, or gazing elsewhere while someone else is talking.”¹⁴³ Participants have even been advised not to eat or drink while on camera.¹⁴⁴

There have also been warnings of Zoom behaviors that could result in termination.¹⁴⁵ “Sharing derogatory images, disclosing confidential information, or using discriminatory language toward a colleague will still have the same repercussions as they would in a physical office setting,” warned Betty Rodriguez, senior workplace analyst at Fit Small Business, about Zoom behaviors that should be avoided.¹⁴⁶ Attorney Jacob J. Sapochnick noted that company confidential information should not be shared since Zoom meetings might be recorded and those recordings could later be accessed by a computer hacker.¹⁴⁷ Meeting participants should also refrain from criticizing their boss in the “private” chat of a Zoom meeting since when the host downloads the meeting transcripts, all such private comments are visible.¹⁴⁸ Participants should avoid using the screen sharing tool to share inappropriate content.¹⁴⁹

There have been many examples of egregious behavior on Zoom that a reasonable person might not have thought required advanced warnings.¹⁵⁰ For example, Sean Nguyen, director of Internet Advisor, had to terminate an employee after repeated Zoom calls during which the employee would loudly fight with her live-in boyfriend.¹⁵¹ A northern California planning commissioner resigned after throwing his cat during a city meeting, explaining, “[w]e are all living in uncertain times and I certainly, like many of you, am adjusting to a new normalcy,” and apologizing for his behavior.¹⁵² But Scott Green, a plastic surgeon acted in a manner that was not only inappropriate, but put a patient’s life at risk when he participated in a Zoom traffic court hearing from the operating room during a surgery.¹⁵³ The judge refused to proceed, protecting the welfare of the patient, who could be seen on the operating table in video Zoom meeting.¹⁵⁴ The Medical Board of California stated that it is “aware of this incident and will be looking into it.”¹⁵⁵ What will the result of that investigation be? Will the Board conclude that it needs a new policy statement that physicians should not attend traffic court while operating? That seems absurd, and

should not be necessary, just as advising drivers not to video Zoom while driving should be obvious.

In an irony that would not be believable in a low-grade movie, vice chair of the Senate Transportation Committee, State Senator Rebecca Saldaña, participated in a legislative video meeting while driving.¹⁵⁶ She was clearly behind the wheel, although she used a virtual background to block the rest of the car and the passing scenery.¹⁵⁷ This was a direct violation of Washington law.¹⁵⁸ Sen. Saldaña acknowledged that she has “supported legislation about penalties for distracted driving, and like all drivers in Washington state, I must be subject and accountable to that law and all traffic laws.”¹⁵⁹

Ohio State Senator Andrew Brenner apparently did not learn from his political colleague, Saldaña.¹⁶⁰ Like Saldaña, Sen. Brenner attended a government video Zoom meeting while driving; however, it was not just the meeting attendees who knew of his distracted driving.¹⁶¹ It was livestreamed to the public, who could not only see his seatbelt and watch him glance from side to side as if readying to cross a street, but could also see a background that made it appear that he was in the office, functionally an admission that he knew he was wrong and was trying to deceive everyone into believing that he was not exercising poor judgment by driving while on video Zoom.¹⁶² Even more troubling is that, unlike Sen. Saldaña who admitted that she was wrong, Sen. Brenner denied that he was distracted, stating that “I was paying attention to the driving and listening to [the meeting]. And I’ve actually been on other calls, numerous calls, while driving. [O]n video calls, I’m not paying attention to the video. To me, it’s like a phone call.”¹⁶³ Three months prior to the incident, Ohio Governor Mike DeWine said, “Ohio’s current laws don’t go far enough to change the culture around distracted driving, and people are dying because of it.”¹⁶⁴ Apparently, Senator Brenner did not agree with Gov. DeWine’s comments, which also included “Distracted driving is a choice that must be as culturally unacceptable as drunk driving is today, and strengthening our current laws will lead to more responsible driving.”¹⁶⁵ Ohio legislators were following the governor’s lead, and they introduced a bill to strengthen laws focused on decreasing dangerous driving, including imposing penalties for texting and livestreaming while driving.¹⁶⁶ Irony seems to

follow politicians who video Zoom while driving, as this distracted driving bill was introduced on the same day as Sen. Brenner's lack of judgment.¹⁶⁷

Apparently, employers cannot rely on their employees to refrain from engaging in video Zoom meetings while driving, and therefore, an employer policy is required to both protect the safety of other drivers and pedestrians on the road and to protect employers from liability for their employees' Zoom engagement while driving.¹⁶⁸ Harvard College recognized this need when stating its policies for *The Business of China*, a general education course taught synchronously online to students all over the world, including "Don't Zoom while driving."¹⁶⁹ While that policy is short and sweet, employers may prefer just a bit more detail offered in the following sample policy:

No Zoom Video Meetings While Driving. While we appreciate our employees' commitment to work, please focus on safety first, and only use electronic devices when it is safe to do so. To protect our employees and the community:

1. Employees are prohibited from using Zoom video while driving by using a mobile phone, tablet, laptop computer, or any other device.
2. Employees are encouraged to always focus on their driving for the safety of passengers, other drivers, and pedestrians. Please wait to engage in meetings until you are safely parked.
3. All supervisors are advised to immediately remove any Zoom meeting participant who is participating on video while driving.¹⁷⁰

Training

Once such a policy is created, employees need to be advised of the policy and trained on how it is to be used.¹⁷¹ One of the keys to successful training is overcoming objections.¹⁷² Productivity concerns are often cited as one of the top obstacles in reducing employee cell phone usage, as not talking to potential customers while driving between appointments could negatively

impact business.¹⁷³ Participants using Zoom video while driving will likely raise the same concerns.¹⁷⁴ When announcing the policy, employers will want to share some of the dangers of distracted driving so that employees understand why the policy is being implemented.¹⁷⁵ Employers may want to consider implementing or participating in a campaign to stop distracted driving, in addition to initiating a policy.¹⁷⁶

Companies should support policies with training and safety programs to help “break distracted driving behaviors that are prohibited by the [company’s] policy.”¹⁷⁷ Truce, a software company dedicated to “eliminat[ing] workplace distractions by making mobile smarter,” notes that “[m]otor vehicle crashes are the leading cause of workplace fatalities, accounting for 24% of all fatal occupational injuries.”¹⁷⁸

The training should begin with statistics reminding employees of the impact distracted driving has on the company, its employees, and the general public.¹⁷⁹ It might also be helpful to do some myth busting in order to get employees to embrace the concept of how dangerous distracted driving can be.¹⁸⁰ For example, those confident that they can successfully multitask while driving can be reminded that “multitasking while driving increases the likelihood of crashes due to delayed breaking times and not seeing traffic signals.”¹⁸¹ Some employees may think that distracted driving is only a problem among cellphone-obsessed teenagers, but the reality is that distracted driving affects drivers of all ages.¹⁸² What may be most surprising is that driving under the influence of drugs or alcohol is not more dangerous than distractions from other sources.¹⁸³

Once employees are trained on the realities of distracted driving, a good next step is to review the law of the employer’s state, as all employees may not be clear on what activities are permitted while driving.¹⁸⁴ Next, the company’s policy should be explained, including the consequences for violating it.¹⁸⁵ Employees should acknowledge that they have read it.¹⁸⁶

In the case of Zoom specifically, employees should be encouraged to not only avoid video Zoom while driving, but also to help enforce the policy by advising any employee who joins a meeting while driving that they should not participate until they are safely parked.¹⁸⁷ In addition,

supervisors should be trained to remove employees from the meeting who are using video Zoom while driving.¹⁸⁸ In the case of fleet management, employers may want to include on-the-road training and possibly install monitoring software in the fleet vehicles, which of course, would require additional employee training.¹⁸⁹

In 2017, Minnesota-based Cargill was the largest (150,000 employees) privately held corporation to implement a total ban on using mobile phones in company vehicles.¹⁹⁰ “Overall, it’s making sure employees know of the dangers of driving while distracted and how important that Cargill feels that safety is first,” said April Nelson, a company spokesperson.¹⁹¹

Tools

To supplement employers’ use of policies to reduce distracted driving, ironically, technology can help, too.¹⁹² For example, FleetGuardian produces a safety box for drivers to use to store their phones while driving.¹⁹³ It still permits Bluetooth connectivity to allow for hands free calls or listening to music, but it prevents fiddling with the phone while driving, and the use of the box can be tracked by the employer.¹⁹⁴ In development is the ZenduCAM Driver Distraction Camera that can detect fatigue and distraction with the use of facial recognition technology and warn the driver with audio alerts .¹⁹⁵

Zoom has a feature known as Safe Driving Mode, intended to lower the distraction while drivers are logged into Zoom.¹⁹⁶ It allows the meeting participant to swipe right on the phone screen to enter “Safe Driving Mode,” during which the microphone is muted and the video is stopped, allowing the driver to listen, like they might to the radio, but not participate.¹⁹⁷ However, the driver is still manually distracted when touching the phone to enter Safe Driving Mode and may still be cognitively distracted by focusing on the business of the meeting.¹⁹⁸

Finally, FaceTime, a popular video call feature on Apple iPhones that can be connected in a car through Apple CarPlay, has a new feature causing the FaceTime camera to be disabled by Apple while an iPhone user is

driving.¹⁹⁹ The fact that both Zoom and Apple have such features acknowledges the dangers of participating in video calls while driving.²⁰⁰

Conclusion

The only way to prevent distracted driving accidents caused by cell phones, whether from texting, voice, or video calls, is to not use the phone while driving.²⁰¹ Individuals need to exercise self-discipline to protect their lives and the lives of others, but when they need a nudge in the right direction, then employers should be there to provide that nudge. Not only will drivers and pedestrians be safer, but it will also decrease employer liability for distracted driving damages.²⁰² Rather than waiting until costs, both financial and physical, drive restraint, employers can learn from the history of drunk driving liability and apply it to other forms of distracted driving.

Just as the public has learned the dangers of drinking and driving through a sustained campaign and enhanced criminal penalties and civil liability, the hazards of texting when on the road, or to someone who is on the road, may become part of the public consciousness when the liability of those involved matches the seriousness of the harm.²⁰³

Employers can initiate and support a campaign to prevent all forms of distracted driving.²⁰⁴

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¹ Luke May, *Virtual Insanity! Police Catch Idiot Driver Holding a ZOOM Video Call at the Wheel on his Way to Work*, DAILY MAIL (Feb. 10, 2021, 8:37 AM), <https://www.dailymail.co.uk/news/article-9244903/Driver-holds-ZOOM-video-call-driving-work.html> [<https://perma.cc/9SZL-2KV9>].

² *Id.* RAC is the UK motoring organization, similar to the AAA in the United States.

³ *Id.*

⁴ *Id.*

⁵ *Commercial Fleet and Delivery Drivers: 5 Tips to Prevent Distracted Driving*, FRANKENMUTH INS. (July 9, 2020), [hereinafter *Commercial Fleet and Delivery Drivers*], <https://www.fmins.com/blog/commercial-fleet-delivery-drivers-prevent-distracted-driving/> [https://perma.cc/PH2P-6836].

⁶ While this Article focuses on Zoom, the same applies to FaceTime, Skype, WebEx, Teams, or any similar platform. For example, on June 7, Apple announced new features for its FaceTime app to allow enhanced video calls, appearing to make it more competitive with Zoom. WWDC, APPLE.COM (June 7, 2021), <https://www.apple.com/apple-events/june-2021/> [https://perma.cc/RE43-URFA]. No such new features should be used while driving.

⁷ See Lisa Nagele-Piazza, *Employers Can Be Liable For Distracted Driving*, SHRM (Oct. 29, 2018), <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/employers-can-be-liable-for-distracted-driving.aspx> [https://perma.cc/DSQ5-HZRS].

⁸ *Don't Drive Distracted*, AAA, <https://www.aaa.com/dontdrivedistracted/> [https://perma.cc/AS23-LAJ7] (defining distracted driving as “any activity (including texting) that diverts attention from the task of safe driving”).

⁹ Kea Wilson, *Speeding Isn't the Only Dangerous Driving Behavior on the Rise During COVID-19*, STREETS BLOG USA (May 7, 2020), <https://usa.streetsblog.org/2020/05/07/speeding-isnt-the-only-dangerous-driving-behavior-on-the-rise-during-covid-19/> [https://perma.cc/9KPG-N85K].

¹⁰ *The Risks of Distracted Driving*, AAA, <https://exchange.aaa.com/safety/distracted-driving/the-risks-of-distracted-driving/> [https://perma.cc/W7PX-3BSS].

¹¹ NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., OVERVIEW OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S DRIVER DISTRACTION PROGRAM 3-4 (2010) [hereinafter OVERVIEW OF DRIVER DISTRACTION PROGRAM]. The NHTSA's mission is to “save lives, prevent injuries, and reduce economic costs due to road traffic crashes.” *Id.* Cognitive distraction can also be in the form of daydreaming. Don Kidd, *There are Four Types of Driver Distraction*, PERDUEANDKIDD.COM (Oct. 30, 2017), <https://www.perdueandkidd.com/blog/distracted-driving/> [https://perma.cc/V5QD-ETKN].

¹² Kidd, *supra* note 11; Julie Ferguson, *Distracted Driving & Employer Policies*, ESI GROUP (Nov. 1, 2009), <https://www.theeap.com/best-practices/distracted-driving-employer-policies> [https://perma.cc/8DTP-GSCZ] (citing a “Carnegie Mellon study [showing] that just listening to cell phones can impair drivers by reducing the amount of brain activity associated with driving by as much as thirty-seven percent. ‘Subjects who were listening committed more lane maintenance errors, such as hitting a simulated guardrail, and deviating from the middle of the lane.’”); Byron Spice, *Carnegie Mellon Study Shows Just Listening to Cell Phones Significantly Impairs Drivers*, CARNEGIE MELLON UNIV., https://www.cmu.edu/news/archive/2008/March/march5_drivingwhilelistening.shtm [https://perma.cc/7PBD-FJKR].

¹³ OVERVIEW OF DRIVER DISTRACTION PROGRAM, *supra* note 11, at 3-4.

¹⁴ *Id.*

¹⁵ Skywriting is another form of visual distraction while driving. Suzanne Raga, 14 *Ethereal Secrets of Skywriters*, MENTALFLOSS.COM (Nov. 10, 2016), <https://www.mentalfloss.com/article/88552/14-ethereal-secrets-skywriters> [<https://perma.cc/3DYZ-8QK8>]. Because the letters appear one at a time, drivers continue to look up to see the rest of the message. *Id.* "When people see [skywriting], they literally slam on their brakes in green lights and stick their heads out the window," according to skywriter Suzanne Asbury-Oliver. *Id.* Anecdotally, the author's daughter, Amanda Carr, affirmed this kind of distraction on March 20, 2021, when she observed a skywriter while she was driving to work on the freeway. Conversation with Amanda Carr in Porter Ranch, CA (Mar. 20, 2020). She reported that traffic on the freeway slowed to a crawl as drivers struggled to read it. *Id.* Amanda admitted that she, too, was distracted, hoping that she would get in a better position to see the entire message, which she only recalled was something like "you're nothing without your bones." *Id.*

¹⁶ Kidd, *supra* note 11.

¹⁷ See Piyush Jain, *Are Car Massagers Safe?*, HOTCARS (Aug. 20, 2019), <https://www.hotcars.com/are-car-massagers-safe-we-explore-the-pros-and-cons/> [<https://perma.cc/F4B3-4GPD>].

¹⁸ Tony Havelka, *Best Car Seat Massager*, LIQUID IMAGE (Sept. 12, 2019), <https://www.liquidimageco.com/best-car-seat-massager/> [<https://perma.cc/E6UL-VPSS>].

¹⁹ Joe Santos, *Why Aren't Massage Seats a More Common Feature?*, MOTORBISCUIT (Aug. 20, 2020), <https://www.motorbiscuit.com/why-arent-massage-seats-a-more-common-feature/> [<https://perma.cc/YR2D-MSST>].

²⁰ See Jain, *supra* note 17.

²¹ *Id.*

²² *Id.*

²³ *Commercial Fleet and Delivery Drivers*, *supra* note 5. The other two tips are "eat before the trip" and "avoid drowsy driving." *Id.*

²⁴ See *id.*

²⁵ See Jon Hamilton, *Multitasking in the Car: Just Like Drunken Driving*, NPR (Oct. 6, 2018, 1:23 AM) <https://www.npr.org/templates/story/story.php?storyId=95702512> [<https://perma.cc/42G5-EVG4>].

²⁶ Spice, *supra* note 12. Neuroergonomics, combining brain science with human-computer interaction studies, measures technology against human capabilities and has been applied to humans operating aircraft, ships, and cars, where the operator's attention is distracted by technology including navigation systems and other tech devices. *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

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- ³⁰ OVERVIEW OF DRIVER DISTRACTION PROGRAM, *supra* note 11.
- ³¹ See *Mobile Fact Sheet*, PEW RES. CTR. (Apr. 7, 2021), <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet> [<https://perma.cc/28UB-JT7K>].
- ³² *Distracted Driving*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/transportationsafety/distracted_driving/index.html [<https://perma.cc/JV67-B5EP>].
- ³³ “Senseless”: Parents Speak Out After Son Killed by Driver Apparently Distracted by Porn, CBSNEWS.COM (Feb. 13, 2020, 7:48 AM), <https://www.cbsnews.com/news/texas-family-files-lawsuit-after-teen-killed-by-distracted-driver-watching-porn-mother-says/> [<https://perma.cc/ZH98-7VUC>].
- ³⁴ See Mike Snider, *Here’s Where You Can’t Stream Video and Drive Anymore*, USA TODAY (June 28, 2018, 10:25 AM), <https://www.usatoday.com/story/tech/news/2018/06/28/you-cant-stream-video-while-driving-more-states-like-georgia-decide/732314002/> [<https://perma.cc/H9H3-7BJ8>].
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *City of Ontario v. Quon*, 560 U.S. 746, 760 (2010).
- ³⁸ See “Senseless”: Parents Speak Out After Son Killed by Driver Apparently Distracted by Porn, *supra* note 33.
- ³⁹ See *id.*; *Cellphones and Texting*, IIHS.ORG (Feb. 2020), <https://www.iihs.org/iihs/topics/laws/cellphonelaws/maphandheldcellbans> [<https://perma.cc/R5L5-GVWP>]. Missouri has a partial ban, but Montana has no ban at all. *Id.* Illinois law prohibits the use of electronic devices while driving. 625 ILL. COMP. STAT. ANN. 5/12-610.2 (West 2021). In Illinois, “[a] person convicted of violating subsection (b-5) commits a Class 4 felony if the violation resulted in the death of another person.” *Id.*
- ⁴⁰ Exec. Order No. 13513, 74 Fed. Reg. 51,225 (Oct. 1, 2009) “Federal employees shall not engage in text messaging (a) when driving GOV, or when driving POV while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.” *Id.* at §2. “Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants to the extent authorized by applicable statutory authority, entered into after the date of this order, shall encourage contractors, subcontractors, and recipients and subrecipients to adopt and enforce policies that ban text messaging while driving.” *Id.* at §4.
- ⁴¹ Limiting the Use of Wireless Communication Devices, 75 Fed. Reg. 59,118 (Sept. 27, 2010) (codified at 49 C.F.R. 383–84, 390–92).
- ⁴² See *New Study Says Drivers Do Not Think Texting While Driving is Dangerous*, ROTHENBERG L. FIRM (Dec. 12, 2018), <https://injurylawyer.com/blog/new-study-says-drivers-do-not-think-texting-while-driving-is-hazardous/> [<https://perma.cc/LVD3-27J4>].
- ⁴³ Kidd, *supra* note 11.

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- ⁴⁴ See Steven M. Gursten, *How Can You Avoid Remote Texter Liability?*, MICH. AUTO L. (Nov. 27, 2017), <https://www.michiganautolaw.com/blog/2017/11/27/remote-texter-liability> [<https://perma.cc/2F2R-WRJL>] (noting that Michigan Auto Law's "Attorney Handbook" provides, "[c]ell phones should not be used while driving. Text-messaging while driving is prohibited at all times (as provided by Michigan law).").
- ⁴⁵ See Kelly Wallace, *Driving While Distracted: Is the Textalyzer the New Breathalyzer?*, CNN (Sept. 2, 2016, 2:03 PM), <https://www.cnn.com/2016/09/02/health/distracted-driving-textalyzer/index.html> [<https://perma.cc/98CM-A7AT>].
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ Tanner Jubenville, *Controversial 'Textalyzer' Device Could Be up for Consideration Again in New York*, 13 WHAM (Mar. 18, 2019), <https://13wham.com/news/local/controversial-textalyzer-device-could-be-up-for-consideration-again-in-new-york> [<https://perma.cc/7JV9-PKTD>] (noting that objections to the device include Fourth Amendment issues, cost, and effectiveness).
- ⁵¹ John Nassivera, *Texting and Driving: ComSonics' Police Radar Gun Helps Cops Find Motorists on Their Phones*, HEADLINES & GLOB. NEWS (Sept. 17, 2014), <http://www.hngn.com/articles/42727/20140917/texting-and-driving-comsonics-police-radar-gun-helps-cops-find-motorists-on-their-phones.htm> [<https://perma.cc/3RDL-5XME>]. ComSonics is a Virginia-based company that provides calibration services for speed enforcement equipment. *Id.*
- ⁵² Kevin Short, *New York State Troopers Battle Texting While Driving, Cell Phone Use on the Roads*, HUFFINGTON POST (Dec. 6, 2017), http://www.huffingtonpost.com/2013/07/23/new-york-texting-driving_n_3634973.html [<https://perma.cc/BSV7-YSQ2>] ("In 1996, then-New York Gov. Pataki signed an executive order that banned unmarked police cars to combat a recent wave of police impersonations. Gov. Cuomo repealed the order in 2012 as part of the crackdown on distracted driving.").
- ⁵³ *U Drive. You Text. You Pay.*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/campaign/distracted-driving> [<https://perma.cc/ZT8J-QDDA>].
- ⁵⁴ Joel Feldman, *Claiming it Can Make Texting and Tweeting Safe for Drivers with its 'Heads Up Display', Navdy Ignores the Science of Cognitive Distraction*, ENDDD.ORG, <https://www.enddd.org/end-distracted-driving/distracted-driving-updates/claiming-it-can-make-texting-and-tweeting-safe-for-drivers-with-its-heads-up-display-navdy-ignores-the-science-of-cognitive-distraction/> [<https://perma.cc/MK6Q-YA79>].
- ⁵⁵ Camille Riesbeck, *Driving with Google Glasses: Good or Bad Idea?*, TRANSPOCO TELEMATICS (June 11, 2014, 11:40 BST), <https://www.transpoco.com/blog/2014/06/11/driving-with-google-glasses/> ("For the purposes of driving whilst using Google Glass, it means that the wearer could be viewing information on the optical display at the same time they are

concentrating on the road and this is concerning both the police and safety organisations.”

⁵⁶ *Id.* “The argument that using devices which do not require one’s vision to be taken away from the road is safer may be superficially appealing but is not backed by sound science.” *Id.*

⁵⁷ See *Distracted Driving, Transportation Safety*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Mar. 2, 2021), https://www.cdc.gov/transportationsafety/distracted_driving/index.html [<https://perma.cc/N9G9-R993>].

⁵⁸ Snider, *supra* note 34 (noting that the driver was texting while driving, killing the motorcyclist and injuring his passenger sister in the October 2017 incident in Pennsylvania).

⁵⁹ See *id.*

⁶⁰ Adam M. Gerschowitz, *Google Glass While Driving*, 47 ARIZ. STATE L.J. 755, 771, 773 (2015). In September 2019, Tesla introduced a new software feature called Tesla Theater, allowing the dashboard screen to show Netflix, YouTube, and Hulu videos. 1sixty8, *Can I Watch Movies in My Car While Driving?*, BESTCARAUDIO.COM (Feb. 7, 2020), <https://www.bestcaraudio.com/can-i-watch-movies-in-my-car-while-driving/> [<https://perma.cc/2U2T-TYJ7>]. However, they are only available while the car is parked. *Id.*; see, e.g., CA. VEH. CODE § 27602(a) (West 2011) (“A person shall not drive a motor vehicle if a television receiver, a video monitor, or a television or video screen, or any other similar means of visually displaying a television broadcast or video signal that produces entertainment or business applications, is operating and is located in the motor vehicle at a point forward of the back of the driver’s seat, or is operating and the monitor, screen, or display is visible to the driver while driving the motor vehicle.”); see also CA. VEH. CODE 27602(b) (West 2011) (providing exceptions for “(1) A vehicle information display, (2) A global positioning display, (3) A mapping display, (4) A visual display used to enhance or supplement the driver’s view forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle”).

⁶¹ Gerschowitz, *supra* note 60 at 771, 773. Jonathan Weaver, age 18, and two others were killed in a head-on collision in Texas by a driver, with a cell phone in his hand, which was playing an X-rated movie on his cell phone at the time of the crash. “Senseless”: Parents Speak Out After Son Killed by Driver Apparently Distracted by Porn, *supra* note 33. Driver James Darling’s employer stated “[o]ur hearts go out to all those impacted by this tragic accident, however, accident reconstruction analysis suggest[s] that our employee was not at fault. Beyond that, we decline to further discuss specific personnel or pending litigation.” *Id.*; see Plaintiffs’ Original Petition and Jury Demand at 1–2, *Weaver v. Energy Transfer Partners*, No. CD-20-02383 (Tex. 44th Dist. filed Feb. 12, 2020), https://courtsportal.dallascounty.org/DALLASPROD/DocumentViewer/Embedded/j5YoGgmr2Cb3wjamaNvTJsaSqdkI3MFzdVaPcRzvc_4lMdyCd7jTf7Ks7xwkc2GmSvlfwe7ljWjyb6Laewi4XA2?p=0 [<https://perma.cc/V775-VTYX>] (awaiting jury trial).

⁶² 1sixty8, *supra* note 60; *Why Front Passengers Can’t Enter GPS Navigation During the Drive*, NEWS WHEEL (Dec. 28, 2018), <https://thenewswheel.com/why-front->

passengers-cant-enter-gps-navigation-during-the-drive/ [https://perma.cc/E9QR-ND3R].

⁶³ 1sixty8, *supra* note 60.

⁶⁴ Snider, *supra* note 34; GA. CODE ANN. § 40-6-241(c)(3) (2018); Robin Frazer Clark, *Were Georgia Roads Any Safer in 2018?*, ATLANTA INJ. LAW. BLOG (Jan. 2, 2019), <https://www.atlantainjurylawyerblog.com/were-georgia-roads-any-safer-in-2018/> [https://perma.cc/H7VD-3UY8].

⁶⁵ Snider, *supra* note 34.

⁶⁶ *Id.*, quoting Jennifer Ryna, director of state relations for AAA's national office. Cole Lauterbach, *Illinois bans streaming video while behind the wheel*, CTR. SQUARE (Sept. 5, 2019), https://www.thecentersquare.com/illinois/illinois-bans-streaming-video-while-behind-the-wheel/article_9b98137c-cff4-11e9-adff-c714d74cefe7.html [https://perma.cc/26ZD-BYZE] ("Illinois' distracted driving laws have been modernized to ensure people can't stream videos while operating a car.").

⁶⁷ Jeremy Baker, *Zoom is Adding to Distracted Driving During the Pandemic, Safe2Save Says*, KENS5 (Aug. 25, 2020), <https://www.kens5.com/article/news/local/safe2save-says-zoom-is-adding-to-distracted-driving-during-the-pandemic/273-93bfea50-8aa6-4258-86e0-5f2b1aa41337> [https://perma.cc/UF8P-CQQV]. Self-described as a "marketplace for immersive experiences," Zoom was named "the Preferred Video App for the 2nd Straight Year." Aleks Swerdlow, *Introducing OnZoom: A Marketplace for Immersive Experiences*, ZOOM BLOG (Oct. 14, 2020), <https://blog.zoom.us/introducing-onzoom-a-marketplace-for-immersive-experiences/> [https://perma.cc/DRL6-MNKQ]; *Zoom the Preferred Video App for the 2nd Straight Year* (2021), ZOOM, <https://explore.zoom.us/docs/lp/most-popular-apps-2021.html> [https://perma.cc/V2UU-JV45]. "2020 will be remembered as the 'year Zoom became a household name.' For the first time, the app became part of many people's daily lives." *Okta's Businesses at Work 2021*, OKTA.COM (2021), <https://www.okta.com/sites/default/files/2021-02/Businesses-at-Work-2521.pdf> [https://perma.cc/6BH7-7VPR]. Zoom was developed by Chinese software engineer Eric Yuan in 2011. Natalie Sherman, *Zoom Sees Sales Boom Amid Pandemic*, BBC.COM (June 2, 2020), <https://www.bbc.com/news/business-52884782> [https://perma.cc/2T3W-FB7E].

⁶⁸ Sherman, *supra* note 67 ("Use of the firm's software jumped 30-fold in April [2020], as the coronavirus pandemic forced millions to work, learn and socialize remotely.").

⁶⁹ See Jason Aten, *Zoom Is Now Worth \$130 Billion. The Reason Why is Simple*, INC.COM (Sept. 2, 2020), <https://www.inc.com/jason-aten/zoom-is-now-worth-130-billion-reason-why-is-simple.html>; Sherman, *supra* note 68 ("Sales jumped 169% year-on-year in the three months to 30 April to \$328.2m, as it added more than 180,000 customers with more than 10 employees since January — far more than it had expected. It also turned a profit of \$27m in the quarter — more than it made in all of the prior financial year.").

⁷⁰ May, *supra* note 1; Baker, *supra* note 67.

⁷¹ Baker, *supra* note 67.

⁷² *Id.*