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PERSPECTIVE

## Piecemeal regulation stifles innovation

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It should come as no surprise that the law often struggles to keep up with new technology, and nowhere is this more true today than in the case of self-driving cars. Throughout the states, legislation is piecemeal: Some states have strict regulations, some have lax rules, and some have virtually no legislation at all. How to remedy this patchwork of regulations? Perhaps now is the time for affirmative action by Congress.

Uber provides a good example of how the lack of uniformity is retarding the development of technology. On the one hand, Uber introduced its self-driving cars last year in a relatively seamless manner in Pittsburgh. The cars have been on the roads for several months. Pittsburgh's mayor was quoted Sept. 10, 2016, in the New York Times saying, "It's not our role to throw up regulations or limit companies like Uber ... You can either put up red tape or roll out the red carpet. If you want to be a 21st century laboratory for technology, you put out the carpet."

But on the other hand, Uber was recently stymied as it attempted to roll out self-driving cars in California. In its recent public battle, Uber claimed that it was exempt from Section 38750 of the California Vehicle Code, which requires test permits for vehicles that can drive "without the active physical control or monitoring by a human operator." Uber's self-driving cars, which had been deployed in San Francisco, have a person in the driver's seat at all times; Uber's position was that the human was there to "control and monitor" where needed. (Google, Tesla Motors and Mercedes-Benz had previously obtained permits for very similar arrangements.) But because their vehicles were not autonomous, Uber argued, the statute did not apply.

As Anthony Levandowski, the vice president of Uber's advanced technologies group noted in the New York Times on Dec.

16, "it's an important issue of principle about when companies can operate self-driving cars on the roads and the uneven application of statewide rules across very similar types of technology." But within days, when the California attorney general backed up the DMV's previously issued cease-and-desist letter with a threat of an injunction, Uber backed down, removing the self-driving cars from San Francisco and shipping them to Arizona.

Manufacturers of self-driving cars are finding themselves in the same position as Amazon a decade ago, and a federal solution may be the answer.

This is not the first time that a technology company has come into conflict with state regulators. Close to a decade ago, Amazon had to navigate a patchwork of state tax rules as it initially contested its "physical presence" in almost every state (other than its home state of Washington). Although Amazon initially refused to collect state sales taxes, it eventually changed course, especially after the New York Supreme Court ruled against the online giant in 2010. While Amazon has subsequently reached consent decrees or similar agreements with most of the individual taxing authorities, Jeff Bezos, Amazon's founder, stated in the May 11, 2011, issue of the Consumer Reports News that "we should simplify the sales tax system" and "the right way to fix this is with federal legislation." And in the budding area of deliveries by drones, Amazon has seemed to benefit from federal preemption. While the Federal Aviation Administration has definitely taken a cautious and careful approach to allowing drones in the national airspace, Amazon (who has made no secret about its airborne ambitions) has clearly taken a leadership role in the nascent industry.

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Amazon a decade ago, and a federal solution may be the answer. Certainly, the states enjoy a broad authority to regulate their roadways, but as the Supreme Court noted in 1959, there are situations where "local safety measures that are nondiscriminatory [can] place an unconstitutional burden on interstate commerce." *Bibb v. Navajo Freight Lines Inc.*, 359 US 520, 529 (1959). Last September, in an attempt to suggest some consistency from state to state, the Department of Transportation and the National Highway Traffic Safety Administration (DOT/NHTSA) issued non-binding model regulations regarding self-driving car inspection, licensing, law enforcement and insurance. But in the four months since they were promulgated, no states have adopted them and, as we have seen, the inconsistencies among the states are starting to affect the technology.

As self-driving cars become more ubiquitous, the impact on interstate commerce will only increase. The DOT/NHTSA model rules do not seem to be enough. Perhaps Uber's public push-back against the San Francisco regulations will convince Congress that now is the moment to help these technologies reach their full potential.

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