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Auto Lenders' Use of GPS Tracking and Kill Switches Prompts FTC Investigation

By Hayley Dardick, J.D. Candidate 2019 | March 6, 2017

Amidst a steady increase in subprime auto loans, lenders are utilizing new surveillance technologies to mitigate their risk. Finance companies, credit unions, and auto dealers use GPS tracking to monitor borrower's locations and "kill switches" to remotely disable vehicles. Lenders say these devices allow them to extend loans to more Americans with poor credit as they can locate the vehicle if a borrower defaults on payments and repossession is necessary.

The Federal Trade Commission is now inquiring whether these devices illegally harass borrowers or unfairly violate their privacy. Credit Acceptance Corporation and DriveTime Automotive Group, Inc. reported in recent securities filings that the FTC issued civil investigative demands, asking for information regarding the use of their GPS starter interrupter devices.

Opponents of the devices are critical of the intrusion into consumers' lives. GPS trackers allow auto lenders to identify the precise location of drivers, which can "reveal a lot about what people are doing in their lives" says Lauren Smith, policy counsel at the Future Privacy Forum, noting, "location data is very sensitive." Manufacturers insist that the GPS capabilities are intended to help lenders after a borrower defaults on payments, not to survey customers. Thus far, there is no evidence that lenders are abusing the information.

The FTC may also be wary of kill switches, which allow lenders to remotely disable a vehicles' ignition. A *New York Times* investigation in 2014 described incidents in which consumers' cars were shut off for missing payments, sometimes stranding them in unsafe neighborhoods or situations. A Las Vegas mother explained that she was unable to transport her sick child to the hospital when her vehicle was disabled. Another woman testified that her car had been shut off while she was on the freeway.

The FTC may be investigating whether use of these devices violate debt collection laws which prohibit making false threats to force consumers to make payments. If a lender prematurely disables a car to induce a customer to pay up, this could potentially constitute an illegal practice.

The auto finance industry has reason to seek a means of reducing losses on bad loans amid a subprime lending boom. As of December 2016, outstanding car loans totaled $1.16 trillion. According to the Federal Reserve Bank of New York, 20 percent of car loans in recent years have gone to subprime borrowers, and with the increase of loans, delinquencies are also on the rise. In December, 5 percent of borrowers of subprime auto loans were at least 60 days behind on payments, with 3.8 percent at least 90 days delinquent.

The FTC will have to decide whether the benefit to consumers outweighs the privacy issues inherent in these technologies. Some state legislatures are working toward a solution of their own. In New Jersey, for example, lawmakers are working on a bill which would provide that

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consumers get written disclosure that a tracking device has been installed in their car and 72 hours' advance notice before the ignition is disabled.

If the FTC ultimately determines these technologies are being used in violation of privacy rights and fair collection practices, it could prohibit companies from using the devices and may create various procedures to safeguard consumer privacy and wellbeing.