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## Dealerships in the Mobility Age

The technology for autonomous vehicles grows daily, and the race is on to see who will own this software. Manufacturers know the threat technology poses. Why else would GM have invested \$500 million in Lyft? Or Toyota contract with Uber? The challenge to be first is difficult, especially when competing with Google and Apple.

Will factories create the ultimate customer experience? My wife's car requires a different 4-digit code to sync her Bluetooth than mine. There are too many calls to dealers from customers trying to decipher Bluetooth and NAV systems. The experience needs to be seamless, so customers enjoy their cars without issue.

Once third-party-owned software dominates the automotive space, the manufacturers' position will weaken. Third parties may license software to manufacturers or sell it to dealers. In either case, a vehicle's technology may create additional revenue streams, sold independently from the vehicles.

How can dealerships be part of this mobility surge?

There is no doubt the OEMs want to be cutting edge. Technology can speed up the sales process, which is infinitely too long. When customers arrive at the dealership, they have made their buying

decisions. Dealerships should be able to initiate another conversation with customers about vehicle add-ons involving software-based services. Such software can order groceries, start Wifi hotspots, remind you of appointments, and more.

Dealers may be slow to offer software-based services because the options change regularly. I was an early adopter - I bought one of the first Betamax players because it was "better" than VHS. With so many options, dealers may be paralyzed by indecision, and the manufacturers are unlikely to rise to this challenge by either developing their own solution or providing uniform solutions across all brands.

If the OEMs are not the owners and providers of technology, dealers may benefit. OEMs will have a weaker position to demand image upgrades, CSI compliance, or the imposition of stairstep incentives, because they do not control the most important asset in its product - the technology. What Microsoft did with software is instructive. It made personal computers a hunk of circuit boards that were worthless without Microsoft products. It forced PC manufacturers to compete on price alone.

Faced with the decision to invest in stopgap solutions or wait for a clear winner to emerge, dealers will likely choose the former; facing constant change, it's the only prudent choice.

## Ringless Voicemail Drops: Regulated or Not?

I have observed over the years that third party vendors in the retail automotive industry show a great deal of ingenuity in coming up with “new” and “innovative” products that are purportedly not subject to regulation by federal or state agencies. One that is currently making the rounds involve ringless voicemail drops that are exempted from FTC and FCC laws and regulations. The technology allows these vendors to directly link to a telephone company’s voicemail server and drop a voicemail onto a customer’s cell phone without it ringing. Messages often come with voicemail scripts, which feature lines that have appeared in promotional mailers, such as, “I have customers looking for a vehicle like the one you are driving.”

The provider claims that its technology is essentially computer- to-computer communication—not a call or a contact between the message provider and the customer. Because a call is never made, the vendors’ promotional materials exclaim that its ringless voicemail technology is excluded from FTC and FCC oversight. This promotion will undoubtedly spark interest among many dealers. It is important, however, that we use caution because the current regulatory landscape is not as clear as has been advertised.

### **Regulators Have Yet to Leave a Message**

At best, it is unclear whether federal regulatory authorities will consider ringless voicemail to be exempt from regulatory oversight and the Telephone Consumer Protection Act (TCPA). This uncertainty is because there remains no definitive regulatory interpretation on whether a ringless voicemail would constitute a call under the TCPA. The TCPA makes it “unlawful for any person within the United States ... to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” 47 U.S.C.A. § 227(b)(1)(A)(iii). Two separate companies that offer the

technology (VoApps, Inc. and All About the Message, LLC) filed petitions for declaratory ruling with the FCC. Both petitions requested that the FCC declare that the delivery of a voice message directly to a voicemail box does not constitute a “call” that falls under the strict requirements of the TCPA. Both companies, however, withdrew their petitions before the FCC ruled on the matter. Neither company explained the reasons or their withdrawal. Presumably, these pre-ruling withdrawals were likely the result of significant opposition on various fronts. For example, the petition filed by All About the Message was strongly opposed by several consumer advocate groups, a few state attorney generals, and a group of U.S. Senators. These opponents asserted that ringless voicemails would circumvent the spirit and purpose of the TCPA to prevent unwanted robocalls and would open the floodgates for companies to place unlimited unwanted calls to consumers.

The petition did have its supporters though, including the Republican National Committee and the U.S. Chamber of Commerce, who argued that ringless technology was not intrusive and that an adverse finding by the FCC would infringe on the First Amendment rights of companies like All About the Message.

### **Without Further Clarification, Use Caution**

We wanted dealers to have this information so that if you are considering using ringless voicemails for marketing, use caution. Our two cents: without further clarification from the FCC, there remains a possibility, if not probability, that in the near future the FCC will consider a ringless message to constitute a call.

“Nothing great in the world has been accomplished without passion.”

— Georg Wilhelm Friedrich Hegel

## Controlled Change

“Disruption” is all the rage in the tech world. For established businesses, disruption is generally bad. It upsets the work force and takes management’s focus from the primary goal – serving customers. Certainly, businesses must change to survive, but slow and steady is the answer. Change is good. Disruption is not.

Dealers are no strangers to change. They evolved from handwritten buyer’s orders and retail installment sale contracts, to machine-printed versions, and now to having integrated systems that automate all paperwork. Disruptors want to quickly break down what has worked in the past, which is not in the best interest of dealers or their employees. While dealers have historically coped with substantial changes in business, they now face challenges like never before.

**What to sell?** For years, this was not a question – four-wheeled, light duty vehicles with internal combustion engines. Most consumers are skeptical of the electrical revolution, with only a small segment preferring electrical propulsion, often only because of expensive government subsidies. The next revolution to disrupt dealers, we’re told, is driverless vehicles.

**Who sells the vehicles?** Traditionally, the answer to this one was easy: dealers do. Today, it is challenged most prominently by manufacturers of electric vehicles. Soon, it may be joined by traditional manufacturers increasingly buying into the future of self-driving appliances on wheels. Under that dream, consumers will not own cars – companies will. Will this leave no reason for dealers to sell them?

**How do you sell?** For years there was no question about how a dealer sold vehicles. A customer may have called, written, or emailed to set up an appointment, but the sale invariably took place at the dealership. Today, we must ask whether everything be done virtually, with the vehicle being dropped off at the customer’s home?

**Do dealers sell?** For years, there was no issue that transactions took place at dealerships. Today, internet brokers would like to make the sale on the internet or through an app. Brick and mortar dealerships would become delivery points or delivery agents.

So, what do dealers do?

**Support dealer trade associations.** National and state dealer trade associations are now more important than ever. The franchise laws passed over the last 60 years incentivize dealers to invest their own capital. Their life’s work should not be at the whim of that franchisor, and state legislators have appreciated the need to protect entrepreneurs through franchise legislation. Just as important are licensing statutes. We have all heard that car issues are the number one source of consumer complaints. Laws have been passed to be sure that those who sell vehicles have a brick and mortar presence so customers who need relief can find them. In addition, dealers are licensed so regulators who wish to discipline dealers can. A dealer’s ability to work with other dealers to maintain and strengthen legislation to control change depends on national and state trade associations.

**Embrace controlled change.** Change is inevitable, and dealers should embrace it – carefully and intentionally. Investigate before buying a new product or service. Make sure the contract for the product or service will ensure that it will meet certain standards. Nothing lasts forever, but make sure the investment is one that will provide a reasonable return.

**Train personnel.** Dealership personnel develop ingrained habits. The only way for people to understand the change and to adjust to it is to train them, oversee them, and retrain them. The franchised car dealer system has lasted for over a century for a reason—it works. It permits local business people to provide sales, maintenance, and repair services to consumers that OEMs cannot afford and cannot do effectively. The system will survive disruption if dealers are dedicated to it and do the hard work to protect it.

### Submit Your Dealer Story

If you would like to share your story, and have it read by thousands, send your submission to [jmichaels@mlgaplc.com](mailto:jmichaels@mlgaplc.com)

# Damage Vehicle Exposure

Damaged vehicles can come into your dealership inventory in many ways. They can be damaged in transport, during test drives, on loan or rental to customers, or through staff error. Damage disclosure can significantly limit your liability.

Most states have statutes that permit a dealer to reject new inventory that is delivered by transport arranged by the manufacturer. These statutes are usually found in state franchise laws and often require damage to be a certain percentage of MSRP to qualify for this rejection. In cases where the dealer accepts the vehicle, most of these laws require the dealer to disclose the damage, even if repaired, to a potential buyer.

Your state could also have statutory disclosure requirements for customers trading in vehicles with prior damage or for a dealer selling a vehicle with repaired damage. There are often forms provided by your state's Motor Vehicle Division or provided by your state's incarnation of the NADA.

The most significant source of liability typically arises under your state's version of the Consumer Protection Act. Failure to disclose damage or repairs to a vehicle is often a UDAAP violation. Dealers can be accused of misrepresenting the certification, qualities or grade of goods; failing to advertise that goods are reconditioned or blemished; or misrepresenting that repairs, alterations, or modifications have been performed. Importantly, CPA violations result in minimum damage awards as well as arbitrary attorney-fee provisions. State CPAs can also provide for government agencies to investigate your dealership's practices.

## Here's how to help your dealers minimize your exposure:

- 1. Detect damage** – Ensure that your trade evaluation forms require customers to disclose vehicle accidents and repairs. Use automotive history reports at the time a vehicle comes into your inventory AND prior to selling to ensure up-to-date information. Service departments should be examining the vehicles for existing damage and repaired damage at check in.
- 2. Notate damage** – Notate damage where it is visible to sales staff and management, such as on pricing screens in your AMS system. If your dealer is still using folders for vehicles, placing a copy of an RO or completed damage disclosure form in the file is also helpful.
- 3. Train to sell damage** - Dealers should train their staff to present the benefits of damage repaired with OEM parts by manufacturer certified mechanics rather than minimizing it. Be sure F&I managers are trained on how/when to use disclosure documents. Due diligence can go a long way in minimizing liability.

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