

Automated Driving in Germany and USA

Libralex Meeting, Montreal
September, 29 / 2018

Dr. Matthias Terbach

Büsing, Müffelman & Theye, Berlin

Legal Background

- I. Regulatory Framework
 - II. Privacy and Data Economy
 - III. Liability Law
-

I. Regulatory Framework

Levels of Automation according to SEA International

	driver	automation				
	Driver permanently executes longitudinal AND transverse movements.	Driver permanently executes longitudinal OR transverse movements.	Driver has to permanently watch the system.	No permanent monitoring Driver has to be able to take over.	No driver in specific cases.	No driver needed.
				System handles specific traffic situations and requests driver to take over within reasonable time.	System can automatically handle specific traffic situations.	System can automatically handle any situation.
	No automated driving system	System takes over one of the functions	System takes over longitudinal or transverse movements in specific traffic situations.			
	Level 0	Level 1	Level 2	Level 3	Level 4	Level 5
	driver only	assisted	partially automated	highly automated	fully automated	driverless/ autonomous

Vienna Convention on Road Traffic (VCRT)



USA and Canada are not members of VCRT

before 2016: „Each driver has to control his vehicle permanently “

after 2016: „...the driver must remain alert and be ready to take over control or deactivate the automatic system“

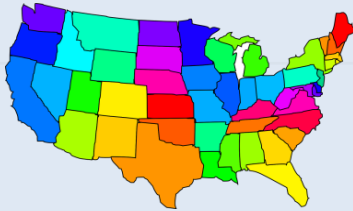
Germany 2017 German Road Traffic Act (StVG)

§ 1 b Rights and responsibilities of the driver when using highly or fully automated driving functions

- (1) The driver of a vehicle being controlled by highly or fully automated driving functions (...) may turn away his attention from traffic and vehicle control; he must **remain sufficiently responsive** to fulfil the duty under para (2) at any time.
- (2) The driver is obliged to immediately take over vehicle control,
 1. if the highly or fully automated system requests him to do so or
 2. if he realizes or **has - on account of obvious circumstances - to , realize that the conditions for the intended use of the highly or fully automated driving functions do no longer exist.**

**... highly or fully
automated...**

**... remain sufficiently
responsive...**



State Law

- **Road Traffic Law (Regulatory Law)**
- **Law on product approval**
- Insurance Law
- Liability Law



Federal Law

- **Federal Motor Vehicle Safety Standards (FMVSS)**
- National Highway Traffic Safety Administration (NHTSA)
- **NHTSA-Policy**
- SELF DRIVE Act 2017 / AV START Act



FEDERAL LAW: FMVSS

- **FMVSS** are **technical regulations/safety standards** (see UN/ECE regulations)
- **Self-certification** of the OEM
- No regulation which would prevent /block **HAV (level 3-5)**
- FMVSS assumes the presence of a „**driver**“ in many cases



NHTSA

NHTSA's Letter in Response to Google's Request:

- **Fact:** No steering wheel in the **Google Car**
- **NHTSA:** In this case the **assistance system** might be considered to be a „**driver**“
- The assistance system must comply with **standards of regulatory law** (esp. Rules of conduct). This needs to be proven by testings.



FEDERAL AUTOMATED VEHICLES POLICY

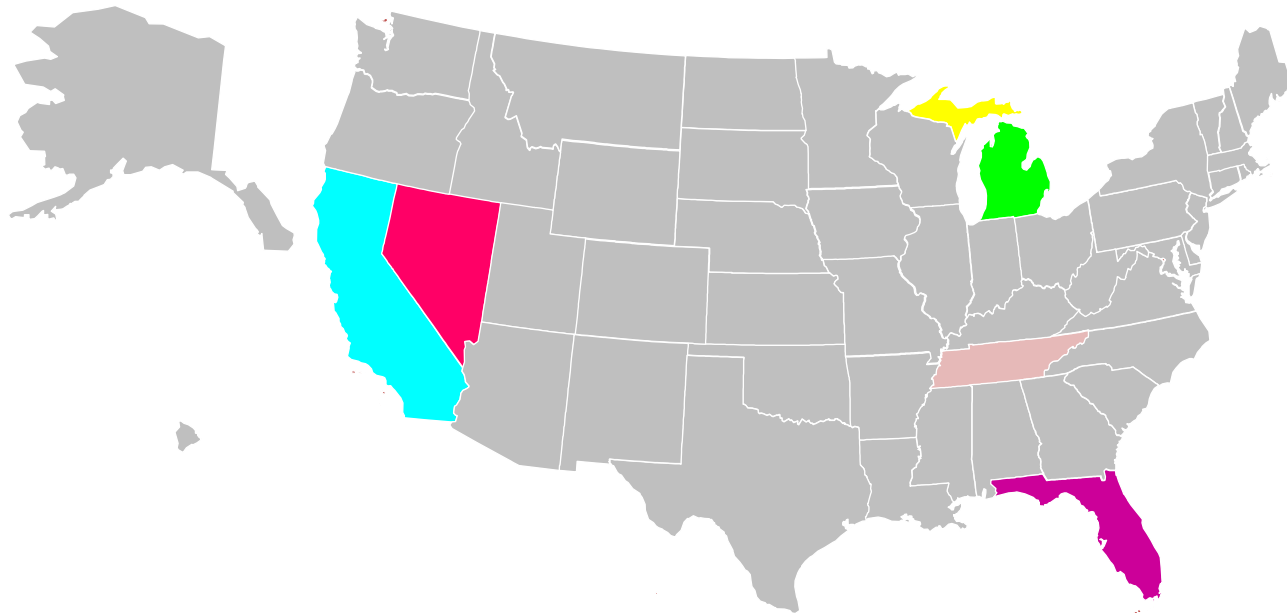
- **Best Practices** for development and testing
- Contents of a **Safety Assessment:**
 - Vehicle safety (Crash-Tests etc.)
 - Fall-back solutions (takeover by driver/system)
 - HMI functionality (Driver Distraction)
 - Privacy
 - IT-security
 - Ethical issues
- **Model State Policy**
 - Suggestion for a standardization of the legal situation between the federal states



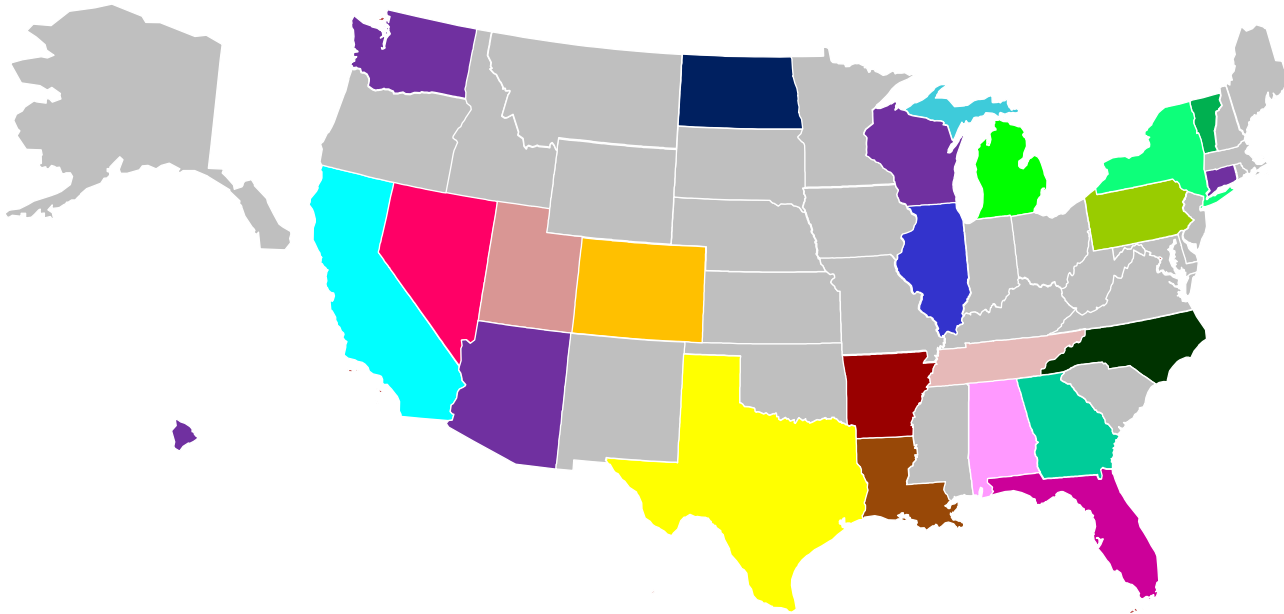
U.S. Department
of Transportation



STATE LAW ON HAV (2018)



STATE LAW ON HAV (2018)



- 33 States have passed legislation on automated driving (Status: Februar 2018)
- Most of them are regulations for **Testing**
- The laws are mostly addressed to **Producer & Manufacturer**

STATE LAW ON HAV - TESTING



CA, NV, FL:

- Security Deposit
\$ 5 Mio.
- **Permit for the Test Vehicle Operator** is required

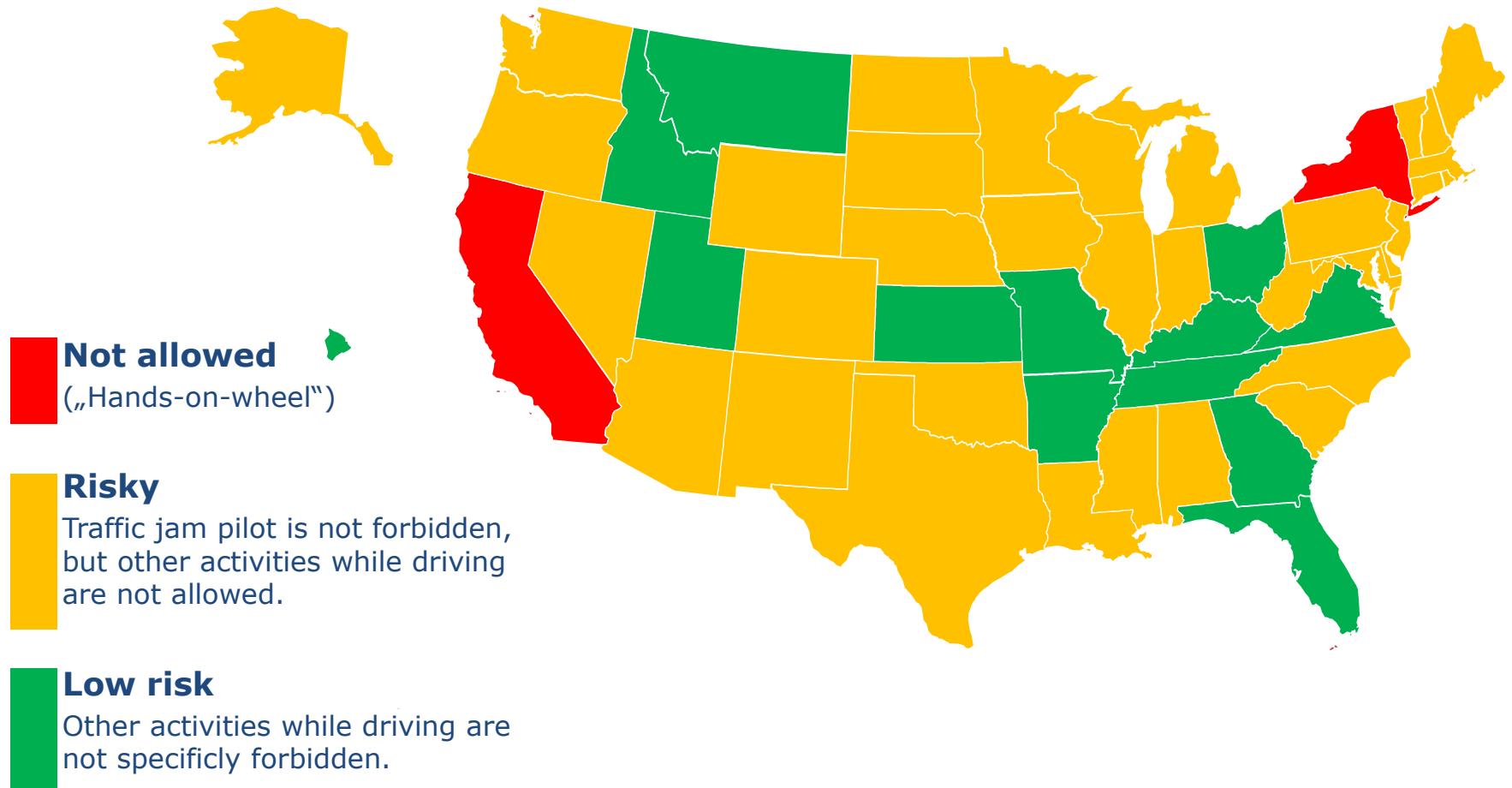
MI:

- Special **registration certificate** is required

NV:

- **2 registered driver** have to be in the car

SYSTEMS OF SAE LEVEL 3 ENABLED? EXAMPLE: TRAFFIC JAM PILOT





Federal Level

- National policy and regulatory framework
- Compliance with safety standards
- International technology harmonisation
- Emission requirements



Provincial / Territorial Level

- Create regulatory framework for testing AV
- Vehicle safety requirements
- Vehicle registration and driver licensing
- Plan AV infrastructure

Ontario – the only Province that issues Permits for HAV testing on public roads (Status 2017).

- Ontario is wants to become leading in the field of HAVs
- 2017: Launch of the **Autonomous Vehicle Innovation Network (AVIN)** \$80 million over five years
- AVIN
 - Located in Straford, Ontario
 - Test Area
 - - 150 companies and organisations in AV industry
 - 10 000 employees



II.

Privacy and Data Economy

European Data Privacy vs. US Data Privacy



Basic principle:
prohibited



Exceptions:
- Consent
- Legal permission



Basic principle:
permitted

Exceptions:
Sectorial regulations

AUTOMOTIVE “PRIVACY PRINCIPLES”

Self-regulation:



FTC



Federal Trade Commission
- supervisory authority -



AUTO ALLIANCE
DRIVING INNOVATION®



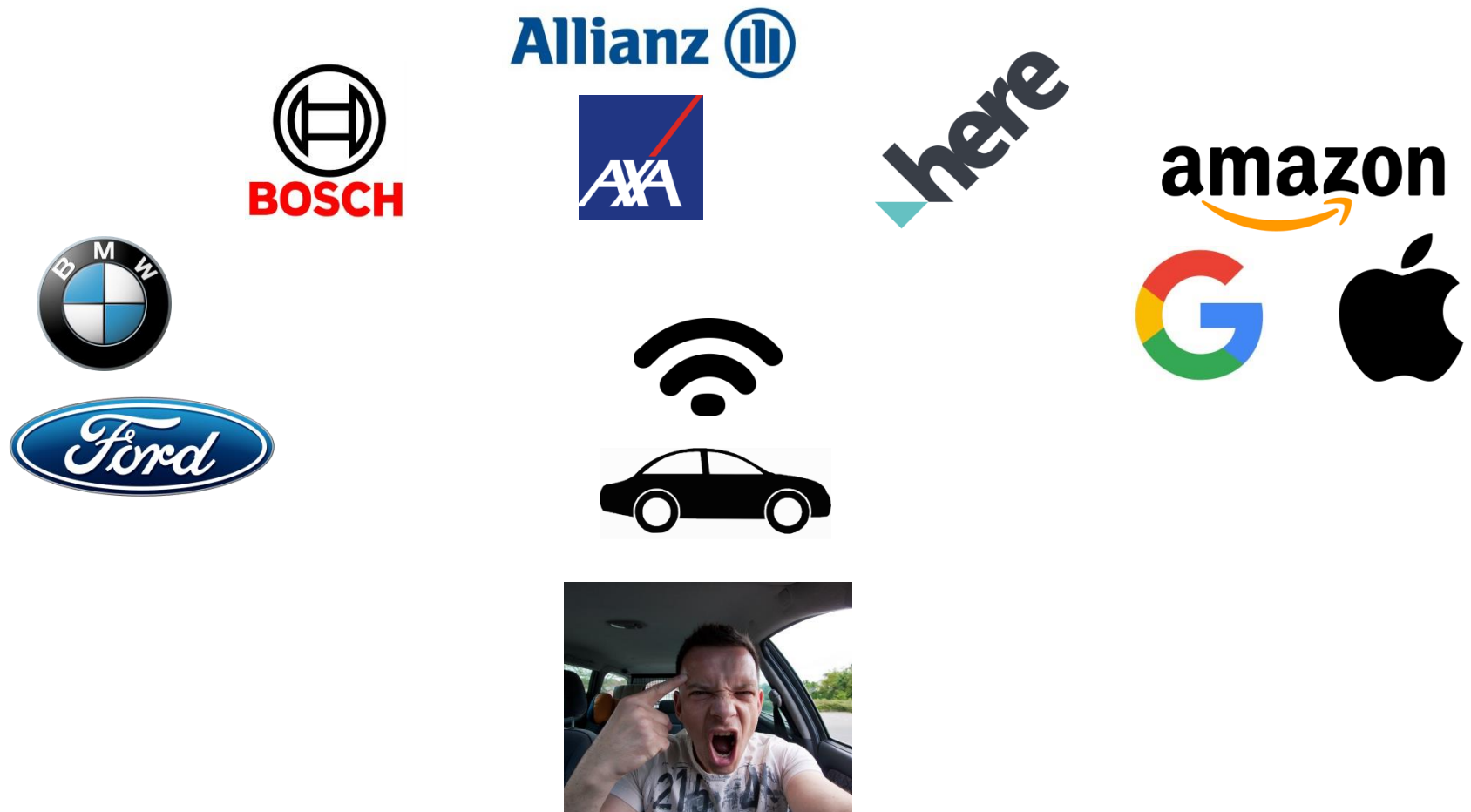
GlobalAutomakers



- ☐ transparency
- ☐ freedom of choice
- ☐ purpose
- ☐ necessity
- ☐ data security
- ☐ data integrity
- ☐ responsibility



DATA ECONOMY





IS THERE A DATA PROPERTY RIGHT?



GDPR



E-Privacy
Regulation



Business
Information
Protection Directive



Database Right
§ 87b German
Copyright Act



Copyright Law /
Patent Law



Civil Law
(ownership)



IS THERE A DATA PROPERTY RIGHT?



European Commission Note, January 2017:

- Technical (anonymized) data shall be legally assigned to a **"Data producer"** (e.g. the owner of the vehicle)
- The data producer shall have **exclusive rights**
- Access shall be granted according to FRAND **conditions**



DATA ECONOMY IN USA



Event Data Recorder (EDR)

DRIVER PRIVACY ACT (2015):

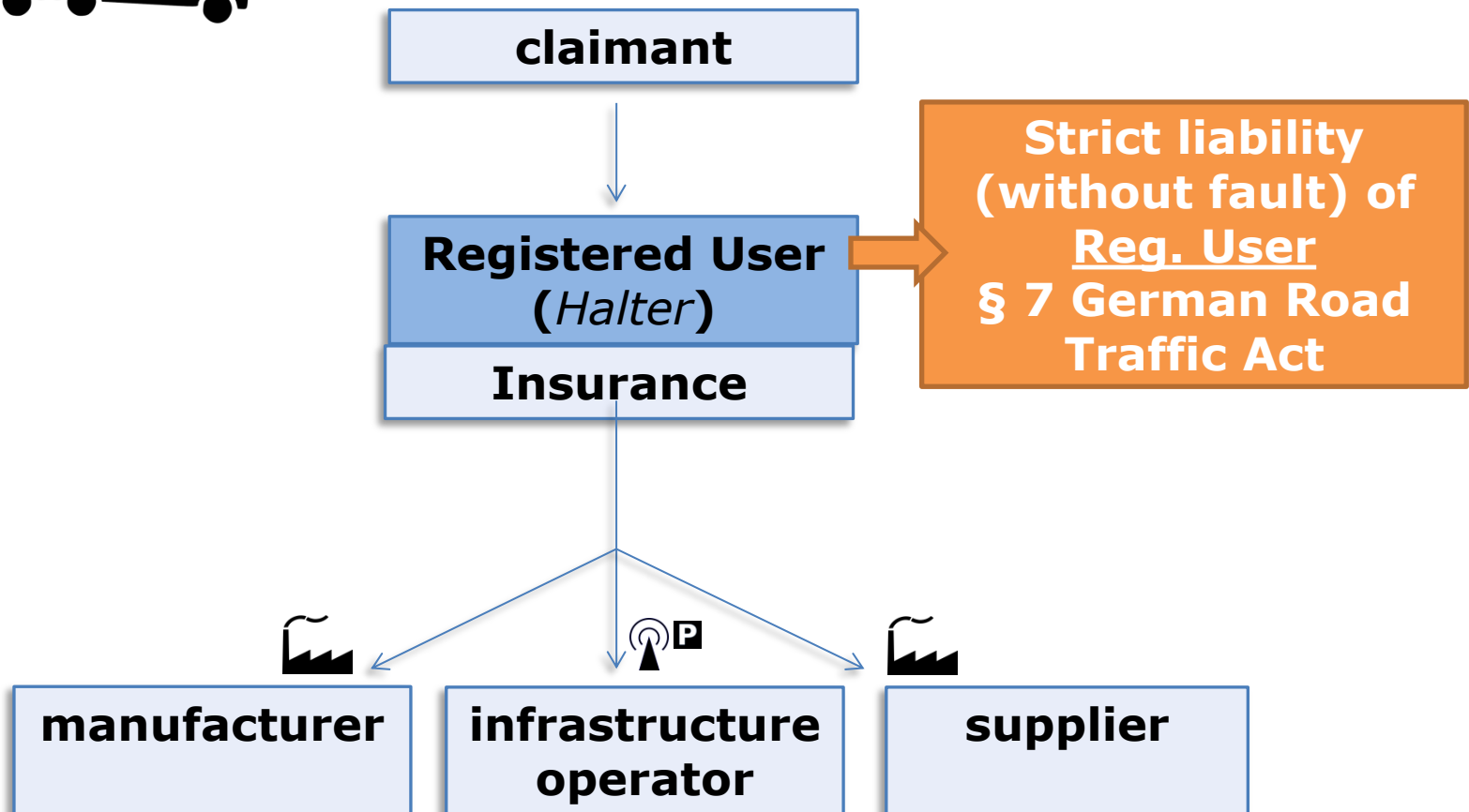
- “**Data owner**” = owner of the vehicle / lessee
- “Data owner”s **concent** is required for data processing by third parties (e.g. garages)

III.

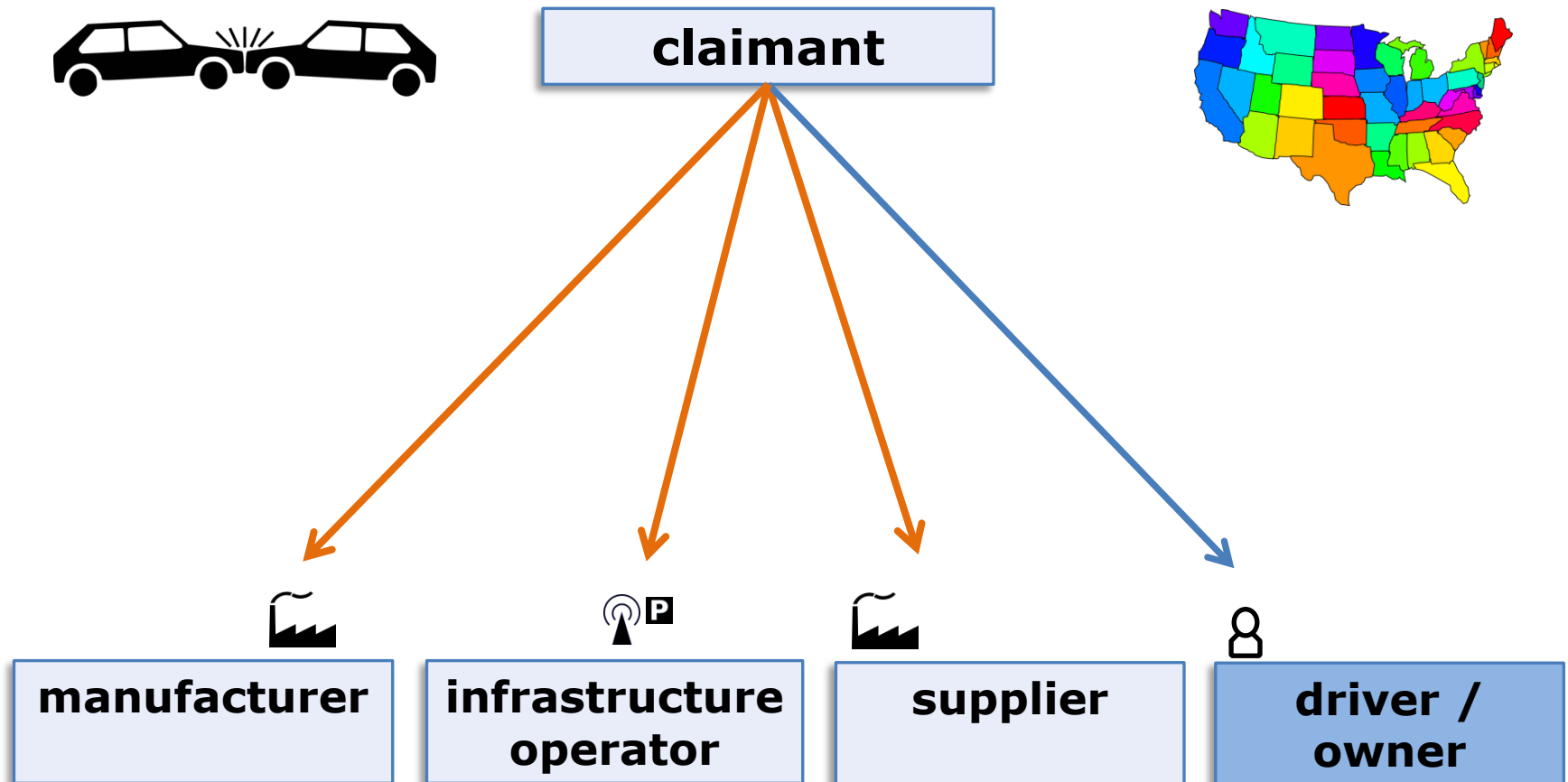
Liability Law



LAWSUIT IN GERMANY



LAWSUIT IN USA



LIABILITY OF MANUFACTURERS IN USA

NV, FL, MI, DC:

- **Laws for limitation of OEM's liability** in case that the automated system was installed by a third party

Thank you for your attention!

**BÜSING
MÜFFELMANN
& THEYE** RECHTSANWÄLTE
UND NOTARE



BMT BÜSING, MÜFFELMANN & THEYE
Rechtsanwälte in Partnerschaft mbB und Notare

Dr. Matthias Terbach

T +49 30 88 03 04-24

E terbach@bmt.eu