

Drawing the line between public safety and personal information: The Textalyzer

Since their invention in 1973, cell phones have rapidly developed from the most basic mobile speaking devices into the sophisticated smart phones that live in our pockets today. The modern smartphone is a capable device that no longer just receives phone calls but instantly sends and receives text messages and video calls, along with housing a wide variety of social media apps all in one place. One in three deaths and one in three serious injuries on the roads in Manitoba are caused by distracted driving¹. In 2018, Manitoba cracked down on distracted drivers in the province by releasing new penalties. First time offenders of distracted driving receive a three-day suspension, and repeat offenders receive a seven-day suspension for subsequent offences². Along with the suspension drivers receive a \$672 fine and move down the Driver Safety Rating scale five notches³. So in addition to the fine next time their license is due convicted driver's wallets also suffer with a higher fee to pay. With cellphones and electronic devices being improved and advanced on a daily basis a new form of technology has been released to track the use of handheld electronic devices behind the wheel. The device, known as the Textalyzer, could revolutionize the ability of police to crack down on distracted driving, providing the ability to track activity on cell phones⁴. This information could increase charges while also increasing safety on the roads and preventing future offences with drivers being aware

¹ "Distracted driving suspensions"(last accessed: November 24, 2019), online: *Manitoba Public Insurance* <<https://www.mpi.mb.ca/pages/distracted-driving-suspensions.aspx>> [<https://perma.cc/262G-D52V>].

² *Ibid.*

³ *Ibid.*

⁴ Christy Somos, "Privacy, safety advocates clash over 'Textalyzer' test for distracted drivers" (November 4, 2019), online: *CTV News* <<https://www.ctvnews.ca/sci-tech/privacy-safety-advocates-clash-over-textalyzer-test-for-distracted-drivers-1.4669455>> [<https://perma.cc/J3JN-R9KY>].

of the technology that could catch them red handed. However, how much personal information does the Textalyzer have access to and at what cost to privacy does that access hold?

The Textalyzer is a device designed by the tech company Cellebrite which plugs into the cellphone of those suspected of distracted driving and releases a minute by minute report of the use of the cellphone⁵. This access will provide knowledge on when the device was last used and if the user was on their phone whilst behind the wheel. This data could revolutionize texting and driving convictions and provide police officers with the ability to prove a distracted driving offence on the spot; getting rid of the need to access drivers cell phone records through court orders. This will not only reduce the traffic in the judicial system for minor offences, but also speed up the process for texting and driving cases that involved serious consequences by already having the vital data needed to prove the case.

The Textalyzer device has already had application in distracted driving cases outside of Canada, for example the case study provided by Cellebrite on its website. The case which occurred in England, examines a distracted driving case of a football manager who was driving in inclement weather, over the recommended speed all whilst using his cell phone to send and receive messages on WhatsApp⁶. The driver lost control of his vehicle and swerved onto the hard shoulder and later collided with a rock⁷. After hitting the rock, the vehicle struck two highway workers who were working on the road⁸. The crash left one highway worker dead at the scene, while the other survived but was left paralyzed from the waist down⁹. The Textalyzer was used

⁵ Jeff Rossen and Lindsey Bomnin, "Rossen Reports: How the 'textalyzer' can tell if you were texting while driving" (June 21, 2017), online: *Today* < <https://www.today.com/money/rossen-reports-how-textalyzer-can-tell-if-you-were-texting-t112973> > [<https://perma.cc/D5TS-NAES>].

⁶ "The fatal consequences of texting while driving" (last accessed: November 24, 2019), online (pdf): *Cellebrite* < https://www.cellebrite.com/en/thanks/?post_id=31864 > [<https://perma.cc/ZZ8B-5ZDS>]

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

to analyze the phone and the driver of the vehicle complied by giving his passcode. The data retrieved revealed that the manager had been sending and receiving texts up to 96 seconds before the accident occurred¹⁰. This data aided in the conviction of the driver, and provided the information needed to convict without needing a court order to obtain it.

While there is no doubt, the Textalyzer does intrude into the individual's privacy whose device is being examined, distracted driving is an offence, and due to the operation of a motor vehicle it poses a serious risk to general safety of others. It claims it has limited access to personal information the phone holds, however, for example in the case where the device was used in England it had access to the content of the messages the driver sent before the incident¹¹. This can be seen in the study when it states, "He then sent Clough a video of a goal he had scored while playing for Bolton 96 seconds before the crash."¹². This to me is personal information that should not be accessed, it is an invasion into the privacy of users without a doubt by having access to message content. Before the device is put into use, I believe this is an issue that should be addressed. Developments should be made however, when contrasted with an offence such as driving under the influence where police officers can take instant samples of the driver's breath to establish their guilt. The Textalyzer, as the name suggests is comparable to the breathalyzer. Those who have been pulled over for the offence or have been involved in an accident have caused serious harm or posed risk to others, as such I believe that this measure is appropriate. It gives law enforcement access to information that could prove vital for convictions without going through the court system.

¹⁰*Ibid.*

¹¹*Ibid.*

¹²*Ibid.*

Distracted driving is not a new issue. It is not one that is going to simply go away with developments in technology, the temptation is only set to increase for drivers to access their mobile devices whilst operating a motor vehicle. The temptation to pick up a cell phone when you receive that text or snapchat you've been waiting for is huge, especially on long highway drives. However, behind the wheel of a vehicle a split second can change your life, regardless of how good of a driver you are. Knowing a device like this exists, and should it come into effect in Manitoba would deter me from using my cell phone whilst behind the wheel. Implementation of such technology increases the chance of being caught red-handed behind the wheel and the likelihood of receiving a charge.

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