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Toyota Fights to Limit Access to 'Crown Jewels'

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By DIONNE SEARCEY

A legal battle involving security measures typically reserved for classified government secrets has been brewing in an unlikely spot: the sprawling consumer litigation over Toyota Motor Corp.'s sudden acceleration incidents.

The fight centers on access to Toyota's source code, the software that controls sophisticated engine management and other electronics in its vehicles. Plaintiffs' attorneys believe the code might contain evidence that could bolster their cases.

Computer on Wheels

Automotive electronics increasingly control vital functions

Main computer:

Software controls electronics and collects information from various sensors.

Anti-Lock Brakes:

Sense a decrease in wheel rotation and pulses the brakes to help prevent skidding.

Door modules:

Control keyless entry and electric windows.

Transmission module

Controls electronic transmission switches.

Throttle:

Electronic module controls gasoline delivery to fuel injectors.

Engine module:

Controls engine temperature, adjusts spark to plugs, monitors oxygen sensors.

The Japanese auto maker has been fighting to restrict access to the software, saying it needs to protect what it calls the "crown jewel" of its global enterprise.

Toyota said the attorneys should only be allowed to view parts of the code in a highly secure room, the likes of which is used by members of Congress or in trials against terrorists and spies for viewing classified information.

Toyota is also demanding attorneys submit to iris and palm scans in order to know who is viewing the software, and all software-related documents be tagged with chip-based tracking tags, known as radio frequency identification technology, to avoid improper dissemination.

A lead plaintiffs' attorney, Donald Slavik, said some of the company's demands for accessing the information have been "beyond anything remotely reasonable." But on Monday, Mr. Slavik said a compromise is so close that a hearing on the issues was postponed to March 25.

"We don't disagree there should be security," he said. "We think we've come to



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Associated Press

A U.S. study cleared electronics in sudden acceleration cases. Above, a 2009 Texas accident involved a Toyota.

a reasonable agreement." A Toyota spokesman confirmed the delay and said negotiations continue.

The measures "are necessary to ensure that portions of this valuable asset do not make their way beyond the walls of any secure

facility," Toyota said in a recent court filing. Joel Smith, the attorney representing Toyota in the matter, added: "All product manufacturers who have controls that are based on source code would have virtually the same reaction."

Attorneys on both sides have been working around the clock to iron out final security measures. The attorneys who have filed hundreds of suits against Toyota want their own engineers to view the auto maker's vehicle source code—hundreds of lines of software—because they think it might reveal electronic flaws that caused some Toyota vehicles to hurtle out of control. The incidents led the company to recall millions of vehicles across the globe beginning in 2009.

Plaintiffs could see a bigger payday in court if attorneys can prove there was a mystery defect that Toyota has yet to identify and correct, according to legal experts and lawyers tied to the case.

The source code demands are part of the pretrial maneuvering to federal suits seeking payments for injuries and deaths caused in sudden acceleration-related accidents as well as economic losses endured by Toyota vehicle owners as fear spread in the wake of the incidents.

Toyota has blamed some of the acceleration incidents on faulty floor mats and sticking pedals.

A government study recently said electronics were not to blame and instead pointed to driver error as the likely culprit in most incidents.

Plaintiffs' attorneys said the government study didn't analyze enough of the source code and is biased because it was produced in cooperation with Toyota. Toyota said plaintiffs were citing out of context issues in the study and that "the fact remains that the government's comprehensive review of Toyota's source code found no electronic causes of [unintended acceleration] in Toyota vehicles."

The security measures being sought by Toyota are more akin to competitors locked in fierce trade secret or other intellectual property battles, legal experts said.

Security is so much a staple of those types of court fights that some courts have issued generic "sample protective orders," said Chicago intellectual property attorney Jason C. White. But the level of security Toyota is asking for is highly unusual, the legal experts said.

"I haven't seen many cases go to such extraordinary lengths" as the Toyota case, said Frank Pasquale, a Seton Hall University School of Law visiting professor and former intellectual property attorney. "But I think this is the wave of the future. You've got to have more and more professionals involved to understand the source code."

Plaintiffs have hired 10 engineers to review Toyota's code. Toyota has asked that plaintiffs' engineers link to its servers to access the code to ensure it isn't being altered as it is reviewed. Toyota also had wanted them to view only a few lines of code at a time and to erase them from their computers at the end of every day.

The plaintiffs have agreed to some of Toyota's demands for security, such as using a secure room to avoid being accused of stealing code. Final security details for viewing the code are likely to be kept from the public, Mr. Slavik said.

"What we're going to be doing is something akin to crash testing a car. You need the whole car," Mr. Slavik said. Toyota, he said, initially was advocating a method akin to removing "the fender and throw[ing] it against a wall."

There's one fact concerning security that both sides have agreed on from the start: the bolstered measures are likely to increase the cost of an already expensive case that involves translating 78,000 documents from Japanese. Labeling source-code related papers with RFID

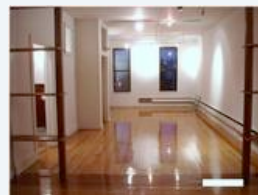
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tags alone will cost about \$1 a sheet, attorneys said.

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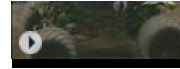
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