

Smile! You May Be on a Dashboard Cam

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By now, most dealers are aware of the need to safeguard data stored in in-car tech. Just like it's important to remember that cars can store data, it's also important to remember that cars can record data. The ability of cars to *record* data is perhaps nowhere as sensitive as in the case of dashboard cameras, which can record both video and audio, including when a car is in your service bay.

When you operate a vehicle servicing operation, you have responsibilities to protect your dealership, your employees, and your customers. When a car pulls in for servicing, a dashcam could be recording the movements and conversations of anyone near the recorder. You think you may easily notice a camera mounted to the dashboard, but remember that technology is evolving and that cameras—or other recording devices—may be integrated into cars or may simply be less obvious. These cameras could record not only your employees but also your customers or other visitors to your shop, who could take a call from their spouse, partner, doctor, or bank and may have no idea they are being recorded.

It is important to consider the issues surrounding dashcams and set a policy about them at your dealership. You should seek input from your counsel because your policy may involve understanding your local law and your particular facts. It may also depend on your desired business approach. There are several options, like telling customers they must turn off cameras or warning anyone entering the bay area that there may be cameras recording them, but there is no one-size-fits-all approach.

In considering your policy, state recording consent laws could come into play, along with various wiretapping or eavesdropping laws. In particular, certain states require that both parties to an oral conversation give consent to being recorded. It's possible that you and your employees may know that there is a live dashcam in the service bay, but others walking past the car may have no idea, which could raise consent issues for you and the car owner. As a result, you may want to require that customers turn off or otherwise disable recording while in the shop. You should also think through what you permit your employees to do if a customer refuses, as disabling a dashcam yourself—especially if the owner refuses to disconnect it—could raise other issues. Further, if you're dealing with a warranty repair, you may not be in a position to decline service.

Instead, you might choose to permit dashcams to run while in the shop, communicating to your customers that you have nothing to hide. Remember that, in doing so, you could

be allowing the creation of evidence that could be used in a lawsuit, either for you or against you. If you allow recording, you'll want to make sure your employees understand this fact and that there is the possibility that they could be recorded.

In any case, it probably would be a good idea to add signage to any entrance to the bay area, warning your employees, customers, or anyone else that there may be a dashcam running in a car. It might be prudent to give this notice even if you prohibit live cameras and think you're always successful in getting car owners to turn their cameras off because you can never be sure that every camera has actually been disabled.

For franchise dealers, your manufacturer may also have a say, particularly because it may have intellectual property it wants to protect. This fact may play into your policy decision.

Once you decide on your approach, you will want to document it in a policy, laying out any laws in play and exactly how you will handle various situations. You also will need to make sure your employees, contractors, and anyone else you regularly have on your property understand the issues and what they are required or permitted to do in each situation. Finally, if you prohibit live dashcams in the shop, it might be a good idea to include notice of this prohibition on your work order and make sure you inform customers of the prohibition before they agree to servicing.

Again, there are no hard and fast rules for dealers, and you should listen and be responsive to any concerns raised by employees or customers. Privacy issues are complex and always evolving, but your counsel will be critical in helping you navigate the legal risks.

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