



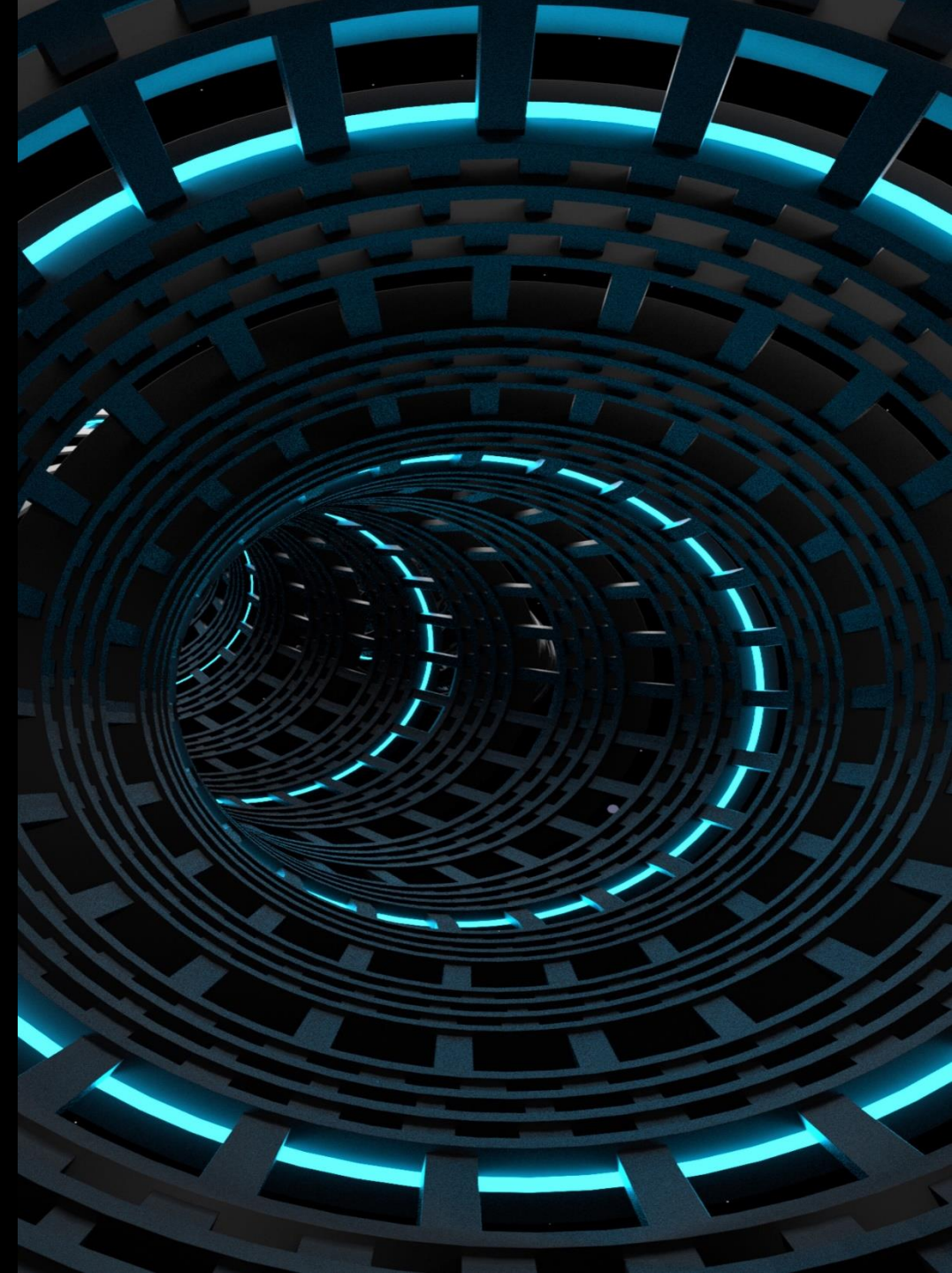
Digital Retailing Before, During, and After COVID-19

*Future of Automotive Return to
Business Mini Series*

June 4, 2020

Seyfarth Shaw LLP

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Speakers



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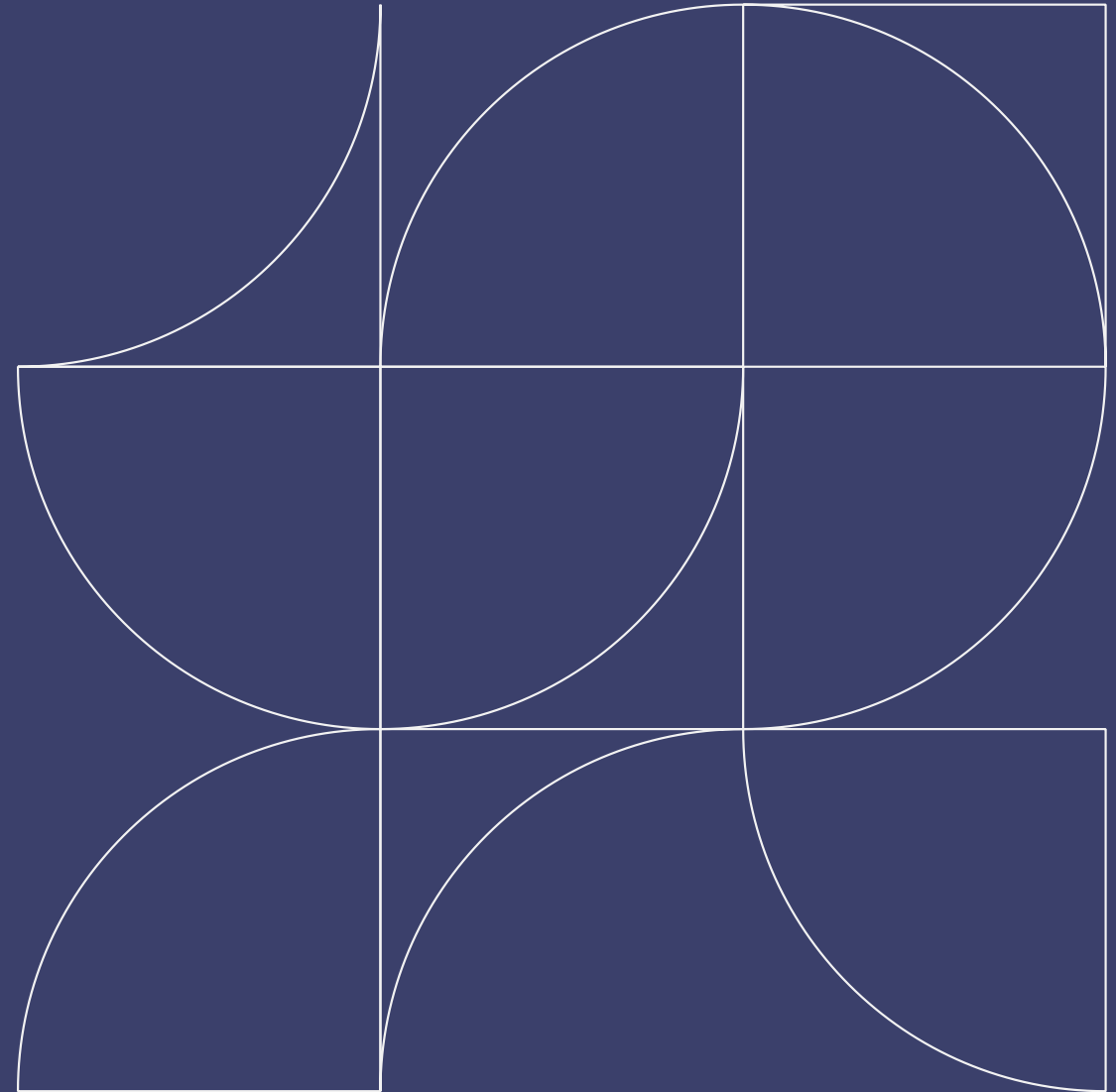


Alison K. Eggers
Franchise & Distribution
Partner
BOSTON

Agenda

- What Is Digital Retailing?
- Digital Retailing Is Here to Stay
- Recent Guidance for Electronic Transactions
- The Rights of OEMs in Digital Advertising

What is Digital Retailing?



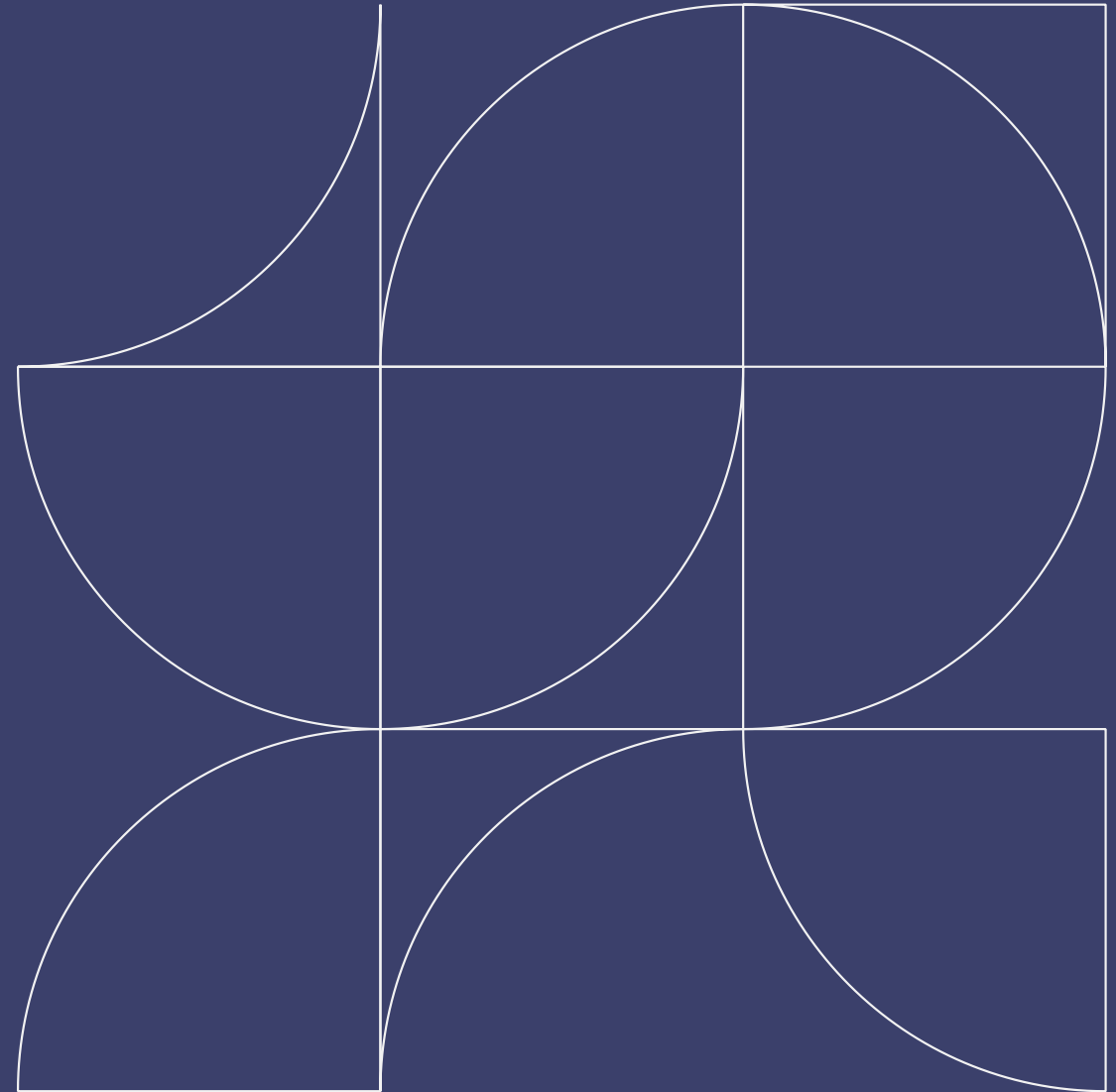
Reaching Customers

- Broad range of ways for OEMs and dealers to reach consumers online
 - Robust online presence
 - Store locators
 - In-stock inventory browsing
 - Chat functions
 - Appointment scheduling
 - Configurators / lead generators

Making the Sale

- Digital retailing has increasingly grown to cover some or all of the purchase process.
 - Paperless in-store experience
 - Blend of online and in-store experiences
 - Fully digital experience with the only physical contact at delivery
- There are many gradations between these steps and each can be tailored to the needs of the brand, the market, and the customer.

Digital Retailing Is Here to Stay



Consumer Preference for Digital Retail

- Consumers were expressing an increasing preference for online-only vehicle shopping and sales even before COVID-19:
 - In 2019, 70% of car buyers said they would likely configure a payment online.
 - 60% said they would configure a payment and provide contact information.
 - More than half said they would configure a payment and start the credit process online.
- Mike Jackson, acting CEO of AutoNation, recently stated in an interview that during the COVID-19 pandemic, 40+% of transactions have been online.
- COVID-19 is likely to sharpen these preferences.
 - In a recent AutoTrader survey, 2/3 shoppers said they were more likely to buy a vehicle completely online.
 - 62% said they were more likely to complete some steps of the purchase process online because of COVID-19.

Boom in Digital Retailing Good for Dealers

- According to a recent NADA survey:
 - 91% of dealers surveyed will use or continue to use digital retailing after COVID-19.
 - Dealers who identified as having a digital retailing capability reported that their GPPV increased versus dealers who did not.
 - Average number of units delivered per salesperson as reported during the survey period doubled, from 9 to 18.
- Digital retailing allows for more efficient use of personnel, one of the big three variable costs dealers can control (advertising, floorplan, personnel).

Facilitated by Two Pieces of Legislation

- Federal E-SIGN Act
 - Provides that e-signatures have the same legal standing as “wet ink” signatures
 - With certain exceptions, a contract may not be denied legal effect simply because it is in electronic form
 - Consent, disclosures, and record retention critically important under E-SIGN Act
- Uniform Electronic Transactions Act (UETA)
 - Adopted by 47 states
 - Three states (IL, NY, WA) have not adopted the Uniform Act, but do recognize e-signatures

Wet Signature Sometimes Still Required

Los Angeles Times

BUSINESS

Car dealers are desperate. Does that make it a good time to buy a vehicle online?

By RUSS MITCHELL | STAFF WRITER

APRIL 8, 2020 | 6:30 AM

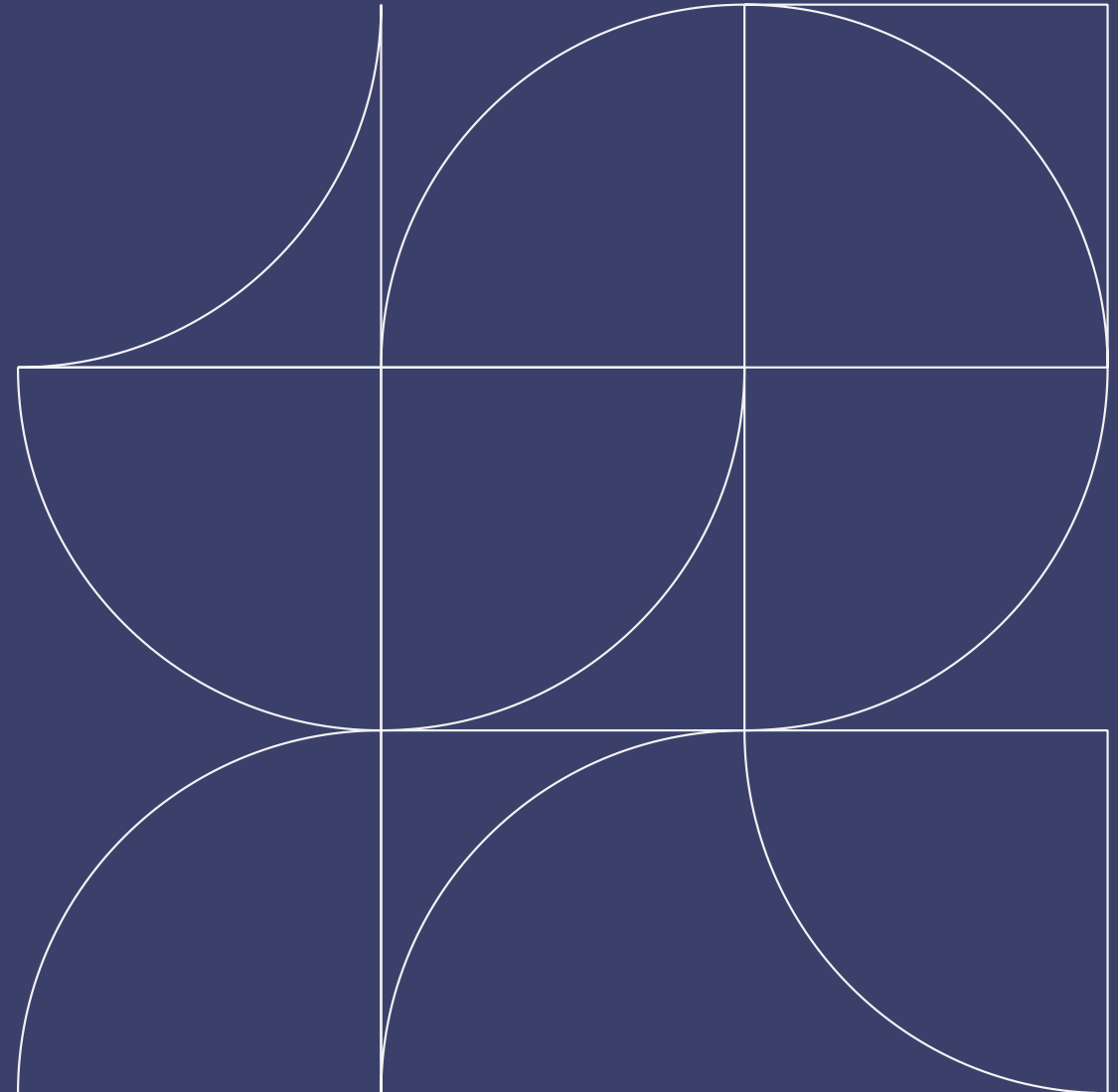


New-car showrooms are closed. Inventory is beyond bloated. Car dealers are bleeding cash and ready to negotiate.

Even with online transactions, delivering the car and finalizing the paperwork involves human interaction and therefore a risk of exposure, however small. Although many car dealers and most banks can accommodate electronic signatures, or can deal with paperwork transactions via FedEx, the state of California remains an analog holdout.

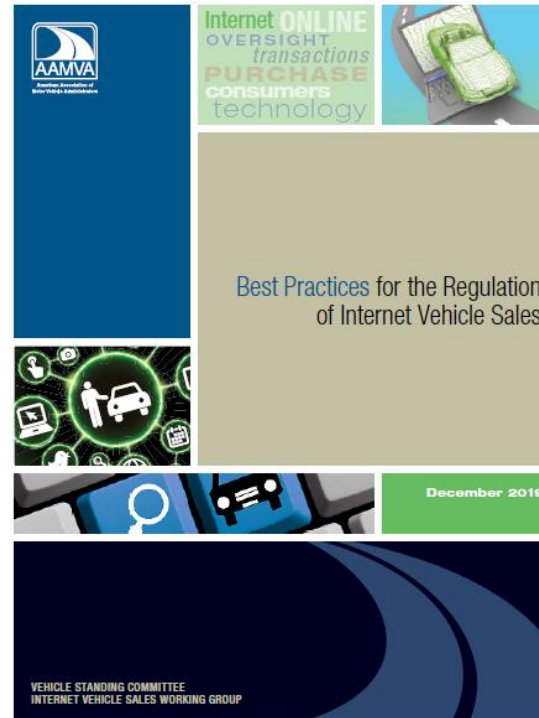
“The Department of Motor Vehicles still requires a wet signature,” Kelman said.

Regulatory Guidance for Electronic Transactions



Recent Guidance from American Association of Motor Vehicle Administrators (AAMVA)

Best Practices for the Regulation of Internet Vehicle Sales (December 2019)



- Recognizes that existing state motor vehicle and licensing statutes contemplate brick-and-mortar locations and fail to address online environment.
- Encourages state-level working groups to conform laws/regulations for online sales.
- Notably excludes OEMs in list of stakeholders.

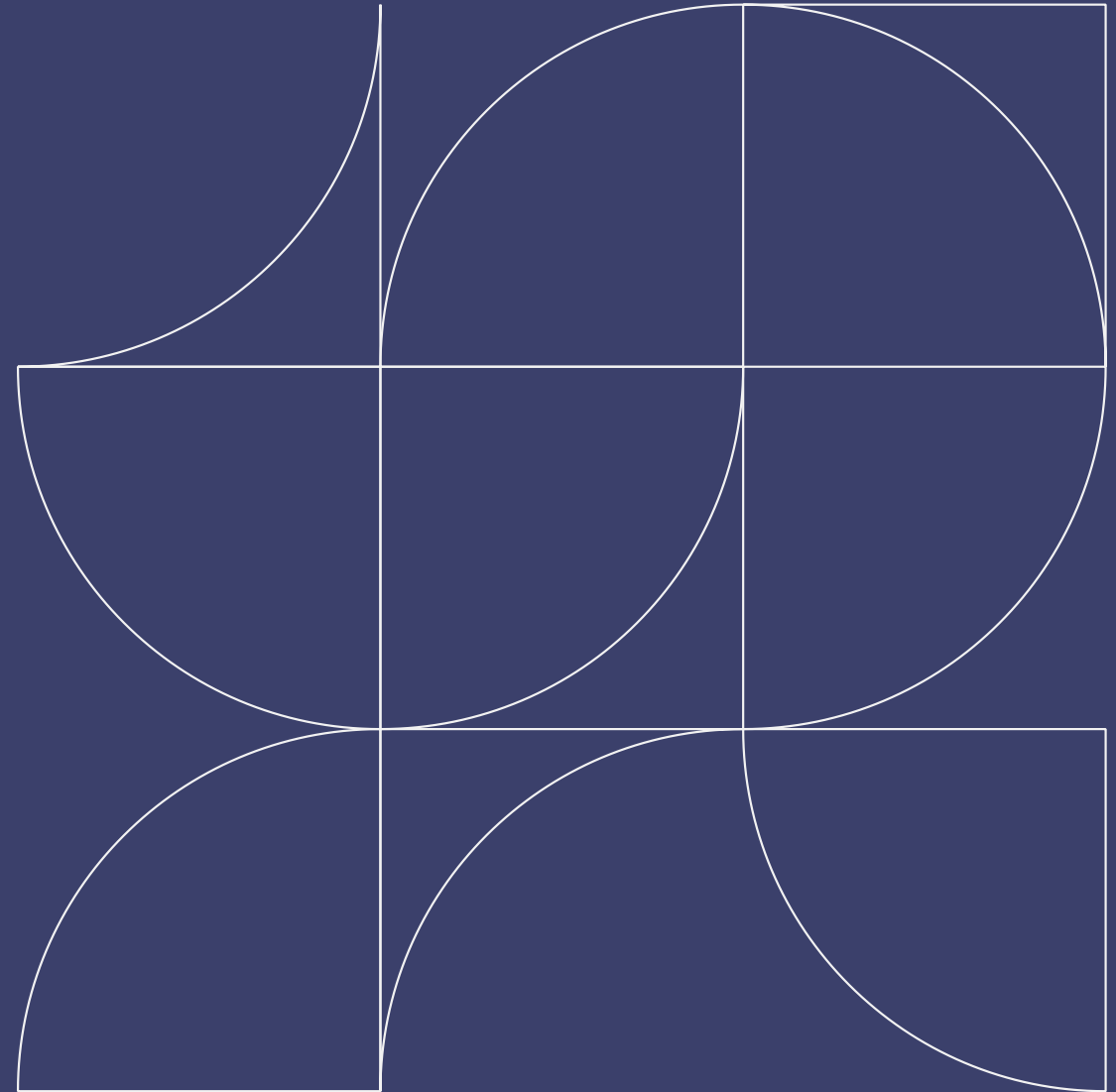
Recent Guidance from AAMVA

E-Odometer Task Force Report (December 2014)



- “Making the Paper Process Electronic” -- “The Task Force . . . believes an electronic process will significantly decrease fraud once e-titles have been implemented on a large scale.”
- NHTSA Final Rule (Sept. 2019) establishes standards under which states may allow for odometer disclosures in electronic format.

Rights of OEMs in Digital Advertising



Trademark Control

- OEMs own the brand trademark. Ownership means OEMs can exercise considerable control over how those marks are used in advertising.
- OEMs can issue digital advertising guidelines governing the use of their marks to:
 - Dictate the look and feel of a website.
 - Provide website templates.
 - Suggest ways in which a dealer's website can interface with the OEM's website.
 - Adopt a Minimum Advertised Price (MAP) policy for online advertising.

Incentivizing Digital Marketing

- Improving digital representation
 - Incentivize dealers to improve their websites
 - Offer assistance to facilitate digital retailing
 - Offer incentives or services to help dealers integrate their websites with an OEM's website
- Incentives or assistance should be made equally available to all dealers.

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<https://www.seyfarth.com/trends/future-of-automotive.html>

<https://www.seyfarth.com/covid-19-resource-center.html>

Next Topic:

Financially Distressed Dealers—COVID-19's Impact on Dealer Networks

Thursday, June 11 @ 1:00 p.m. EST

