REMOTE DISABLEMENT AND THE UNIFORM COMMERCIAL CODE

by

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In 2022, the American Law Institute and the Uniform Law Commission approved important amendments to the Uniform Commercial Code (UCC) to address various technological developments. These notable amendments ushered in novel changes to the UCC. Despite this, the amendments failed to effectively address remote disablement of tangible collateral in consumer transactions. Professor Juliet M. Moringiello's important scholarship in this area documents and evaluates the rise of remote disablement from the 1990s. This essay builds on Professor Moringiello's existing body of scholarship in this area by exploring distinct privacy risks associated with remote disablement technology. The essay concludes by proposing important amendments to the UCC to better address consumer concerns associated with remote disablement.

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I. Introduction

Professor Juliet M. Moringiello's tragic passing in 2025 has generated various well-deserved tributes to her legacy and impact on the legal profession.[1] However, her notable scholarship and dedication to mentorship and teaching were widely recognized long before her death. For instance, in 2021, she was the recipient of the Pennsylvania Bar Association's Edward Sell Business Lawyer Award, which honors recipients' "contributions to the practice of business law . . . through teaching."[2]

In 2025, Professor Moringiello was the recipient of the Association of American Law Schools, Section on Commercial and Consumer Law mentorship award.[3] Professor Moringiello was particularly committed to mentoring new and junior members of the legal profession. I can personally attest to Professor Moringiello's tireless efforts as a mentor. Over the years, Professor Moringiello provided critical advice and detailed and invaluable feedback on my own scholarship.

Beyond her strong commitment to mentorship and teaching, Professor Moringiello was also a renowned academic authority in the consumer law and commercial law fields. She was a four-time recipient of the Widener University Commonwealth Law School's Douglas E. Ray Excellence in Faculty Scholarship Award.[4] The award is "one of the law school's highest academic honors . . . [and] recognizes scholarship that advances the development of the law."[5]

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[1] *See, e.g.*, Neal J. Kling, *In Memoriam*, ACCFL, https://accfl.memberclicks.net/in-memoriam [https://perma.cc/TM4Y-UW57]; Melissa Jacoby, *Juliet Moringiello-One of the Greats*, CREDITSLIPS, https://creditslips.org/2025/03/06/juliet-moringiello-one-of-the-greats/ [https://perma.cc/2ZBW-83KB].

[2] *Widener Associate Dean Juliet Moringiello to Receive PBA Sell Award Recognizing Extraordinary Contributions in Business Law*, PA. BAR ASS'N (Nov. 3, 2021), https://www.pabar.org/site/News-and-Publications/News/News-Releases/2021/Nov/Sell-Award [https://perma.cc/RM8Y-5ERN] [hereinafter, *Widener Associate Dean*].

[3] *Professor Juliet Moringiello Honored with Prestigious AALS Mentorship Award*, WIDENER UNIV. COMMONWEALTH L. SCH. (Jan. 9, 2025), https://commonwealthlaw.widener.edu/current-students/law-school/news/detail/2014 [https://perma.cc/GQ2S-9VA4].

[4] *Personal Profile Juliet M. Moringiello*, WIDENER UNIV. COMMONWEALTH L. SCH., https://commonwealthlawwidener.elsevierpure.com/en/persons/juliet-m-moringiello/ [https://perma.cc/9RDT-LWMA].

[5] *Widener Law Commonwealth Recognizes Faculty and Staff Excellence with Annual*

Further, Professor Moringiello was a recognized leader in law reform in the commercial law field. As a member of the Pennsylvania Bar's Business Association Section, she was instrumental in facilitating amendments to "Pennsylvania's Uniform Commercial Code and the Uniform Voidable Transactions Act."[6] Professor Moringiello served as the vice chair of the drafting committee for the 2022 amendments to the Uniform Commercial Code (UCC) where she advocated for a balanced approach to law reform that considers both business and consumer interests.[7] Additionally, she played an instrumental role in the American Bar Association's Business Law Section.[8] In recognition of her undeniable impact on the bankruptcy law field, she was appointed to "serve on the Federal Judicial Center's Bankruptcy Judge Education Advisory Committee" in 2024.[9]

Given Professor Moringiello's indisputable accomplishments in the legal field, it is with the acute pang of bereavement that we write about her in this memoriam project honoring her life's work. My contribution to this memoriam spotlights one of Professor Moringiello's scholarly accomplishments, *Automating Repossession*.[10] In this work, Professor Moringiello exposes companies' use of electronic remote disablement techniques in consumer goods transactions.[11] She masterfully unpacks the impact of this concerning practice and highlights the distinctions between self-help repossession concepts under Article 9 of the UCC and modern remote disablement techniques.[12] She advocates for UCC amendments to address lenders' use of remote disablement mechanisms.[13]

This essay documents one of Professor Moringiello's important contributions to the field of commercial law by focusing on distinct consumer

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Awards, WIDENER UNIV. COMMONWEALTH L. SCH. (July 9, 2025), https://commonwealthlaw.widener.edu/current-students/law-chool/news/detail/2049/ [https://perma.cc/9SQQ-DXVG].

[6] *Widener Associate Dean*, *supra* note 2.

[7] Richard G. Paszkiet, *In Remembrance of Juliet M. Moringiello: A BLS Member Who Left a Radiant Legacy to the Section*, ABA (Oct. 17, 2025), https://www.americanbar.org/groups/business_law/resources/business-law-today/2025-october/in-remembrance-of-juliet-m-moringiello/#:~:text=Her%20remarkable%20life%20ended%20on,passed%20away%20quietly%20from%20cancer [https://perma.cc/G6WF-P69E].

[8] *Id.*

[9] *In Recognition of Her Expertise, Professor Juliet Moringiello Appointed to Prestigious Federal Advisory Committee by Chief Justice Roberts*, WIDENER UNIV. COMMONWEALTH L. SCH. (July 3, 2024), https://commonwealthlaw.widener.edu/current-students/law-school/news/detail/1983/ [https://perma.cc/ZR8Z-K5VC].

[10] Juliet M. Moringiello, *Automating Repossession*, 22 NEV. L.J. 563, 568 (2022).

[11] *Id.* at 568–75.

[12] *Id.* at 567.

[13] *Id.* at 600–03.

concerns associated with remote disablements. This essay builds on Professor Moringiello's existing body of scholarship in this area by exploring the notable privacy risks associated with remote disablement technology. The essay concludes by joining Professor Moringiello's earlier calls for important amendments to the UCC to better address consumer concerns about remote disablement.

II. Remote Disablement in Practice

As Professor Moringiello observes, vehicle lenders began using remote disablement as a remedy for non-payment in consumer lending transactions as early as the 1990s.[14] Examples of the technology enabling remote disablement include starter interrupt devices and payment assurance devices supported by GPS technology.[15] Subprime consumers in need of vehicles are often required to execute loan documents acknowledging the installation of remote disablement technology in their vehicles as a condition of loan approval.[16]

Remote disablement technology permits a lender to disable a consumer's vehicle once the consumer fails to make timely payments (and in other instances) and to eventually repossess the vehicle if needed.[17] As the Consumer Financial Protection Bureau (CFPB) explains, there have been instances in which consumers' vehicles were remotely disabled even when they were not in default under their loan agreements.[18] At least one lender has allegedly "incorrectly disabled vehicles at least 7,500 times and caused . . . [remote disablement] devices to play warning tones in vehicles over 71,000 times during periods when . . . consumers . . . [were] not in default."[19] The lender "remotely disabled vehicles at least 1,500 times after explicitly promising consumers it would not do so."[20]

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[14] *Id*. at 568.

[15] *Id.*

[16] *Id.*

[17] *Id.*; Press Release, Consumer Financial Protection Bureau, CFPB Sues USASF Servicing for Illegally Disabling Vehicles and for Improper Double-Billing Practices, (Aug. 2, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-usasf-servicing-for-illegally-disabling-vehicles-and-for-improper-double-billing-practices [https://perma.cc/BT6C-J5WG] [hereinafter, *CFPB Press Release*] ("Many auto lenders require that cars are installed with devices using GPS technology that allow the lender or servicer to prevent a borrower from starting a car. These devices are known as 'kill switches' or 'starter interrupters.'").

[18] *CFPB Press Release*, *supra* note 17.

[19] *Id.*

[20] *Id*.

Lenders' use of remote disablement technology in subprime lending transactions raises distinct privacy and electronic domination risks.[21] Consumers who are required to accept installation of remote disablement technology may risk increased monitoring by secured parties and other entities who are permitted to gain access to the data collected by remote disablement technology. Remote disablement technology devices that are installed in consumer vehicles can provide lenders with speed notifications, hourly monitoring, GPS monitoring, "text and email payment reminder features," "daily device history," and "excessive millage reports."[22] These devices can also be accompanied by geofence features that allow lenders to create "virtual geographic boundaries around financed vehicles" and notify lenders of "state-line crossings [and] unusual travel distances."[23] According to the CFPB "some lenders require access to GPS locators so that they always know where a car is physically located [and] require the installation of technology that blocks a borrower who has missed even one payment from starting the car."[24]

Data obtained from remote disablement technology could be aggregated, analyzed, and combined with other sources of information, including data collected from connected vehicles, to reveal detailed insights about subprime borrowers. For instance, the data could reveal consumers' precise geolocation, frequently visited locations, health status, place of employment, and political preferences. These data and insights could then be subsequently used in ways that consumers may not expect. The rapid expansion of artificial intelligence and companies' use of the same to analyze consumers' data may exacerbate these concerns.

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[21] Stacy-Ann Elvy, *The Vehicle Monitoring and Collection Technology Era*, 110 IOWA L. REV. 43, 48 (2024).

[22] *Id.* at 58; *Select GPS Starter Interrupter Device*, PASSTIME GPS (2024), https://passtimegps.com/solutions/select-gps [https://perma.cc/X5XG-FPFT]; *TRAX GPS Device*, PASSTIME GPS (2024), https://passtimegps.com/solutions/trax [https://perma.cc/S7QC-U97Q] ("Every 49 hours, TRAX automatically provides the current location of the vehicle or asset and a detailed location history of that GPS device."). GOLDSTAR PRODUCT COMPARISON 1–2 (2017), https://www.spireon.com/wp-ontent/uploads/GS_SalesEnablement Tables_1217_Web-1.pdf [https://perma.cc/5VNC-D99B]; Ryan Kelly, Chris Kukla & Ashwin Vasan, *Rising Car Prices Means More Auto Loan Debt*, CONSUMER FIN. PROT. BUREAU (Feb. 24, 2022), https://www.consumerfinance.gov/about-us/blog/rising-car-prices-means-more-auto-loan-debt [https://perma.cc/7BG3-WWGU].

[23] *AI-Driven Auto Loan Fraud: How BHPH GPS Tracking Prevents Losses*, GPS LEADERS, https://gpsleaders.com/post/ai-auto-loan-fraud-bhph-gps-tracking-prevention [https://perma.cc/F4RL-TQKM]; Elvy, *supra* note 21, at 58.

[24] Kelly, et al., *supra* note 22.

Remote disablement technology also poses electronic domination concerns as subprime consumers are likely to have "less control over their vehicles' operations in comparison to transactions in which such devices or features are not used."[25] Recall that there have been instances in which lenders have remotely disabled consumers' vehicles even when consumers were not in default under their loan agreements.[26] Consumers may also have their vehicles remotely disabled even after paying off their loan in full due to a lender bookkeeping error or the lender's failure to effectively remove or deactivate the remote disablement device.[27] Additionally, the geofence features associated with remote disablement technology can allow lenders to disable a consumer's vehicle if the vehicle exits a preestablished geographic area determined by the lender.[28]

Professor Moringiello posits that a scant number of courts have evaluated lenders' use of remote disablement technology in consumer transactions.[29] She clarifies that many of the cases evaluating remote disablement technology have been bankruptcy decisions addressing whether lenders' use of the same violates automatic stays under bankruptcy law.[30] As Professor Moringiello explains, bankruptcy courts have found that the use of remote disablement technology to disable consumers' vehicles can in some instances interfere with debtors' "possessory rights in the collateral."[31] Despite this, Professor Moringiello contends that these decisions "support the position that disablement should be governed by Article 9" of the UCC.[32]

Article 9 of the UCC primarily applies to transactions in which a security interest is created in personal property.[33] Article 9 allows secured parties (lenders) to exercise specific rights if the debtor breaches the security agreement. These remedies include the right to "take possession of the

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[25] Elvy, *supra* note 21, at 54.

[26] *CFPB Press Release*, *supra* note 17 ("Auto-loan servicer remotely activated devices that prevented cars from starting, even when borrowers were not in default."); Hanes v. Darar, No. COA11-627, 2012 WL 707110, at *1 (N.C. Ct. App. Mar. 6, 2012) (discussing remote disablement by lender after verbal disagreement with lender's spouse).

[27] *See, e.g.*, Harry Samler & Lindsey Basye, *Ga. Man Stranded After He Says Dealer's GPS Device Disabled His Car*, ATLANTA NEWS FIRST (Mar. 14, 2022), https://www.atlantanewsfirst.com/2022/03/14/he-paid-off-his-car-two-years-later-he-says-gps-device-left-him-stranded [https://perma.cc/J3KD-VQWU].

[28] Elvy, *supra* note 21, at 69.

[29] Moringiello, *supra* note 10, at 571.

[30] *Id.*

[31] *Id.* at 572.

[32] *Id.* at 573.

[33] U.C.C. § 9-109(a)(1).

collateral" and render the debtor's "equipment unusable and dispose of" same on the "debtor's premises."[34] This latter remedy is unlikely to apply to consumer goods as it is limited to transactions involving equipment, a special category of goods under the UCC.[35]

In exercising the right to take possession of the collateral, the secured party must not breach the peace. [36] In evaluating whether a secured party has breached the peace when exercising self-help remedies under Article 9 courts may consider "(1) whether there was entry by the creditor upon the debtor's premises; and (2) whether the debtor or someone acting on his behalf consented (or objected) to the entry and repossession."[37] Despite this, as Professor Moringiello aptly contends, Article 9 "neither permits nor prohibits the remedy [of remote disablement] in consumer transactions."[38]

Given this ambiguity it is unclear whether a lender's use of the many features associated with remote disablement technology installed in a vehicle qualifies as a repossession under Article 9 of the UCC. To the extent that a lender's remote disablement of a consumer's vehicle qualifies as a repossession, it is also unclear whether any such remote disablement would breach the peace. In fact, the breach of the peace standard may not apply to remote disablement of consumer goods.

In 2022, the American Law Institute and the Uniform Law Commission approved important amendments to the UCC to address various technological developments. These notable amendments ushered in novel changes to the UCC. Despite this, the amendments failed to effectively address remote disablement of consumer goods in secured transactions. In my discussions with Professor Moringiello on this topic, she acknowledged that the failure to clarify this issue in Article 9 as part of the 2022 UCC amendments represents a glaring missed opportunity. As is the case with other uniform acts and amendments, the primary objective of enactment may have superseded consumer concerns that are labeled as impediments to widespread adoption.

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[34] U.C.C. § 9-609(a).

[35] U.C.C. § 9-102(a)(33) (defining "equipment" as "goods other than inventory, farm products or consumer goods").

[36] U.C.C. § 9-609(b)(2); Moringiello, *supra* note 10, at 575–76.

[37] JAMES J. WHITE & ROBERT S. SUMMERS, UNIF. COMM. CODE § 26-7, at 1336 (6th ed. 2010); Moringiello, *supra* note 10, at 590–96.

[38] Moringiello, *supra* note 10 at 576; Elvy *supra* note 21, at 77 ("Article 9 does not expressly restrict the use of electronic self-help or remote disablement in the consumer context.").

Despite Article 9's continued silence on this issue, a few states have adopted laws and non-uniform amendments to the UCC to address remote disablement by lenders in consumer transactions.[39] As Professor Moringiello explains Connecticut's non-uniform amendment to Article 9 expressly "expands the disablement remedy to consumer goods," subject to the consumer consenting to this remedy in writing and the secured party providing notice prior to remotely disabling the goods.[40] The statute also limits secured parties' ability to exercise remote disablement in consumer goods if doing so would cause substantial injury or raise safety concerns.[41]

Other states, such as Nevada, have adopted separate statutes to address remote disablement of consumer vehicles.[42] Nevada's statute is notable in that it expressly provides that remote disablement of a vehicle is a "constructive repossession."[43] This suggests that the breach of the peace standard may be applicable to remote disablement in Nevada. However, as Professor Moringiello clarifies, the UCC does "not use the term constructive repossession, but courts have also used the term very few times in opinions involving Article 9 remedies."[44] Professor Moringiello goes on to persuasively contend that "it is not clear whether characterizing automated

[39] *See, e.g.*, CAL. CIV. CODE § 2983.37 (amending); COLO. REV. STAT. § 4-9-609(e) (2022) (amending); CONN. GEN. STAT. §§ 42-419(d), 42a-2A-702(e), 42a-9-609 (2026) (amending); NEV. REV. STAT. § 598.9715 (West 2026) (adopting); N.Y. U.C.C. LAW § 9-102(60-a) (McKinney 2026) (amending); N.Y. GEN. BUS. LAW § 601(10) (McKinney 2026) (amending); *see also* Legal Action Chicago, Comment Letter on Notice of Proposed Rulemaking, Motor Vehicle Dealers Trade Regulation Rule 8 (Sept. 12, 2022) [hereinafter, *Legal Action Chicago Comment Letter*], https://downloads.regulations.gov/FTC-2022-0046-8097/attachment_2.pdf (remote disablement "is an emerging area of law, and most jurisdictions have not yet responded to the problems [associated with remote disablement technology] with a legislative solution"); Moringiello, *Automating Repossession*, *supra* note 10, at 587 ("A handful of states target subprime automobile lending in their statutes regulating the use of remote disablement."); Juliet M. Moringiello, *Electronic Issues in Secured Financing*, *in* RESEARCH HANDBOOK ON ELECTRONIC COMMERCE LAW 285, 297–303 (John A. Rothchild ed., 2016) ("In response to the increasing use of on-time devices, several states have enacted non-uniform provisions in their versions of Article 9. Colorado and Connecticut specifically authorize the use of electronic self-help in their secured transactions law, and California does so in its Automobile Sales Finance Act.").

[40] Moringiello, *supra* note 10, at 586.

[41] *Id.*, CONN. GEN. STAT. § 42a-9-609.

[42] NEV. REV. STAT. § 598.9715(2)(c); CAL. CIV. CODE § 2983.37.

[43] NEV. REV. STAT. § 598.9715(2)(c); Moringiello, *supra* note 10, at 587–88 (Nevada's "statute specifies that automated shutoff is a 'constructive repossession' for the purposes of Articles 2A and 9 of the UCC and Nevada's law governing contracts for the installment sale of vehicles").

[44] Moringiello, *supra* note 10, at 588.

shutoff as a constructive repossession for the purpose of the UCC subjects it to the breach of the peace limitation, given that the scant case law on constructive repossession is limited to finding that such acts trigger post-repossession duties on the part of the secured creditor."[45]

Despite the Nevada statute's ambiguous use of the term constructive repossession, Nevada also imposes limitations on the use, sale, retention, and disclosure of "telemetry data" collected from remote disablement devices.[46] These restrictions may be helpful in ameliorating some privacy related concerns related to third party disclosures and inferences. However, the statute's language indicates that these restrictions apply to "telemetry data" that is "related to a consumer."[47] Thus, it is unclear whether these limitations also apply to aggregated and anonymized telemetry data that may arguably not directly relate to an individual, even if inferences about an individual may be drawn from such data.[48]

State comprehensive privacy laws, such as the California Consumer Privacy Act (CCPA), may also be applicable to the collection of consumer data via remote disablement technology.[49] For instance, assuming that an automobile lender meets the required entity thresholds for coverage under the CCPA, the statute grants consumers rights of access and deletion, the right to opt-out of the sale of their data and it imposes data minimization obligations.[50]

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[45] *Id*. at 589.

[46] NEV. REV. STAT. § 598.9716(3). The statute defines "telemetry data" as "any information collected by electronic tracking technology or starter interruption technology, regardless of whether such information is transmitted or retained in the device, and includes, without limitation, information pertaining to the location, speed and motion status of a motor vehicle." *Id.* § 598.9716(5)(b).

[47] *Id.* § 598.9716(3) ("A person who possesses or obtains telemetry data related to a consumer that is collected by electronic tracking technology or starter interruption technology may not: (a) Sell any telemetry data. (b) Provide any telemetry data to any person or entity other than: . . . .").

[48] *See id.*

[49] COLO. REV. STAT. § 6-1-1301 to -1313 (2026); CONN. GEN. STAT. § 42-515 to -525; UTAH CODE ANN. § 13-61-101 to -404 (West 2026); VA. CODE ANN. § 59.1-575 to -585 (2026).

[50] CAL. CIV. CODE §§ 1798.100, .105, .110, .130; CAL. CIV. CODE § 1798.100(a)(3) ("[A] business shall not retain a consumer's personal information or sensitive personal information for each disclosed purpose for which the personal information was collected for longer than is reasonably necessary for that disclosed purpose."); *id.* § 1798.100(c) ("A business' collection, use, retention, and sharing of a consumer's personal information shall be reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in

While these privacy rights are notable, they over rely on privacy self-management—the dominant approach to privacy regulation in which consumers are given a "bundle of rights . . . to provide . . . [them] with control over their personal data, and through this control people can decide for themselves how to weigh the costs and benefits of the collection, use, or disclosure of their information."[51] State comprehensive privacy rights have some value in that they could limit various types of secondary data uses and monetizations, such as the sale of remote disablement data, assuming that consumers effectively exercise these rights.[52] As I have observed elsewhere, "[t]his approach places a significant amount of responsibility on [consumers] to effectively enforce their privacy rights."[53]

Recall that consumers may be required to consent to the use of remote disablement technology in vehicle credit transactions as a condition of loan approval. Lenders may encourage consumers to provide consent to their remote disablement data collection and monetization practices. Privacy frameworks that over emphasize the notice and choice model and a privacy rights regime often fail to effectively account for the cognitive limits that impact consumers' privacy decisions and the structural problems that may occur even when consumers are "well-informed and rational."[54] These structural problems include the fact that there is an enormous number of companies that collect data about consumers which makes it difficult for consumers to manage their privacy by effectively exercising their statutorily granted privacy rights.[55]

III. Proposals

In *Automating Repossession,* Professor Moringiello convincingly argues that "[i]n permitting creditors to use self-help to remotely disable collateral, the UCC should restrict its use by a standard tailored to the harm that self-help remote disablement can cause."[56] To this end, Professor

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which the personal information was collected, and not further processed in a manner that is incompatible with those purposes.").

[51] Daniel J. Solove, *Introduction: Privacy Self-Management and the Consent Dilemma*, 126 HARV. L. REV. 1880, 1880 (2013).

[52] *Elvy*, *supra* note 21, at 93.

[53] *Id*.

[54] Solove, *Introduction: Privacy Self-Management and the Consent Dilemma*, *supra* note 51, at 1881.

[55] *Id.*

[56] Moringiello, *supra* note 10, at 600.

Moringiello goes on to powerfully posit that a remote disablement "might also violate privacy norms . . . [as] it is invasive from the user's perspective" even if physical violence does not occur in connection with disablement.[57]

While various sources of law, including state privacy law and a few state remote disablement statutes, govern remote disablement, Article 9 amendments sanctioned by the entities responsible for drafting and amending the UCC may be a more viable route to enacting legislation in more states that effectively regulates the use of remote disablement. Given the limitations in the existing frameworks that govern remote disablement discussed in Part II, there are several amendments that could be made to Article 9 to more adequately address consumer concerns associated with remote disablement.

For instance, Article 9 could prohibit the use of remote disablement as a remedy in consumer transactions involving consumer motor vehicles. This approach is not new to commercial law. For instance, the American Law Institute's Principles of the Law of Software Contracts prohibits remote disablement in consumer transactions.[58] The drawback to this approach is that it may not fully address lenders' use of remote disablement technology in other consumer transactions or fully remedy privacy concerns that may occur even if a lender does not elect to use the remote disablement technology installed in a consumer's vehicle to remotely disable the vehicle after default. Recall that once remote disablement devices are installed in consumers' vehicles lenders can obtain detailed data on consumers' driving habits, among other things.

An alternative proposal is to amend Article 9 to expressly authorize the use of remote disablement as a remedy in consumer transactions subject to certain guardrails and restrictions. Article 9 could define remote disablement as a repossession and clarify that the breach of the peace standard is applicable to remote disablements. In providing guidance on the breach of the peace standard, the comments to § 9-609 explain that "this section does not define or explain the conduct that will constitute a breach of the peace, leaving that matter for continuing development by the courts."[59]

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[57] *Id.* at 601.

[58] PRINCIPLES OF THE L. OF SOFTWARE CONTS. § 4.03 cmt. b, illus. 4 (AM. L. INST. 2024) (noting that "automated disablement is not available in a consumer agreement"); Moringiello, *supra* note 10, at 598 (explaining that the Principles of the Law of Software Contracts "allow automated disablement of software, but prohibit it in mass-market and consumer transactions").

[59] U.C.C. § 9-609 cmt. 3.

Historically, in applying the breach of the peace standard courts have focused on consent, objections to repossession and physical entry.[60] However, courts could begin to consider the privacy risks associated with lenders' use of remote disablement technology in determining whether a lender has breached the peace. Article 9's comments acknowledge the possibility of courts continuing to develop and expand the breach of the peace standard. As one court explains, "a breach of the peace has been described as 'a legal concept with shifting boundaries not unlike the relatively elastic legal concept of probable cause.'"[61] Additionally, at least one court has considered the unique privacy expectations of the debtor in determining whether a lender breached the peace in a self-help repossession.[62]

As privacy law scholars have explained, "[p]rivacy has significant collective, public, and social value [and] it plays a critical role in our democracy and the privacy choices of one individual can impact the privacy of others and potentially harm societal interests."[63] The breach of the peace standard is also arguably related to the protection of societal interests, such as public safety and tranquility.[64] As one court explains in discussing the breach of the peace standard "[a]lthough it is apparent that the self-help remedy is efficient for creditors and results in reduced costs of credit for debtors, we must seek a reasonable balancing of that interest against private property

[60] WHITE & SUMMERS, *supra* note 37, § 26-7, at 1336.

[61] Droge v. AAAA Two Star Towing, Inc., 136 Nev. 291 (2020).

[62] Salisbury Livestock Co. v. Colorado Cent. Credit Union, 793 P.2d 470, 475 (Wyo. 1990) ("We believe that the location and setting of this entry to repossess is sufficiently distinct, and the privacy expectations of rural residents sufficiently different.").

[63] Elvy, *supra* note 21, at 101; PRISCILLA M. REGAN, LEGISLATING PRIVACY: TECHNOLOGY, SOCIAL VALUES, AND PUBLIC POLICY, xiv, 220–31 (1995) ("[P]rivacy serves not just individual interests but also common, public, and collective purposes. . . . Privacy has value not just to individuals as individuals or to all individuals in common but also to the democratic political system."); Joshua A.T. Fairfield & Christoph Engel, *Privacy as a Public Good*, 65 DUKE L.J. 385, 385 (2015) ("explain[ing] why privacy has aspects of a public good, and . . . draw[ing] lessons from both the theoretical and the empirical literature on public goods to inform the policy discourse on privacy"); Daniel J. Solove & Woodrow Hartzog, *Kafka* in the Age of AI and the Futility of Privacy as Control, 104 B.U. L. REV. 1021, 1021 (2024) ("[P]rivacy law's primary goal should not be to give individuals control over their data. Instead, the law should focus on ensuring a societal structure that brings the collection, use, and disclosure of personal data under control."); Julie E. Cohen, What Privacy Is For, 126 HARV. L. REV. 1904, 1906 (2013) ("privacy . . . shelters the processes of play and experimentation from which innovation emerges").

[64] Lavalley v. Skyline Recovery Serv., Inc., 788 F. Supp. 3d 224, 231 (2025) ("Moreover, looking to the actions of both the debtor and the repossessor is consistent with the UCC's goal of preserving public safety and tranquility. . . . [M]ost jurisdictions make determinations of what constitutes a breach of the peace on a case by case basis.").

interests and society's interest in tranquility."[65] Privacy harms may also lead to physical injuries. Indeed, as Professor A. Michael Froomkin observes, privacy "makes one physically safer; . . . it provides psychological security; [and] . . . it makes one economically safer (and protects from some forms of invidious discrimination)."[66] The breach of the peace standard can evolve to address privacy and electronic domination concerns.

One potential critique of this proposal is that repossessions may trigger not only a breach of the peace but also an invasion of privacy claim under tort law.[67] Following this line of argument, one might posit that consumers' privacy interests can be adequately protected using the privacy torts. As such, there is no need for the breach of the peace standard to be stretched to accommodate privacy harms. One response to this critique is that the privacy torts are often limited by the "highly offensive to a reasonable person," "disclosure of private facts," or "intrusion into private affairs" standards, all of which may prove challenging to satisfy in the context of modern privacy claims, particularly when consumers consent to data collection.[68] Furthermore, as Professors Danielle Citron and Daniel Solove explain "while the privacy torts handily addressed the privacy problems of Warren and Brandeis' time, such as invasions of privacy by the media, this is not the case for modern privacy problems involving the collection, use, and disclosure of personal data."[69] Indeed, "[b]ecause courts cling rigidly to the elements of the privacy torts as set forth in the [torts] Restatement, the privacy torts have little application to contemporary privacy issues."[70] Additionally, since Article 9 establishes self-help as a creditor's remedy and imposes the breach of the peace limitation, courts can expand on the use of the breach of the peace standard in Article 9 repossessions.

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[65] *Salisbury Livestock Co. v. Colorado Cent. Credit Union*, 793 P.2d 470 (Wyo. 1990).

[66] A. Michael Froomkin & Zak Colangelo, *Privacy as Safety*, 95 WASH. L. REV. 141, 163 (2020).

[67] 2 *Debtor-Creditor Law* § 10.05 (Theodore Eisenberg & James M. Lawniczak eds.) (Matthew Bender 2026) ("[C]reditors making a wrongful repossession may commit one or more common law torts, including negligence, trespass, assault, battery, conversion, invasion of privacy, and intentional infliction of emotional distress or mental anguish."); *Stone v. Credit Acceptance Corp*., No. 19-1711 (DWF/TNL), 2019 WL 6716152 (2019 U.S. Dist. Minn.) (discussing repossessions and the elements needed to satisfy an inclusion upon seclusion claim).

[68] RESTATEMENT (SECOND) OF TORTS § 652B-E (AM. L. INST. 1977) (defining the torts of Public Disclosure of Private Facts; Intrusion upon Seclusion; False Light and Appropriation).

[69] Danielle Keats Citron and Daniel Solove, *Privacy Harms*, 102 BOSTON UNIV. L. REV. 793, 810 (2021).

[70] *Id.*

With respect to the data collection and secondary use concerns discussed in Part II, the drafters of Article 9 could, with some adjustments, look to Nevada's existing statute on remote disablement for inspiration. For instance, restrictions could be imposed on the disclosure of remote disablement consumer data to third parties or entities other than the consumer and repossession agents of the lender.[71] Limitations could be imposed on lenders' ability to use these data for purposes other than for physical repossessions or to sporadically ensure the functionality of remote disablement technology installed in consumer vehicles.[72] Data retention limits could also be imposed.[73] Many state comprehensive privacy laws lack a private right of action. As such, state actors responsible for enforcing state comprehensive privacy laws could also attempt to ensure strict compliance with statutory data minimization principles.

IV. Conclusion

Expanding on Professor Moringiello's scholarship, this essay has documented shortcomings in some of the existing legal frameworks that regulate remote disablement in secured transactions involving consumer goods and has exposed the potential privacy risks associated with this self-help remedy. The essay offers a path forward. *Automating Repossession* is but one example of Professor Moringiello's outstanding contributions to the fields of consumer law and commercial law. Professor Moringiello's presence will be deeply missed, but her impact endures in the numerous lives she has influenced and inspired.

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[71] *See, e.g.*, NEV. REV. STAT. § 598.9716(3)(c) (containing similar restrictions).
[72] *Id.*
[73] *See id.* § 598.9716(3)(d).