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DRONE WORLD IS CONSTANTLY CHANGING

Written by Jackie Van Dyke, MPS, CP

The Federal Aviation Administration (FAA) regulates all aspects of aviation, including unmanned aircraft systems (UAS) popularly known as drones, in the United States and over its surrounding international waters. Drone activity is increasing in the news, and regulations are continuously evolving for safety, surveillance, and security.

Some of the most common rules, as outlined in the FAA's Part 107, state: (1) drones cannot be flown more than 400 feet above ground level, (2) drones may not be flown over people, (3) drones may not be flown at night, and (4) drones must be flown in a visual line of sight. The FAA can grant emergency waivers for responding to natural disasters or other emergencies. One must get permission from the FAA to fly in any restricted airspace, and any drone greater than 55 lbs. must be registered.

In October 2018, the FAA Reauthorization Act of 2018 was signed into law. The law provides the Department of Homeland Security and the Department of Justice the authority to mitigate threats from drones using counter-UAS measures. Such authority includes issuing warnings to drone operators and using "reasonable force, if necessary, to destroy the UAS." (https://www.asisonline.org/publications--resources/news/blog/new-aviation-law-makes-positive-changes-to-current-rules-for-commercial-drone-use/) Also, as of October 2018, all drone operators must pass a safety and knowledge exam. Even hobbyist drone operators are now subject to passing a knowledge test. »

DRONES AND WILDFIRES

Drones are now being used by firefighters to detect hotspots, to chart the spread of a large fire, and to follow the progress in controlling a blaze. Unauthorized drone flights can create collision hazards to official firefighting aircraft. Drone operators interfering in wildfire suppression or other similar emergency response efforts may face civil penalties exceeding $20,000 and possible criminal prosecution. (https://www.faa.gov/news/updates/?newsid=91287)

DRONES AND WORKPLACE SAFETY

The Occupational Safety and Health Administration (OSHA) has begun using drones in place of safety officers to conduct worksite inspections. Such inspections by drones do require employer consent. Employers may want to define the scope of a drone inspection before consent. Potential viewing of trade secrets should be addressed before such an inspection. Drone pilots working for OSHA must follow FAA requirements, including having passed the pilot test for operating a remote-controlled aircraft and be FAA certified. The drones used must weigh less than 55 pounds.

According to Bloomberg Law, there were nine such instances using drones in the workplace in 2018. These were situations that were too dangerous for an inspector such as a fire on an oil drilling rig or a chemical plant explosion. (https://www.internationallawoffice.com/Newsletters/Aviation/USA/Cozen-OConnor/Its-a-bird-its-a-plane-its-OSHA?redir=1)

DRONES AND LAW ENFORCEMENT

In addition to firefighting or analyzing workplace incidents, drones are being used in different law enforcement applications such as search-and-rescue efforts, damage assessments following disaster recovery claims, utility restoration, and even media coverage to provide crucial public information. In these circumstances, a remote pilot must first apply for a waiver from the FAA that will authorize one to fly a drone for specific operations. Drones also provide law enforcement with a protective cover when carrying out search warrants. (https://www.faa.gov/uas/advanced_operations/emergency_situations/)

DRONES AND PRIVACY CONCERNS

While safety and security concerns regarding drones have prompted regulation, drone concerns around privacy continue to be raised. According to a Forbes magazine article, females have more privacy concerns about drones than males. https://www.forbes.com/sites/stephenrice1/2019/02/04/eyes-in-the-sky-the-public-has-privacy-concerns-about-drones/#2b97e3566984.

FAA regulations do not specifically address drone flights in residential areas. They can be purchased relatively cheap, which make them easily accessible. Drones are also reasonably quiet, and a flyover may not be noticed. Unmarked drones also generate privacy concerns.

RECENT LITIGATION

A recent decision in California became the first to address the common assumption that "drones are, in fact, aircraft." Hollycal Production, Inc., used a drone for photography during a wedding reception that unfortunately resulted in a serious eye injury to one of the guests. After Hollycal submitted a claim to their insurance carrier, Philadelphia Indemnity argued that the accident was subject to a policy exclusion for aircraft. The Central District Court of California confirmed such an aircraft exclusion as follows:

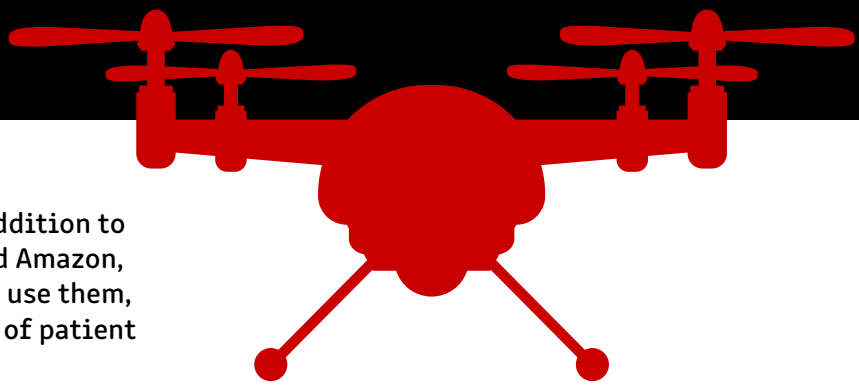
> While the policy does not define the term 'aircraft,' the term 'aircraft' is unambiguous and its ordinary meaning, as defined by Merriam-Webster's Collegiate Dictionary, is 'a vehicle (such as an airplane or balloon) for traveling through the air... A drone, as a 'vehicle... for traveling through the air' is an aircraft under the term's ordinary and plain definition. The ordinary definition of an aircraft does not require the carrying of passengers or cargo. Additionally, that a drone is unmanned and operated remotely does not make it any less of an aircraft. *Philadelphia Indemnity Insurance Company vs. Hollycal Production, Inc,* 2018 U.S. Dist. LEXIS 211289 (Dec. 7, 2018).

VARYING STATE AND CITY DRONE LAWS

Lawyers and paralegals need to be aware of not only the drone federal regulatory environment but also the applicable state laws and local ordinances. For example, Texas has drone laws related to privacy that are unique to the state. Possessing or distributing an image of a person is a Class C misdemeanor in violation of the Texas Penal Code. (https://www.dronethusiast.com/drone-laws-texas/) Oklahoma lawmakers are considering legislation to ban drones flying less than 400 feet. Drone operators violating this measure would face a year in prison. (https://www.publicradiotulsa.org/post/oklahoma-considers-drone-restrictions) On a local level, the City of Chicago has a wide range of state and local drone regulations. (https://statedronelaw.com/state/illinois/)

The increasing interest in drones, the ever-changing rules regulating drones and their operators, along with resulting litigation engenders paralegals working in aviation law to stay abreast of the different drone regulations and policies. »

DRONES IN ACTION



Drones are becoming ubiquitous. In addition to being put into service by Facebook and Amazon, emergency crews are being trained to use them, and they are being introduced as part of patient care.

In June 2019, *Interesting Engineering* magazine reported that Facebook filed for patent protection for their kite drone. The concept indicates that kite components such as the tail will generate energy based on air movement. The patent application indicates that increased energy could extend drone flight time. Whether Facebook will actually build such a drone remains to be seen. https://interestingengineering.com/facebook-files-patent-for-kite-drone?sfns=mo

A recent CBS *This Morning* report confirmed that drones are providing valuable information to hurricane and other natural disaster first responders. A federal facility outside of Denver provides for the recreating of crashes and related drone training. Police, fire, and other emergency personnel are learning how to use drones to get the "first look" at an emergent situation before putting lives at danger and entering a burning building. When Notre Dame was burning in April 2019, the Paris fire department used a drone to look inside the cathedral for hot spots. Drones with thermal cameras are also now available to find potential victims. https://www.cbsnews.com/news/drones-are-being-deployed-in-disaster-scenarios-heres-how/

A June 2019 article in the online magazine *Verge* shared that Amazon is soon hoping to launch a delivery service using their hybrid drone. The Prime Air delivery drone is capable of forward flight as well as vertical takeoff and landing similar to a helicopter. Amazon's ultimate goal is to create "drones that can fly up to 15 miles and deliver packages under five pounds in less than 30 minutes." https://www.theverge.com/2019/6/5/18654044/amazon-prime-air-delivery-drone-new-design-safety-transforming-flight-video

In March 2019, the North Carolina newspaper *News & Observer* reported that the Federal Aviation Administration approved the first regular commercial delivery by UPS to provide blood and other lab samples between hospitals and clinics to a main lab in the Raleigh area. The delivery was a short distance of approximately 1,377 feet and took three minutes, monitored by a remote pilot. UPS and the California manufacturer of the drone are hopeful to secure FAA waivers allowing daily deliveries in an effort to save time and money compared to using trucks within city limits for transporting lab specimens. The long term goal is for medical deliveries by drones to be routine at hospitals across the country. https://www.newsobserver.com/news/local/article228373214.html

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