

The Drones Have Arrived: Now What?

By Ryan Painter

America is suffering—for lack of a better term—from “drone mania.” One can hardly open a newspaper or turn on the nightly news without seeing a story about the use, or misuse, of these machines. A cursory Internet search quickly yields myriad stories about the wonders of drones and their limitless potential to conduct aerial monitoring, search-and-rescue operations, and even make home deliveries. The same search results are also replete with more ominous descriptions of drones targeting and attacking enemy combatants, interfering with commercial passenger aircraft, and conducting surveillance (legal or otherwise).

So what exactly is a drone? Also called unmanned aerial vehicles, or UAVs, drones are described by Webster’s as “unmanned aircraft or ship[s] guided by remote control or onboard computers.”¹ The Federal Aviation Administration (FAA) refers to drones as “unmanned aircraft system[s],” and defines them very broadly as “the unmanned aircraft (UA) and all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.”² Drones come in many sizes, from small enough to fit in the palm of your hand like the Fineco FX-1 Nano Drone³ all the way up to large military drones like the Northrup Grumman RQ-4 Global Hawk which, when fully loaded with fuel, weighs more than 32,000 pounds and can fly in excess of 390 miles per hour.⁴ To put that in perspective, a single Global Hawk weighs nearly as much as 17 Volkswagen Beetles.⁵

Nearly as confusing as the different sizes and types of drones is the assortment of laws sprouting up around the nation to deal with the perceived challenges these drones present. There seems to be a consensus that something must be done, but what and



by whom? The FAA has begun a “Know Before You Fly” public awareness campaign and lists the following rules and recommendations for drone use:

- Fly below 400 feet and remain clear of surrounding obstacles
- Keep the aircraft within visual line of sight at all times
- Remain well clear of and do not interfere with manned aircraft operations
- Don’t fly within 5 miles of an airport unless you contact the airport and control tower before flying
- Don’t fly near people or stadiums
- Don’t fly an aircraft that weighs more than 55 lbs
- Don’t be careless or reckless with your unmanned aircraft—you could be fined for endangering people or other aircraft⁶

Interestingly, the FAA relies on its Modernization and Reform Act of 2012⁷ for authority,

but ultimately treats drones like traditional model aircraft. The FAA also warns that “non-hobby, non-recreational operation” is prohibited without its authorization.⁸ In other words, commercial use of drones is prohibited without FAA approval.

What does this portend for farmers who wish to use drones to survey their fields to ensure crops are adequately watered or real estate agents who wish to use drones to take photos of clients’ homes from more advantageous angles? The FAA allows hobbyists to attach cameras to their drones for personal use and explicitly says on its website that “using a [drone] to take photos for your personal use is recreational; using the same device to take photographs or videos for compensation or sale to another individual would be considered a non-recreational operation.”⁹ There appears to be no exception for home deliveries, however, so Amazon’s Prime Air project to use drones to deliver its products to consumers’ doorsteps may be on hold for the indefinite future.¹⁰

Sadly, the FAA has shed little additional light on the full scope of what constitutes recreational versus commercial use, nor does it adequately define the limits of recreational use, so years of litigation are likely. Congress originally set a September 2015 deadline for the FAA to figure out a regulatory scheme that would allow commercial use of drones while still ensuring the safety of passenger aircraft and the general public, but the FAA missed the deadline.¹¹ So for now, companies wishing to fly drones commercially must apply to the FAA for a Section 333 exemption.¹² In the meantime, some states have stepped into this regulatory vacuum with their own drone laws and restrictions. Michigan recently jumped into the fray with Public Acts 12 and 13 of 2015, which forbid using drones to interfere with or harass hunters and fisherman or for hunting or fishing, respectively.¹³ These may have been passed in response to a new drone called the Angel Air, marketed by People for the Ethical Treatment of Animals and intended to “spy on hunters and catch them in the act as they terrorize animals and break game laws.”¹⁴

In 2013, the Michigan House of Representatives debated a pair of proposals¹⁵ to limit police use of drones to situations involving an imminent threat or when officers had already received a search warrant, and to make otherwise unauthorized use of drones—including unauthorized civilian use—a felony punishable by up to 10 years in prison.¹⁶ The bills were never passed, and the Michigan State Police has since purchased its own drone for law enforcement use, raising interesting questions about expectations of privacy.¹⁷

It is unclear what effect these laws have had on the actual use of drones, although news stories about pilots diverting aircraft because of drone sightings have become routine. There have even been news reports about police helicopters nearly colliding with drones while flying over heavily populated cities.¹⁸ Such a collision could have fatal consequences, both in the air and on the ground. Clearly, a new regulatory scheme is badly needed, but what form it will take and when it will take effect are anyone's guess. In the meantime, look to the skies—you just may be a target for a drone. ■

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ENDNOTES

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