



Drone Law Issues

Carlos R. Soltero



Commercial Uses

Volans-i shows off its long-range delivery drones in Texas

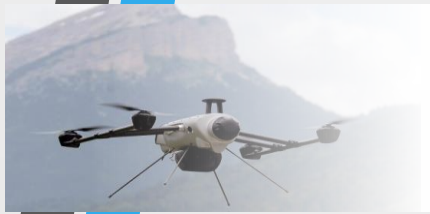
Posted May 9, 2017 by [Lora Kolodny \(@lorakolodny\)](#)



Whether they're flying pizzas, burritos, or medications to customers' doors, drones for delivery have arrived.

Still most drones built for delivery only fly for a short time and distance.

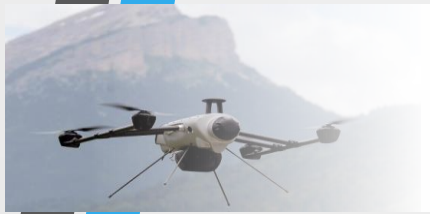
Now a startup called Volans-I has developed long-range drones for business to business, express deliveries.



Commercial Uses

UAS are already being used in a variety of applications, and many more including rural areas will benefit by their use:

- Wildfire mapping
- Agricultural monitoring
- Disaster management
- Law enforcement
- Weather monitoring
- Television news coverage, sporting events, moviemaking
- Environmental monitoring
- Oil and gas exploration; and
- Freight transport



Other Uses

May 10, 2017:

Drones Will Soon Help First Responders

May 11, 2017:

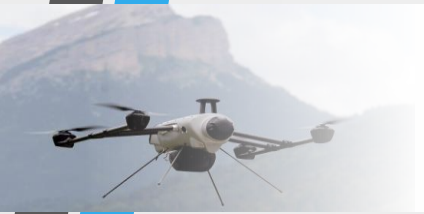
More Public Safety Agencies in Texas Embrace Use of Drones

May 30, 2017:

A&M: Drones Could Boost Crop Production

May 31, 2017:

Drone Acts as Flying Cell Tower to Provide Coverage Kilometers Away



FAA Approves Drone As “Cell Phone Tower In The Sky” For Puerto Rico

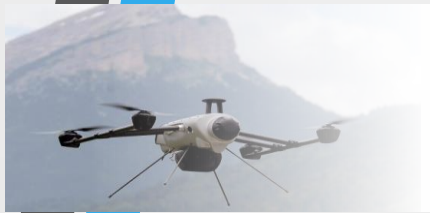
Nov. 17, 2017:



The FAA announced it approved a drone that can function as a flying cell phone tower to help restore cellular service in Puerto Rico.

The aircraft is called the Flying COW, for Cell on Wings.

It flies up to 200 feet above the ground, and can provide voice, data and Internet service for 40 square miles.



Some Concerns

National Security

FAA records detail hundreds of close calls between airplanes and drones

Fire, Police Drones Caught Between Public Safety and Privacy Concerns

Privacy concerns have helped ground drone plans in San Jose and Berkeley.

BY BENNY EVANGELISTA, SAN FRANCISCO CHRONICLE / MAY 12, 2017



Unregulated drones are accidents - and worse - waiting to happen

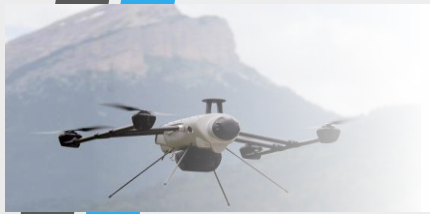
David Hastings Dunn

An airliner metres from disaster above Heathrow shows how unprepared we are - whether from a terrorist attack or hobbyists losing control



ⓘ 'Any drones that can accommodate a camera can also be weaponised to carry a gun or small explosive device.'
Photograph: Andrew Matthews/PA

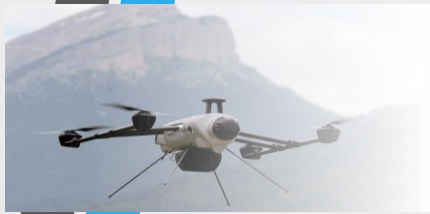




Some Concerns

- This week (November 27, 2017):

Man arrested for dropping free-speech flyers from drone at 49ers, Raiders games

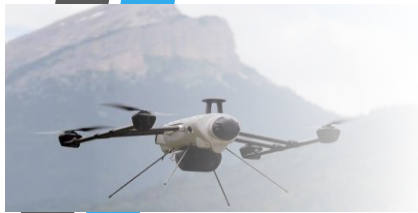


FAA—UAS Regulations



- June 21, 2016—Summary of Small UA (Part 107)
- Less than 55 lbs/25 kg & Max. Altitude 400 ft AGL/structure
- Sight distance/Daylight
- Licensing: Remote pilot in command certification
- Class G Airspace w/o ATC

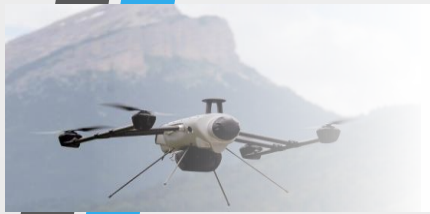




FAA—UAS Regulations Airspace Restrictions

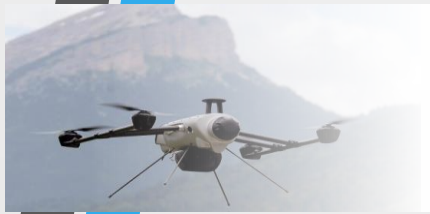


- Security Sensitive Airspace Restrictions
- Temporary Flight Restrictions
- Restricted or Special Use Airspace
- Stadiums and Sporting Events
- Wildfires
- Airports



Taylor v. Huerta (D.C. Cir. May 2017)

- DC Cir. struck down a regulation requiring the public to register drones bc the **FAA did not have the authority to regulate so-called “model aircraft.”**
- Violates § 336 of the FAA Modernization & Reform Act
- FAA *encourages* registration for all drone operators.



FAA—UAS Goals

- **Electronic id & tracking of UAS for local law enforcement**
- **Establish process for property owners & critical infrastructure to restrict flight over those properties.**
- **Amendment to part 107 - allow operations over people under certain conditions.**
- **Full Integration into the NAS: refining our existing regulatory framework to accommodate operations for unmanned aircraft and any other aviation innovations.**



Huerta v. Haughwout (D. Ct July 2016)

- YouTube UAS w (i) gun & (ii) “flame-throwing contraption”
- It appears from oral argument **the FAA believes it has regulatory sovereignty over every cubic inch of outdoor air in the United States** (at least over any airborne objects).
- Congress surely understands that state and local authorities are (usually) well positioned to regulate what people do in backyards.
- The Constitution
 - Limited national government
 - Traditional police power of state and local government.
 - No clause in the Constitution vests the federal government with a general police power over all of the air or all objects that leave the ground.



Amendment X

The powers

- not delegated to the United States by the Constitution,
- nor prohibited by it to the States,

are reserved

1. to the States respectively, or
2. to the people



Limits to FAA/Regulatory Compliance

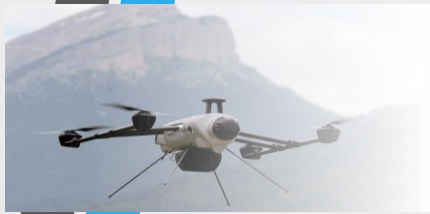


As the Texas Supreme Court wrote:

"a permit is not a get out of tort free card."

“This is consistent with our common law rule that the mere fact that an administrative agency issues a permit to undertake an activity does not shield the permittee from third party tort liability stemming from consequences of the permitted activity”

FPL Farming, Ltd. v. Environmental Processing Sys., L.C. (Tex. 2011)



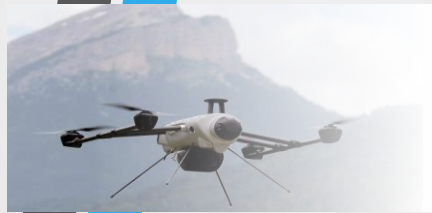
Legal Issues

FAA vs. States

- Property rights – where does airspace/FAA regulations begin?
- Is more than one sovereign empowered to regulate?
- Who may complain?
 - Public
 - Private

State Tort Laws

- Trespass
- Nuisance
- Invasion of Privacy
- Property damage & Personal injury
 - Negligence
 - Products Liability



Intersection of Federal & State Laws & Even Some Local Laws



**In 2015, 25 states passed
UAS legislation or
resolutions**



**In 2016, 14 states passed
26 pieces of UAS
legislation or resolutions**

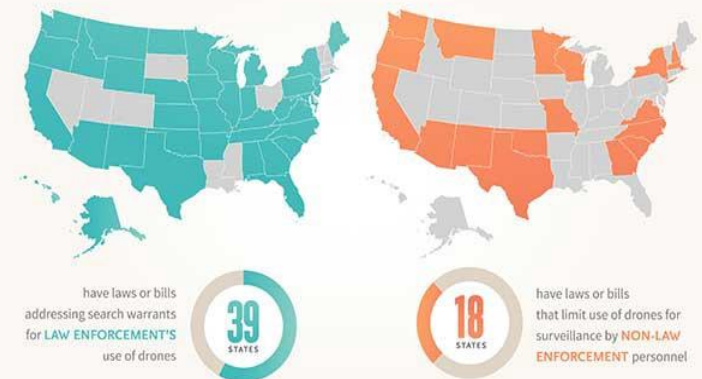


**National
Conference of
State Legislatures**



**85th Texas Legislative
Session – Passed 3
Drone Related Bills**

DRONE LEGISLATION



have laws or bills for a
PRIVATE RIGHT OF ACTION
by individuals aggrieved by
violations of drone rules



have laws or bills that
PROHIBIT WEAPONIZED
drones



have laws or bills
PROVIDING EXCEPTIONS
for drone use



WA, NV, TX & OH are
ENCOURAGING
the development of drone
technology within their state

Singer vs. City of Newton

(D. Mass. Sept. 2017)

- Not complete preemption
- In his case, 3 parts of the city ordinance were preempted:
 1. Registration
 2. Line of Sight
 3. Landowner Preclearance



Texas 85th Legislative Session

SB 840--Authorizes certain entities to use UAS to capture images

1. Images for the operations, maintenance, inspection, or siting of telecommunication facilities.
2. Images by law enforcement or contract/direction of law enforcement w/in 25 miles of the Mexico border.
3. Provides insurance companies the ability to use drones in connection with underwriting or rating certain claims.



Texas 85th Legislative Session

- **HB 1424**

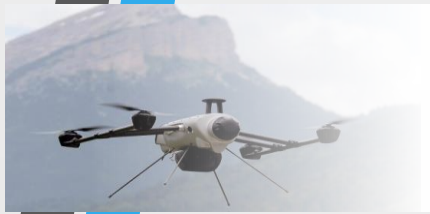
Creates a new offense for flying drone w/in 400 ft. above a correctional or detention facility and sports venue

- **HB 1643**

Statewide laws.

Municipality, county or joint board may only adopt and enforce an ordinance or order if

1. Special event
2. Political subdivision's own use
3. Near facility/infrastructure owned by subdivision & FAA notice/hearing.



Texas Statutory Law

Texas Privacy Act-Government Code Chapter 423

Attempts to balance allowed commercial uses with privacy concerns

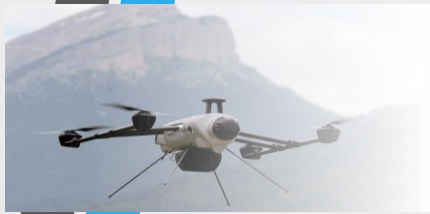
Authorizes law enforcement and other governmental use

Must obtain a search warrant

Authorizes certain academic use

Authorizes certain electric or natural gas utility uses

Authorizes certain real estate uses



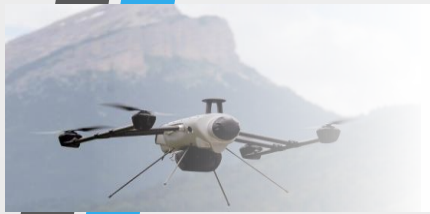
Nuisance Law

A "nuisance" is a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy the land.

A nuisance
invades
another's
interests in any
or all of these
ways:

- (1) a negligent invasion;
- (2) an intentional invasion; or
- (3) other conduct abnormal and out of place with its surroundings.

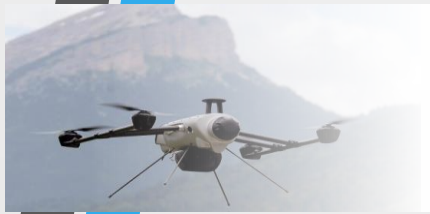




Trespass Law

A “trespass” is a intentional use of another’s real property, without authorization or privilege to do so.





Invasion of Privacy

Drone Privacy: Is Anyone in Charge?

A lawsuit seeks to force the FAA to make sure drones don't infringe on privacy—but for now, there are few protections

Lawmakers want to outlaw 'creepy stuff' with drones

RICHMOND — Using a drone to help fix power lines is OK. Using a drone to spy on a sunbathing neighbor is not OK. But drawing a legal distinction between good drones and bad drones may be a tricky task for the Virginia General Assembly.



Personal Injury/Products Liability

Negligence & Strict liability

NEWS

11-MONTH-OLD GIRL INJURED AFTER PRIVATE DRONE CRASHES IN PASADENA

Flying Drones Over a Crowd of Concert-Goers Can't Be a Good Idea

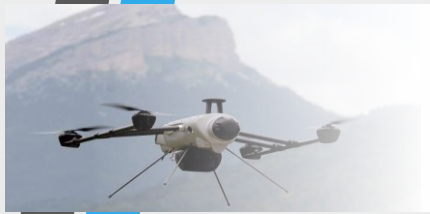
TGI Friday drone crashes into woman's face and cuts it open in restaurant

Drones carry mistletoe and kiss cams to pressure couples into kissing

***Getting a Drone as a Gift?
Check Your Insurance***



- Insurance Services Office, Inc. developed endorsement forms extending GCL to drones
- Aviation Insurance Market (e.g., Global Aero)



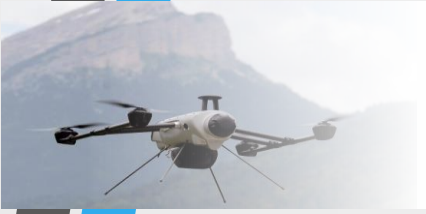
Property Rights

Lawsuit over shot-down drone could set U.S. law

USA TODAY NETWORK Andrew Wolfson, The (Louisville, Ky.) Courier-Journal 9:53 p.m. EST January 16, 2016

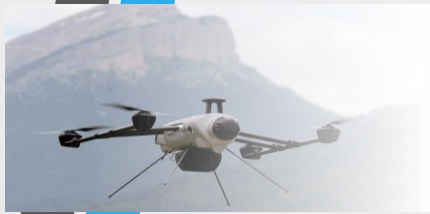


‘DRONE SLAYER’ CLEARED OF
CHARGES, JUDGE SAYS HE HAD
THE RIGHT TO SHOOT DOWN UAV



Boggs v. Merideth
(W. D. Ky. March 21, 2017)

- A federal judge dismissed for **lack of subject matter jurisdiction** suit against William Merideth, the Kentucky man who shot down a drone he believed was flying over his property.
- Unlike *Haughwout*, federal question jurisdiction did not exist.
- Boggs' claim is a trespass claim for state court, no agency.
- Thus, federal courts have not adequately addressed the question whether a drone flying over private property is trespassing.
- Note: *United States v. Causby* (1946) chicken farmer could assert property rights at least up to 83 feet in the air.



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