

The Intersection of Technical and Legal Considerations in Commercial Drones

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Agenda

- ▼ Regulation of drones
- ▼ Export control considerations
- ▼ Intellectual property and data rights

Regulation of Drones

- ▼ Patchwork of regulation
- ▼ Infrastructure regulation of drones

First Challenge: Patchwork of UAS Regulations

- ▼ Federal (FAA)
- ▼ State
- ▼ Local (city and county zoning laws)

Federal Regulation – FAA

- ▼ **Special Rule for Model Aircraft (recreational)**
- ▼ **Part 107 (up to 55lbs) for non-hobby non-recreational use**
- ▼ **Over 55 pounds? It gets tough**
- ▼ **Drone registration required for all types**

State Regulation

- ▼ In 2016 alone, 31 states considered UAS legislation
- ▼ Arizona SB 1449 prohibits:
 - ▼ operation that interferes with first responders
 - ▼ operating near or taking pictures of a critical facility
- ▼ Good stuff too: states such as DE have passed resolutions expressing support for use and development of UAS

Local Regulation

- ▼ **Golden Gate Bridge: no go zone**
- ▼ **The City of Santa Clara:**
 - ▼ found that drones create an “unnecessary risk of accident, terror attack, and opportunity for counter surveillance or for the delivery of harmful substances in a densely populated area.”
 - ▼ prohibits all commercial and consumer drone flight around certain areas, including within a half-mile radius of the City’s NFL stadium, local college sports facilities, and other “large venue special events in public parks and public facilities that will attract large groups of people.”

Federal Preemption

- ▼ FAA, aware that a patchwork of conflicting laws would choke a nascent industry, has provided guidance on state and local regulation
- ▼ December 17, 2015 "Fact Sheet": encourages local regulators to coordinate with FAA on most laws, but notes areas of traditional local police power like land use, zoning, and privacy

Second Challenge: Infrastructure

- ▼ **Passenger/cargo UAS: What good is a beautifully designed, safe car if there are no roads? No gas stations?**

Challenges as Opportunities

- ▼ **Technical solutions to address regulation**
 - ▼ E.g., geofencing, use sense-and-avoid systems to ensure compliance with zoning and privacy laws?
- ▼ **Infrastructure for passenger UAS**
 - ▼ Air traffic control systems? Recharging stations?

Export Control Considerations

- ▼ **Export Control Jurisdiction/Classification**
- ▼ **Design/Development Challenges**
- ▼ **International Trade Risk Mitigation**

Export Control Jurisdiction/Classification

- ▼ **Export Control jurisdiction/classification determines your regulator and level of control**
 - ▼ Analysis for UAVs involves multiple factors/specifications (*e.g.*, endurance, payload, wind stability, *etc.*)
- ▼ **Commercial UAVs are generally subject to Commerce jurisdiction under the EAR**
 - ▼ ECCN 9A012a. (Non-military Unmanned Aerial Vehicles)
 - ▼ ECCN 9A991b. (“Aircraft,” not elsewhere specified,)
 - ▼ But also look at 9A120 and 9A610 (and USML Cat. VIII)
- ▼ **Consider multilateral controls and ECR effects**
- ▼ **Self-Classification v. “CJ” (or CCATS)**

Design/Development Challenges

- ▼ Remain under Commerce/EAR jurisdiction (“dual-use” controls - no ITAR) to maximize commercial opportunities
 - ▼ ITAR “see through” effects
 - ▼ Evolving regulatory tweaks from ECR
- ▼ U.S. Export Control Reform provides some helpful regulatory strategies
 - ▼ Lowered Controls and USML → CCL migration
 - ▼ “Specially Designed”
 - ▼ EAR License Exceptions (e.g., STA)

International Trade Risk Mitigation

- ▼ **Conduct a comprehensive assessment of regulatory requirements/opportunities**
 - ▼ Export/trade-specific
 - ▼ Other applicable laws/regulations (e.g., FAA and state)
- ▼ **Economic Sanctions and Trade Embargoes**
 - ▼ Comprehensive and Targeted Programs
- ▼ **Global Anti-Corruption Laws**
 - ▼ U.S. Foreign Corrupt Practices Act
 - ▼ UK Bribery Act and relevant non-U.S. laws

Intellectual Property Considerations

- ▼ Comprehensive assessment of potential intellectual property rights
- ▼ Selection of appropriate rights
 - ▼ Patents
 - ▼ Copyrights
 - ▼ Trade secrets
 - ▼ Trademarks/brand protection

Intellectual Property Considerations

- ▼ UAVs generally require similar IP considerations to other products
- ▼ Autonomy requires special consideration
 - ▼ Technical contributions
- ▼ Company IP philosophy
 - ▼ Selection of appropriate rights:
Patents/Copyrights/Tradesecrets/Trademarks
 - ▼ Software: Open-source or Closed-source?

Data Rights

- ▼ **Who owns data?**
 - ▼ How was data gathered?
 - ▼ Privacy/contractual considerations
- ▼ **Data protection**
 - ▼ Contractual provisions
 - ▼ Intellectual Property rights

Questions?

Thank you!

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