

REGULATING



DRONES AT YOUR EVENTS

By Greg Cirillo

Battery-powered, remote controlled drones now give us the ability to capture amazing images and video that was previously only available with helicopters at great expense and danger. Views that used to be captured for tens of thousands of dollars, can now be had for hundreds of dollars, or less. Event organizers, performers, media, bloggers and even attendees will want to capture these amazing images and videos. If you are lucky, they will ask permission and you will have the opportunity to protect your interests. But many will not ask, and you will need to deal with uninvited drones.

For the near future, the vast majority of well-intended drone uses are technically illegal. And if you are hosting or sponsor-

ing an event, you need to consider both the safety risks and privacy infringements posed by drones. What must a host know in order to remain in compliance with law? And what should a host do in order to minimize liability for drone usage?

"Anything this good must be illegal."

That statement is largely true for most uses of drones, at least for the next year or two. In a nutshell, the law on civilian drone use in the United States is as follows:

- Although the Federal Aviation Administration (FAA) has proposed rules (released February 15, 2015) that allow limited civilian drone use under defined limitations, those proposed rules will not go into effect until they have

cleared mandatory notice-and-comment periods, which may not be until 2017. Until then we are left with the current legal landscape.

- The Federal Aviation Administration (FAA) considers a drone to be an aircraft, whether it weighs 15,000 lbs. or 3 lbs. The FAA has very limited flexibility and needs to consider the worst case scenario (that being a remotely controlled drone impacting a passenger aircraft with potentially disastrous results).
- Unless a specific regulatory exemption applies or is granted, to operate in our national airspace (which means anywhere outdoors and off the ground) the equipment needs to satisfy FAA airworthiness standards, the

operator needs to meet FAA licensing requirements, and the operation must comport to the same airspace rules as a Cessna 172 or Airbus A380. Yes, really.

- The FAA is developing rules to govern the airworthiness certification of drones, the licensure of operators (pilots) and proper use in U.S. airspace; but those rules are unlikely to become law until well into 2016. It is anticipated that these rules will initially require constant manned operation (no autonomous flight), operations within the pilot's visual line of sight, and a very high level of diligence in the design and operation of drones, including a requirement that the operator hold a pilot's license. The rules will, by no means, make drone operations easy or common.

This summary of the law seems completely at odds with what we are seeing every day. Hundreds of thousands of consumers are buying drones and flying them anywhere and everywhere. They are not pilots and they are not seeking FAA authority. So how are they lawfully operating? There are three explanations.

- First, there is a long-standing exemption (meaning that the FAA looks the other way) for aircraft modelers. Long before the advent of lightweight cameras and quadcopters, you had hobbyists building and flying model aircraft – often replicas of actual aircraft. Applying the above FAA standards, these would otherwise be considered aircraft and would require airworthiness certifications, pilot licenses and airspace compliance. But in a nod to practicality, the FAA allows modelers to enjoy their hobby provided that they voluntarily comply with a written understanding restricting flight operations.¹ This modeler's exemption is now applicable to modern quadcopters to the same extent as it applies to model aircraft operators. For operators that want to remain within the exemption, their operations are limited in a number of ways, including remaining within the operator's line of sight, under 400 feet, away from other people and away from air traffic. Most importantly, the use of drones must be non-commercial, meaning that it is not done for profit or even for reimbursement or barter.
- Second, many operators are behaving illegally and have no concern or no idea that they are behaving illegally, and the FAA does not have the resources to stop them. The FAA has always had the ability to seek financial penalties for unsafe "aircraft" operation and they have actually done this with drone operations. However, the process is slow and cumbersome, and the FAA lacks the re-

sources to police the hundreds of thousands of drones flooding our airspace. This may change as the FAA very recently released guidelines to encourage local law enforcement officials to identify and prosecute illegal drone operations.²

- The third explanation for current drone uses is that, beginning in late 2014, the FAA started issuing one-off exemptions in response to specific petitions seeking limited use of drones, including commercial uses. There are only a handful of legal operators under this exemption process, but that will likely increase. As with the modeler's code, operators will be severely restricted in their operating area and operator requirements.

As An Event Host, Here is What You Must Do

Make a good faith effort to prevent unlawful drone usage and protect yourself from illegal uses. Drones can be dangerous if they come in contact with visitors, participants or equipment. As a starting point, your position on drone operations should be clearly spelled out in your policies and operating contracts. Nobody should be operating a drone at your facility unless you are convinced that it is legal. For example, if a photographer offers to produce and sell video at your event, that photographer is going to need to show an FAA exemption permitting that use. If an event participant wants to employ a drone to record part or all of an event, you will need confirmation and acknowledgment that they are within the modeler's exemption, or have an FAA exemption. Even an amateur blogger capturing video for his or her blog is going to need to show you an FAA exemption. In all cases, the drone operators need to attest to the legality of their operation, assume responsibility, and hold the host harmless for breaches. In some cases, it will be appropriate to require the operator to secure liability insurance, with the facility named as an additional insured party. If drones of any kind are allowed, it needs to be with permission and after satisfaction of these conditions.

Without going into the details, what you will find is that today and for the near future the vast majority of intended drone uses are simply going to be illegal. For example, even in the rare cases where FAA exemptions have been granted, it does not freely permit drone operations over people's heads. The risk and consequences of being caught for an FAA violation is nominal for the photographer or blogger using it on occasion; but the risk to an event host is much higher, and of greater concern. Your event management personnel are going to need to be educated on your drone policy and be prepared to safely intercede to prevent unauthorized uses.

As An Event Host, Here is What You Should Do

Even if the intended drone usage is technically legal, as an event host you need to manage drone use in order to advance visitor safety and to keep yourself out of other legal matters involving privacy or illegal nuisance. The simplest approach is instituting a complete ban on drone usage. In the right context, this is the way to go since enforcement is easy.

But commercial and popular forces will come into play and you will want to allow certain uses either by the media, performers or even in support of your own operations (site inspection or event promotion). In that case, it is vital to understand what is legal (including knowing your local laws protecting the privacy of individuals, and prohibiting nuisance activities), and educating your staff so they can carry out your objectives. As above, you will need to build in new procedures and documentation to address the safety, privacy and liability risks of drone uses.

Lastly, if you are going to allow drones at events where performances are taking place, you must consider how copyrights may be impacted, and whether contracts with performers adequately address the rights to the images or video collected at the event.

Keep in mind that the law will change when the FAA issues its detailed, final rules, and whatever policies and procedures you adopt today will need to be reviewed and revised when the law changes.

1. The FAA has January 13, 2014 Memorandum of Understanding with the American Modelers Association, building on a long history of self-regulation by aircraft modelers.
2. January 8, 2015 FAA Press Release and Notice. <http://www.faa.gov/news/updates/?newsId=81244>

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