

# DRONE TECHNOLOGY AND PRIVACY: EVOLVING REGULATION

TIMOTHY Q. PURDON  
PARTNER, ROBINS KAPLAN LLP  
(FORMER U.S. ATTORNEY – NORTH DAKOTA)

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## THE UNITED STATES ATTORNEY

- Appointed by POTUS and Confirmed by the U.S. Senate
- Chief Federal Law Enforcement Official  
– Prosecute ALL Federal Crimes
- Defend the United States in Civil Actions
- Work closely with Federal Agencies
- District of North Dakota, 2010-2015



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## U.S. ATTORNEY WORK WITH DRONES



- U.S. CBP Northern Border Drone Fleet
  - HQ'ed in Grand Forks, ND
- Issues: Technology, Law Enforcement, Privacy, Canada

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## FEDERAL DRONE LAW: YOUR INDUSTRY IS GOING TO BE HIGHLY REGULATED

- The Pirker case (NTSB): Drones are aircraft.
- The FAA Modernization and Reform Act (FMRA)(2012) and FAA Interpretation of FMRA(June 2014): “Recreation vs. Commercial.”
- Want to fly commercial? Petition for FMRA Sec. 333 Exemption.

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## FMRA SEC. 333 EXEMPTIONS

- Stopgap until final FAA rulemaking.

- Trends:

- Less than 55 lbs
- Less than 400 feet
- Line of sight
- Daylight
- Private Pilot Certificate - but moving to Sport Pilot Licenses



## FAA SMALL UAS: NOTICE OF PROPOSED RULEMAKING

- For Commercial Uses

- Draft Rule:

- Less than 55 lbs
- Less than 500 feet
- Visual Line of Sight (unaided)
- Daylight only
- “Operators:” Pass FAA test, Vetted by TSA, UAS Operator Certificate



- Final publication of rule pushed back to 2016

## UAS REGISTRATION: MERRY CHRISTMAS FROM THE FAA!

- 12/15/15: DOT/FAA announced new INTERM registration rule: almost all drones must be registered
- Different than FAA commercial rules (2016)
- Recreational Drones:
  - Weights more than .55 lbs.
  - DJI Tech Phantoms: Yes
  - Parrot BeBop: Yes
- Owner registers online (vs. point of sale)



## WHY REGISTER ALMOST ALL DRONES?

- DOT Sec. Anthony Foxx: "...when you're in the national airspace, it's a very serious matter."
- Questions:
  - Wait: FRMA only allows FAA to regulate commercial drones. (Foxx: FAA can register any aircraft in national airspace.)
  - Point of sale still on table? (Retail Industry Leaders Assoc.)
  - Who maintain list of drones? (Privacy concerns?)

## IS YOUR BACKYARD NAVIGABLE AIRSPACE?

- FAA defines “navigable airspace” as above the minimum flight altitudes.
- Airplanes:
  - People: 1,000 feet above highest obstacle
  - Uncongested: 500 feet

## IS YOUR BACKYARD NAVIGABLE AIRSPACE?

- *US v. Causby*, (SCOTUS, 1946): Bombers vs. Chickens
  - Above minimum safe altitude (MSA) is public domain.
  - MSA: (1) “exclusive control, immediate reaches, enveloping atmosphere,” and (2) space you can occupy or use
  - Farmer won: Noise and 83 feet
  - FAA: Class G airspace: 83 feet to 500 feet
- *Boggs v. Merideth*, (KY, 2016): Drone vs. Shotgun
  - Drone in Class G airspace: 200 feet
  - Kentucky Trespass Claims
  - Drones: Noise? Privacy?

## OTHER KEY COMPLIANCE ISSUES IN THE DRONE INDUSTRY

- Protecting Intellectual Property
- Privacy: Regulation by local governments.

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## MISTAKES EVERY DRONE COMPANY SHOULD AVOID TO PROTECT IP

### Letting ideas walk out the door

Even if your consultants or employees develop the next great drone invention while working for your company, that invention is not necessarily your company's property.

Use good NDAs, employment agreements, and independent consultant agreements.



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## MISTAKES EVERY DRONE COMPANY SHOULD AVOID TO PROTECT IP

### Using someone else's secrets

Accidentally misappropriating a competitor's trade secrets is potentially disastrous.

Make sure employees understand the importance of separating current R&D from the work they did with previous employers.



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## MISTAKES EVERY DRONE COMPANY SHOULD AVOID TO PROTECT IP

### Failing to plan for IP protection

Protecting IP requires a well-managed strategy. Plan early and often.

### Jointly owning little

Make sure joint development agreements clearly define intellectual property ownership.



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## NAVIGATING PRIVACY PITFALLS WITHOUT FAA GUIDANCE

- FAA focus is on safety. NOT on privacy
- Privacy regulation has fallen to the states and local governments.
  - Common Law
  - Legislative Acts: Statutes and Ordinances

## NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

- February 15, 2015 – President Obama memorandum ordering the NTIA to launch a process to determine privacy best practice for commercial drone use.
- Efforts so far:
  - No results
  - No Federal guidance
  - Difficult to predict the outcome....





## BACKGROUND OF PRIVACY LAWS

- Potential common law issues

- Trespass
- Torts
- “Peeping Tom”
- Stalking



- Local legislation

- 45 states have considered 164 bills related to drones
- So far, 26 states have enacted laws addressing drone issues

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## COMPLIANCE DEPARTMENT: WHAT SHOULD YOU DO?

- Comply with federal state, city and municipal law.
  - Keeping up to speed on an extremely rapidly changing regulatory environment.
  - Think local. Comply with FAA, but also with state and city regs.
- Strong internal policies.
  - Specify how your drone technology will be used.
  - Training, training, training. (Cowboys in a highly regulated industry.)
  - Put in place oversight/monitoring of employees to ensure no improper uses
- Know some good lawyers!

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**GOVERNMENT AND INTERNAL  
INVESTIGATIONS GROUP**

TIMOTHY Q. PURDON  
PARTNER, ROBINS KAPLAN LLP  
CO-CHAIR, GOVERNMENT AND INTERNAL INVESTIGATION GROUP  
(FORMER U.S. ATTORNEY – NORTH DAKOTA)

612.349.8500  
[TPURDON@ROBINSKAPLAN.COM](mailto:TPURDON@ROBINSKAPLAN.COM)