



UAS Privacy Considerations

Unmanned Aircraft Systems (UAS) are emerging technologies that have the potential to transform America by providing wide ranging economic, environmental, safety, and security benefits. A recent studyⁱ by the Association for Unmanned Vehicle Systems International conservatively estimates that 103,776 high paying jobs could be created and state tax revenue could exceed \$482 million by 2025. They believe that every year the integration of UAS into the aviation systemⁱⁱ is delayed, America will lose more than \$10 billion in potential economic impact.

UAS applications and benefits include assisting these civil government and commercial tasks: emergency deployment at accident scenes, search and rescue, barricade situations, structure or other fire emergencies, terror threats, firefighting, chemical and HAZMAT detection, crop dusting, agricultural development, monitoring of pollution, pipelines, wildlife, traffic, and floods, aerial news coverage, delivering medical supplies to remote areas, aerial photography, forensic photography, real-estate photography, filmmaking, communications, broadcasting, Arctic and volcanic research, damage assessment, cargo transportation, port, border, and event security, etc. In addition to these direct benefits, UAS implementation has the potential to spawn many new industries and provide an incredible array of manufacturing, operation, and other high paying job opportunities.

Along with these benefits come concerns about individual privacy. There is an existing body of federal, state and local law relating to privacy. The question is whether existing law is adequate, absent extensive judicial review, to alleviate the concerns of state legislators and citizens regarding privacy rights in light of this new technology. Because this technology can use a variety of sensors and some can potentially loiter for long periods of time without detection, there is a concern that government can use these systems to monitor individuals in a way that was not imagined in Supreme Court 4th Amendment rulings based on the presumption of privacyⁱⁱⁱ. Because state law interacts with Federal 4th Amendment rulings, states may choose to enact legislation addressing this issue. The challenge is to provide privacy protection while allowing the use of UAS to achieve UAS' many benefits, as described above.

Because of the complexity of this issue and the importance of privacy to citizens in every state, representatives of the Aerospace States Association (ASA)^{iv}, the Council of State Governments (CSG)^v, and the National Conference of State Legislatures (NCSL)^{vi}, have joined together to create considerations for states to evaluate in developing UAS legislation. As part of our impartial deliberative process, UAS privacy stakeholder associations including the ACLU, EPIC, and IACP Aviation Committee^{vii}, AUVSI – the industry trade association^{viii} – as well as academics^{ix} responded to our request to submit their suggestions for state privacy legislation to an independent law firm, Cadwalader, Wickersham & Taft LLP^x. These submissions can be seen at <http://aerostates.org/events/uas-privacy-submissions>. Our review also included the Congressional Research Service's report, "Integration of Drones into Domestic Airspace: Selected Legal Issues," from April 4, 2013, and a memorandum for the Secretary from

the Office of Civil Rights and Civil Liberties, U.S. Department of Homeland Security, dated September 14, 2012. After deliberation, ASA, CSG, and NCSL provide the following considerations:

1. Warrants: States may consider requiring a warrant for government surveillance of an individual or their property where the individual is specifically targeted for surveillance in advance without their permission. All other observation activities should not require a warrant, to the extent allowed under Supreme Court rulings. Additionally, if there is not a specific person identified for surveillance in advance, it is generally not possible to obtain a warrant. Requiring one would eliminate UAS benefits, but can be addressed per recommendation number two, below.
2. Data Concerns: Some are worried about government use of data derived from warrantless observations. States may consider addressing this by prohibiting the repurposing of data collected from Government use of UAS in warrantless observation unless a warrant allows the repurposing.
3. States may consider prohibiting commercial UAS and model aircraft flights from tracking specific, identifiable individuals without their consent.
4. States can consider prohibiting weapons to be carried by any UAS in commercial airspace.
5. States may consider endorsing the International Association of Chiefs of Police Aviation Committee (IACP) "Recommended Guidelines for the use of Unmanned Aircraft^{xi}." These guidelines define UAS and provide guidance for community engagement, system requirements, operational procedures, and image retention for UAS operations by law enforcement organizations.
6. States may consider emphasizing that the FAA regulates commercial UAS^{xii}, and that they and model aircraft operations should be operated in a manner not to present a nuisance to people or property.

End Notes

ⁱ Economic Impact of Unmanned Aircraft Systems in the United States, March 2013, <http://www.auvsi.org/econreport>

ⁱⁱ The Federal Aviation Administration regulates all civil airspace, vehicles, and operators within the U.S. for safety and efficient airspace use through federal preemption. UAS safety regulations are being developed by the FAA. Until such regulations are in place, civil UAS operations must be specifically approved by the FAA. Government operations must comply with civil air traffic control directives. A lack of FAA permissive regulation and state prohibitions of UAS use delay integration of UAS into the aviation system and adversely affect America's global competitiveness in the development of this industry.

ⁱⁱⁱ The crucial inquiry for Fourth Amendment protection is whether a person has a reasonable expectation of privacy that society is prepared to recognize. Courts have found that individuals may have a Fourth Amendment right against the unreasonable search and seizure of the area surrounding a house, referred to as the "curtilage." The

Supreme Court has found that aerial surveillance over private property does not violate the Fourth Amendment if conducted by an aircraft in legally navigable airspace. However, UAV's can fly lower, often undetected, and this holding might not apply to UAVs and their unique capabilities, and arguably remains an open question.

^{iv} ASA is a bipartisan organization that represents the grassroots of American aerospace. It is a 501(c)(3) scientific and educational organization of lieutenant governors, governor-appointed delegates, and associate members from industry and academia. ASA was formed to promote a state-based perspective in federal aerospace policy development and to support education outreach and economic development opportunities.

^v Founded in 1933, The Council of State Governments is our nation's only organization serving all three branches of state government. CSG is a region-based forum that fosters the exchange of insights and ideas to help state officials shape public policy. This offers unparalleled regional, national and international opportunities to network, develop leaders, collaborate and create problem-solving partnerships.

^{vi} The National Conference of State Legislatures is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories. NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues. NCSL is an effective and respected advocate for the interests of state governments before Congress and federal agencies.

^{vii} In response to our request for information, papers were received from the Airborne Law Enforcement Association (including and referencing the guidelines from the International Association of Chiefs of Police Aviation Committee), the American Civil Liberties Union, the American Legislative Exchange Council, the Electronic Frontier Foundation, the Electronic Privacy Information Center and the National Association of Criminal Defense Lawyers.

^{viii} The Association for Unmanned Vehicle Systems International is the world's largest non-profit organization devoted exclusively to advancing the unmanned systems and robotics community. Serving more than 7,500 members from government organizations, industry and academia, AUVSI is committed to fostering, developing, and promoting unmanned systems and robotic technologies. AUVSI members support defense, civil and commercial sectors.

^{ix} Douglas Marshall of New Mexico State University and Paul Voss of Smith College responded to our requests.

^x Cadwalader, Wickersham & Taft LLP, established in 1792, is one of the world's leading international law firms, with offices in New York, Washington, D.C., Charlotte, Houston, London, Hong Kong, Beijing and Brussels. Cadwalader has provided pro bono legal services to ASA for over 20 years.

^{xi} http://www.theiacp.org/portals/0/pdfs/IACP_UAGuidelines.pdf

^{xii} Code of Federal Regulations Title14, as amended.