

CIVIL LIBERTIES, REMOTE SPYING AND THE DRONE LOBBY: Opening US Domestic Airspace to Unmanned Drones

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The repercussions of [the drone lobby's success in forcing opening US domestic airspace to unmanned drones by 2015 are](#) beginning to be felt across the US as civil liberties groups and politicians wake up to the implications for safety and privacy.

An article on the Public Intelligence website asks the basic questions [“Is it even logistically possible to operate thousands of pilot-less aircraft in domestic airspace?”](#) The authors examine two basic practical problems with unmanned drones. Firstly how they tend to become “zombies” by losing their wireless data-link to the remote operator - and then crashing. And secondly how without ‘sense and avoid’ capability drones are unable to avoid other aircraft and cause mid-air collisions. In both cases the more drones that fly - and the [FAA predict up to 30,000 drones will be flying in the US by the end of the decade](#) - the more incidents of lost data links and mid-air collisions there will be.

While safety is rightly the primary concern, civil liberties issues are also seriously affected by the new legislation. Last week the co-chairs of the Congressional Privacy Caucus, Ed Markey & Joe Barton, wrote [an open letter to the Federal Aviation Administration \(FAA\)](#) pointing out the “potential for drone technology to enable invasive and pervasive surveillance without adequate privacy protection” and requesting information as to how the FAA were to address privacy concerns.

In particular the pair want to know

- What privacy protections and public transparency requirements has the FAA built into its current temporary licensing process for drones used in U.S. airspace?
- Is the public notified about where and when drones are used, who operates them, what data are collected, how are the data used, how long are they retained, and who has access to that data?
- How does the FAA plan to ensure that drone activities under the new law are transparent and individual privacy rights are protected?
- How will the FAA determine whether an entity applying to operate a drone will properly address these privacy concerns.”

A couple of days later [an ‘op-ed’ piece in the Washington Post](#) by two Brookings analysts also raised the privacy issue:

“The current legal framework with respect to observations from above by government is not particularly protective of privacy. Two of the most relevant Supreme Court cases, California v. Ciraolo in 1986 and Florida v. Riley in 1989, addressed law enforcement’s use of manned aircraft to perform surveillance of a suspect’s property. In both cases, the court held that observations made from “public navigable airspace” in the absence of a warrant did not violate the Fourth Amendment.

These precedents suggest, in a world in which UAVs will be inexpensive and plentiful, that government operators might have broad legal latitude to use them for surveillance. Non-government operators may have even fewer constraints regarding surveillance. And today’s cameras are far more capable than those of the 1980s and can acquire stunning high-resolution imagery from hundreds of feet away — imagery that can be processed using ever more capable computers.”

However, the op-ed’s authors, John Villasenor and Ben Wittes also make the not unreasonable point that given “the challenges the agency will face in safely providing for the operation of what may soon be tens of thousands of UAVs, operated by tens of thousands of people from unconventional flight locations... to broaden its already unenviable task, to include this hotly disputed field [of privacy] that lies far from its core competency, is a recipe for bad and technologically uneven outcomes that will satisfy no one.”

The consequences of allowing unmanned drones to fly within domestic airspace both in terms of safety and privacy are beginning to be apparent to all. That such a serious step should be taken in such a rush and under such pressure, simply because of industry lobbying is ludicrous. There needs to be a serious re-think, as well as an investigation into how companies with a vested industry were able to force through such a huge change with little apparent regard to the consequences.

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