



The Rise of Drones: Best Practices for UAV Liability

Three Liability Aspects to Consider:

- UAVs you control directly
- UAVs controlled by a third-party contracted by your business
- UAVs beyond your control that may impact your business

Commercial use of UAVs is booming. Is your company protected?

Call them unmanned aerial vehicles (UAVs), unmanned aerial systems (UASs), or simply drones. The U.S. government estimated one million were sold during the 2015 holiday season. The market – which includes military, commercial, and personal use – is projected to grow exponentially, especially now that the U.S. Federal Aviation Administration (FAA) has finalized its rules for commercial operation. The FAA cites industry estimates that new relaxed commercial UAV rules could result in more than 100,000 new jobs and \$82 billion for the U.S. economy over the next 10 years.

As of December 2015, recreational users must register their aircraft and abide by certain rules. And in the U.K., commercial use requires express permission from the Civil Aviation Authority (CAA). The new FAA rules will take effect August 29, 2016, opening up UAV usage on a vastly larger scale than under the current model which requires a Section 333 exemption. But there are still rules to abide and liability risks to consider.

UAV Liability Risks

If you operate a UAV, your risks aren't solely penalties from the FAA or CAA for exceeding allowed UAV usage*. You face a myriad of liability risks: *What if your UAV crashes into a crowd of people? What if it goes through a building or car window? What if the company you hire to take aerial footage causes property damage, injures people on the ground or, in a catastrophic situation, damages a manned aircraft and injures those aboard?*

From a liability and risk management standpoint, there are three areas to focus on: (1) best practices for the UAVs you control directly; (2) best practices for contracting with third-parties to control UAVs for you; and (3) best practices regarding those UAVs you do not control at all.

Your company may or may not have CAA permission or be in full compliance with FAA rules. Either way, you want to take advantage of UAV benefits to help your business map property, manage crops, inspect buildings, film commercials, etc. There are a number of safeguards to consider. First and foremost is risk assessment of equipment, route and the potential dynamics of the flight zone.

Best Practices for UAVs You Control:

- Inspect the surrounding environment of your business and property from the air. Where is the nearest airport or heliport? Are there neighbors who may take offense to UAVs hovering over their property? Understanding the environment from a flight pattern and privacy perspective can help shape your company's policy.
- Keep track of UAV usage. Just as the federal government now calls for registration of personal UAVs, record and routinely audit UAV operation for liability protection, asset management, and for claims and insurance purposes.
- Ensure your UAV operators have received sufficient training in operation and are knowledgeable of airspace concerns and privacy implications.
- Operators should be obliged to follow a routine inspection and maintenance plan to confirm the UAV can fly properly and safely. This includes mechanical concerns and software features such as the return-to-home function.

*For more information, consult with your in-house or external legal counsel to confirm that you are complying with all applicable rules.

UAV Deployment Through a Third-Party:

Enlisting a third-party for UAV commercial work also raises liability concerns.

- Ensure proper indemnification language is included in the contract and the third-party has proper liability insurance coverage – both in amount and coverage of a UAV-related claim. You should be named as an additional insured.
- Find out if the third-party has operators who satisfy the pilot certification standards in accordance with FAA rules. Also, if the scope of work may go beyond the allowable limits of the FAA rules, find out if the operator has the appropriate FAA waiver.
- Establish guidelines for operations that fall in line with the FAA rules, such as: maintaining visual line-of-sight, remaining below 400 feet, and flying at least 5 miles away from an airport. Consider reviewing safety procedures and establishing notice requirements for those on the flight path.
- Know your contractor: Inquire flight history and experience, UAV training, business history, and their policies for collection and retention of data from UAV operation.



Where Did That Come From?

Your business may encounter UAVs landing on premises or flying overhead.

- Determine whether you should ban external UAVs. Certain venues like resorts, theme parks and residential complexes are appealing flight areas for operators. A clearly communicated ban gives you some protection.
- Add proper signage throughout your facility and grounds to communicate a UAV ban or UAV rules that all customers, residents or tenants must abide by.
- Identify any party – e.g., contractors, film crews, event organizers, etc. – who may seek UAV usage for their work onsite. Ensure your management procedures actively address potential UAV deployment.

Conclusion

The benefits of unmanned aerial vehicles for your business are plentiful but so are the liability risks. To protect your business, check your regulatory standing, inquire about insurance, and keep in mind these simple best practices.

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For more information on the new FAA rules governing commercial use, please visit: www.faa.gov/uas

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