

Time to talk with legislators about rules on using drones

We are far behind with this technology

I was extremely disappointed in December when the Federal Aviation Administration selected six sites for research and testing of unmanned aircraft systems (drones), with its anticipated conclusions to be issued sometime after February 2017.

The FAA selected an airport, two state entities, and three universities for its research, based on “geography, climate, location of ground infrastructure, research needs, airspace use, safety, aviation experience and risk.”

Its goal: Development of standards for drone categories, state monitoring and navigation, and safe drone operation; development of protocols and procedures for airworthiness testing; and testing of drone failure, operational and technical risks. All clearly are highly complicated and scientific categories.

I’m a journalist at heart, and I could not imagine why the FAA wouldn’t want to use the University of Missouri as a test site, in order to see how its program is teaching journalists how to use drones for covering news. Instead, the FAA has told MU to cease its drone program.

Meanwhile, Congress has urged the FAA to issue its conclusions by 2015 because we are so far behind other nations in accepting this technology. One expert was quoted as saying this country is “lagging, not leading, the commercial drone boom.” Apparently drones have been used for 20 years to fertilize crops in Japan, with Australia and South Korea moving in that direction.

Farmers in the United States are making use of drones in many ways already, although, of course, the biggest concern is ensuring that these unmanned vehicles

are not on a collision course with piloted planes and that they have a mechanism to land if something goes wrong with their communication and guidance system.



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Real estate photographers are using drones to photograph properties for listing purposes. Law enforcement uses drones for surveillance. Commercial use is expected to grow exponentially as ideas proliferate, including photography of sporting events, destination weddings, delivery of Amazon purchases, and many other uses.

As government considers these issues, it must consider also whether it will allow the public to use these for the same purposes it permits for it-

self. If government uses drones to check for wrongdoing among citizens, should not citizens have the same right to use drones to check for wrongdoing within government?

For example, law enforcement presently uses cameras on official vehicles to document citizen violence. Citizens have learned that cameras in their phones, similarly, can be used to document officer violence. Such a balance is an important check.

Ultimately, you are talking about First Amendment rights conflicting with Ninth Amendment privacy rights. This is not a new conflict. Back in 1986, for example, a plane flew over the backyard of a landowner and filmed marijuana plants being grown there. The U.S. Supreme Court rejected the homeowner’s argument that this was his private space, not visible from any public street, noting that “[a]ny member of the public flying

in this airspace who glanced down could have seen everything that these officers observed.”

But in another case that same year, the same Court, holding that government surveillance of a private place was justified, noted in dicta that perhaps it might feel differently about highly sophisticated surveillance equipment, such as “satellite technology” being used for similar purposes.

And in one more case, from 1989, the Supreme Court felt that surveillance of marijuana growing in a greenhouse, while not visible from a public place, was not an invasion of privacy because the owner had neglected to replace missing panels in the ceiling, leaving it visible to the public.

Okay, so what do I want you to take away from this? I want you to know that this battle is coming to your home town, immediately! At least one bill already has been introduced in the Missouri legislature this session, House Bill 1204, by Rep. Kenneth Wilson, of the Kansas City area, which would limit the use of drones for many purposes, including reporting.

Specifically, this bill says: “No person, group of persons, entity, or organization, including, but not limited to, journalists, reporters, or news organizations, shall use a drone or other unmanned aircraft to conduct surveillance of any individual or property owned by an individual or business without the consent of that individual or property owner.”

A House committee hearing in late January offered hope that an exemption for journalists may replace the prohibition language in HB 1204.

It’s too early to know what will happen to this bill. At present, the FAA considers the use of drones by journalists as “commercial use,” and not permitted. But I think now is the time for Missouri Press members to begin talking to their state legislators about the history of case law allowing photography from the air and the potential good purposes that can come from the use of drones in stories.

State law allows the media access to closed drivers license records for public safety purposes, despite privacy concerns. Perhaps a similar exception might be the answer here.