

A light blue world map is visible in the background of the slide, showing the continents and oceans.

OGA Conference Call

Privacy and Legal Issues Associated with UAS Operations

Association for Unmanned Vehicle Systems
International (AUVSI)

Overview

- AUVSI Advocacy
- What we're doing privacy issues
 - AUVSI's Industry Code of Conduct
- What started the Privacy Debate
- Proposed Legislation
- Letters to/from the FAA
- Judicial Precedent
- Law Enforcement's Response
- 113th Congress

www.auvsi.org

About AUVSI

AUVSI's mission is to advance the unmanned systems and robotics community through education, advocacy and leadership.

AUVSI's vision is to improve humanity by enabling the global use of robotic technology in everyday lives.

- In its 40th year, AUVSI is the ***world's largest non-profit association*** devoted exclusively to unmanned systems and robotics
 - Air, Ground and Maritime
 - Defense, Civil and Commercial
- AUVSI represents ***7,000 members***, including ***more than 580 corporate members*** from over ***60 allied countries***
- ***Diverse membership*** from industry, government and academia

AUVSI: Strongly Supporting Privacy

- AUVSI believes we can expand the use of unmanned systems safely and responsibly without infringing Americans' Constitutional rights
- **Privacy is NOT the FAA's responsibility**
- AUVSI encourages an open dialogue with ALL stakeholders
 - Met with more than a **dozen privacy groups**
 - Met with over **100 Congressional offices**
- Privacy Panel at conference
- Testified at a Congressional hearing on privacy
- Given over 120 media interviews
- Working with numerous law enforcement agencies
 - IACP, NSA, ALEA, DOJ, DHS



Code of Conduct

- In July 2012, AUVSI released the industry's first ever **"Code of Conduct"** which emphasizes
 - Safety
 - Professionalism
 - Respect
- The Code of Conduct explicitly supports individual privacy
 - "We will respect the privacy of individuals."
 - "We will respect the concerns of the public as they relate to unmanned aircraft operations."
 - "We will support improving public awareness and education of the operation of UAS."

"I think it's really important that they're paying attention to privacy. That's to their credit."

- Chris Calabrese, American Civil Liberties Union, 7/2/12

What Sparked the Privacy Debate

- EPA flying “drones” over farmers’ fields
 - Numerous news agencies erroneously reported that the EPA was flying UAS to conduct Clean Water Act violation inspections
 - EPA doesn’t own/fly any UAS
 - It’s been flying manned aircraft for decades
- Charles Krauthammer on Fox News, 14 May 2012

"I would say that you ban it under all circumstances and I would predict, I'm not encouraging, but I am predicting that the first guy who uses a Second Amendment weapon to bring a drone down that's been hovering over his house is going to be a folk hero in this country,"
- Numerous bills were introduced and Members of Congress spoke about the government’s regulatory overreach.

"SEE? THEY ARE REAL!
ONE OF THEM EPA SPY DRONES WAS
HOVERIN' RIGHT OVER THE BARN AND I
BLASTED IT TO KINGDOM COME!"

DRONE? THAT
WAS GRANDPA'S
FANCY ANTIQUE
WEATHERVANE.



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The Washington Post

6/16/12

Reining in the rumor about EPA 'drones'

EPA 'spy drones' overshoot the facts

The hubbub over nonexistent drones spying on U.S. cattle farmers provides a look at something hard to capture in U.S. politics: the vibrant, almost viral, life cycle of a falsehood

Federal Legislation in 2012

1. **Rep. Austin Scott** (R-GA) H.R. 5925 [**24 Cosponsors**], “Preserving Freedom from Unwarranted Surveillance Act”
2. **Senator Rand Paul** (R-KY) S. 3287 [**2 Cosponsors**], “Preserving Freedom from Unwarranted Surveillance Act”
3. **Rep. Shelley Moore Capito** (R-WV) H.R. 5961 [**14 Cosponsors**], the “Farmer’s Privacy Act”
4. **Rep. Ed Markey** (D-MA) H.R. 6676, the Drone Aircraft Privacy and Transparency Act”
5. **Rep. Ted Poe** (R-TX) H.R. 6199 [**26 Cosponsors**] the “Preserving American Privacy Act”
6. **Senator Mike Johanns** (R-NE) S. 3467 “to establish a moratorium on aerial surveillance conducted by the Administrator of the Environmental Protection Agency”
7. **Rep. Adrian Smith** (R-NE) Amendment to H.R. 6093 “to establish a moratorium on aerial surveillance conducted by the Administrator of the Environmental Protection Agency”
8. **Rep. Frank LoBiondo** (R-NJ) Amendment to H.R. 5972 “to prohibit the use of funds to be used to operate a UAS except in accordance with the Fourth Amendment of the Constitution”
9. **Rep. Scott Garrett** (R-NJ) Amendment to H.R. 5972 to defund the FAA’s implementation of the UAS provisions in the FAA bill
10. **Senator Rand Paul** (R-KY) Amendment to S. 3414 to require certification that a “drone” is immune from cyber attack or other compromise of control, navigation, or data. It would also mandate search warrants prior to use.
11. **Rep. Robert Aderholt** (R-AL) Amendment to H.R. 5855 to prohibit the use of armed UAS for homeland security
12. **Rep. Michal Burgess** (R-TX) H.R. 5950 introduced the “No Armed Drones Act”

State Legislation

Some States that have already introduced UAS privacy legislation

- Pushed for by the ACLU (and other privacy groups) and Tea Party Republicans
- Mirrors Federal legislation – same as the Rep. Scott and Senator Paul’s “Preserving Freedom from Unwarranted Surveillance Act” in Congress
 - California
 - Florida
 - Illinois
 - New Jersey
 - Oregon
 - Missouri
 - Michigan
 - Indiana
 - North Dakota
 - Virginia

2012 FAA Letters

- **21 December 2011** – Congress requests the DOT Inspector General to Audit the FAA’s UAS work.
 - **22 October** the DOT IG letter announcing the audit
- **24 February** – 30 privacy organizations ask the FAA to conduct a rulemaking to address privacy and civil liberty concerns
- **19 April** – Congressional Privacy Caucus, Reps. Edward Markey (D-Mass.) and Joe Barton (R-Texas), sent a letter to the FAA expressing concern about privacy and requesting a response from the FAA on how it will deal with privacy issues
 - **21 September** the FAA responds
 - **29 November** the Privacy Caucus releases a statement
- **3 May** – AUVSI inquired about the delay in the small UAS rule
 - **14 May** the DOT responds citing continued review of the FAA bill requirements as the cause of the delay
- **1 August** – Congressional Unmanned Systems Caucus writes the FAA for a UAS update
 - **1 November** the FAA responded, citing privacy issues as the cause of the delay
- **20 August** – AUVSI writes DOT and the FAA about the delay in the six UAS test sites
 - **21 September** the FAA responded, citing privacy issues as the cause of the delay
- **21 September** – the Aerospace States Association, comprised of all of the state Lt. Gov., write the FAA about the delay in the test sites
 - **21 November** the FAA responded, citing privacy issues as the cause of the delay
- **28 November** – AUVSI statement: “AUVSI to FAA: Focus on Your Mission, Proceed with UAS Integration”
- To Date, the FAA has received over **60 Freedom of Information Act (FOIA) requests**

Judicial Precedent

- UAS operations will ALWAYS have to comply with:
 - **Fourth Amendment to the U.S. Constitution** against unreasonable searches and seizures and requires search warrants to be based upon probably cause
 - **Supreme Court** precedent
 - The U.S. Supreme Court has repeatedly held that airborne technology cannot be used to invade **Constitutionally protected areas**; however, if you operate in public airspace, anything seen in “**plain view**”, without using “**sense enhancing technology**” will be admissible without a warrant.
 - So far, in determining what is a **Constitutionally protected area**, the U.S. Supreme Court has distinguished between four types of areas: **businesses**, **open fields**, **curtilage**, and **homes**.
 - The Court has held that the expectation of privacy outside a home or outside a business is less than that for inside a residence.
 - ***Katz v. United States (1967)***, the Court ruled that eavesdropping by using a listening device on a public phone booth violates “a subjective expectation of privacy that society recognizes as reasonable.”

Judicial Precedent Cont.

“Sense-Enhancing Technology”

- In *Kyllo v. United States (2001)*, a case involving the use of thermal imaging by police, the U.S. Supreme Court held that all details, with respect to a home, are “intimate details” and that the use of “sense-enhancing technology” to gather information about a home, in this case infrared imaging, is considered a search and cannot be done without a warrant.
 - In the words of the court, “we think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area ... constitutes a search.”
 - In other, other words, the court prohibits the use of airborne technology to invade Constitutionally protected areas without a search warrant.
- However, the Court has a differing view on the reasonable expectation of privacy in outdoor business property, and open fields and curtilage surrounding a residence, when observations can be made from a place where the observer has a legal right to be and the item or area is in “**plain view**”.

Judicial Precedent Cont.

“Plain View”

- In ***Dow Chemical Company v. United States (1986)***, another case involving the airborne use of thermal imaging, the Court held that a Fourth Amendment protection does not include the open area of an industrial complex where there was no legitimate expectation of privacy.
 - The Court compared the aerial observations of the business with the lawful observations made over an “open field”, where an individual also does not have a legitimate expectation of privacy.
- With regards to the “open fields” doctrine, in ***California v. Ciraolo (1986)***, the U.S. Supreme Court held that the police did not have to obtain a search warrant when observing a person’s backyard or curtilage from an airplane more than 1,000 feet above the ground.
 - The Court further defined aerial searches in ***Florida v. Riley (1989)***, when it held that police officers do not need a search warrant when flying a helicopter above 400 feet above the ground.

Privacy Guidelines for Law Enforcement

- AUVSI publicly applauded law enforcement's push for privacy
 - The **International Association of Chiefs of Police** (IACP) approved model guidelines for UAS operations
 - IACP guidelines adopted by:
 - The Airborne Law Enforcement Association
 - The FBI Law Enforcement Executive Development Association
 - FBI National Academy Associates
 - Grand Forks (ND) Sheriff's Department

9/7/12



Police chiefs urge limits on use of drones

Washington, DC - The nation's largest consortium of police officials is calling for the limited use of unmanned drones in local law enforcement operations...

Privacy Guidelines for Law Enforcement



“The IACP is to be applauded for addressing this issue, and for issuing recommendations that are quite strong...”

- Jay Stanley, ACLU Senior Policy Analyst, 8/17/12

Advancing Technology, Protecting Privacy

- Experts agree: Legal framework already in place a good start to protecting Americans' privacy...

THE HILL

Flurry of 'drone' bills shows Congress has much to learn

“It is quite reasonable for Americans to be concerned how a new technology will impact their personal privacy. It has been a concern since the founding of this country. Fortunately, there is already precedent, through the Constitution’s Fourth Amendment and case law, by which users of this new technology must abide.”

- *Tim Adelman, legal expert on the use of unmanned aircraft systems by law enforcement agencies, 9/20/12*

Forbes

Will "Drones" Outflank the Fourth Amendment?

“In a word, no. The Fourth Amendment...has served us well across over two centuries of technology advances, and there is no reason to expect that it will suddenly lose its protective power when domestic use of unmanned aircraft becomes common.”

- *John Villasenor, UCLA Professor and Brookings Institute Non-Resident Fellow, 9/20/12*

Supporting Privacy Legislation

- Despite a legal framework being in place, AUVSI supports reaffirming Americans' privacy rights
- Endorsed legislation by Rep. Frank Lobiondo (R-NJ) reaffirming 4th Amend. rights with regard to UAS
 - Amendment passed the House of Representatives as part of the Department of Defense Appropriations bill

“Unmanned aircraft can help our police, fire fighters and first responders save time, save money and most importantly, save lives, while fully respecting Americans’ rights to privacy.”

- AUVSI president and CEO, Michael Toscano

Threats to advancing UAS

CQ

“The current Congress, which has little time in which to address a long agenda, is unlikely to delve into drones again...lawmakers might find the next session an opportune time for revisiting what they have wrought, before that final FAA rule-making deadline comes and goes.”

- *Congressional Quarterly, October 22, 2012*

113th Congress

- We anticipate multiple hearings on UAS
 - We've met with:
 - House Homeland Security Committee
 - House Judiciary Committee
 - House Transportation and Infrastructure Committee
 - Senate Commerce Committee
 - Senate Judiciary Committee
- We anticipate all of the current legislation to be reintroduced
- AUVSI working on a strategy to proactively address privacy issues in the 113th Congress