

## Change is in the air : The evolving legal status of drones

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Let's say you want to use a drone.

Your purposes could be innocent or sinister, from snapping aerial photos of a sunset illuminating the beach to snapping aerial photos of a sunset illuminating your neighbor's bedroom.

What kind of legal hazards might you face?

"That's a model bar exam question," Los Angeles attorney Michael Ehline told the News-Press. "It raises a bunch of interesting issues."

The military and government agencies have been using unmanned aerial vehicles (UAVS, or drones) for years, both to conduct surveillance domestically and fight terrorism.

Private companies are getting in on the action, with Internet mega-retailer Amazon seeking FAA approval of "Prime Air," a program that, according to Amazon's website, would employ UAVs to deliver online merchandise orders as fast as a pizza - 30 minutes or less.

Private citizens, too, have been slowly adopting the technology.

Cliff Baldrige, a Santa Barbara-based tech enthusiast and expert on all things Google, has been using radio-controlled vehicles for three decades.

"You could classify me as (an) expert hobbyist," Mr. Baldrige told the News-Press.

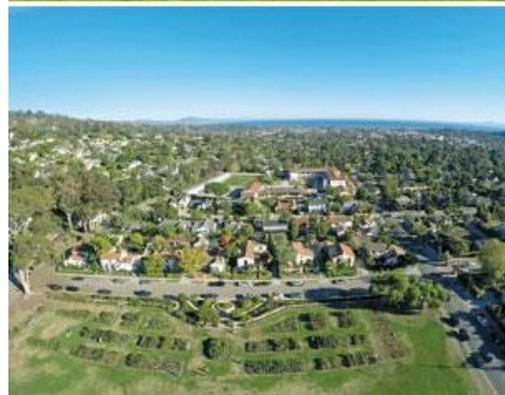
Mr. Baldrige seems to be one of the "good guys" who employ the aircraft. He uses drones to capture aerial footage of Santa Barbara vistas, posting scenic videos on the Santa Barbara Arts TV YouTube page.

His tool of choice is an AR Drone 2.0, which he's modified to hold a Go Pro HD camera.

Mr. Baldrige said the technology allows him to capture "absolutely amazing, stunning images and video you could never get ever without a drone."

Despite the seemingly innocuous nature of his work, Mr. Baldrige said he has to be careful how he uses drones, and films "rarely for hobbyist purposes."

According to Mr. Ehline, a personal injury lawyer who writes a legal blog from a libertarian perspective, private citizens like Mr. Baldrige face two major legal issues when it comes to using drones: the FAA, and the right to privacy.



Above, a drone enabled the photographer to get a wide shot of a Softball game at Dos Pueblos High School. At right, Santa Barbara is shown from above the Mission Rose Garden

The Santa Barbara Harbor as seen from a drone view

ERIC ISAACS / NEWS-PRESS PHOTOS

"Even if you're respecting all the rules of FAA licensing, you're still bound by the penal code," Mr. Ehline said. "It all comes down to the reasonable expectation of privacy."

Under California law, recording in public places is legal unless those being recorded can claim a reasonable expectation of privacy, so while recording a police officer making a public arrest is typically legal, filming an unaware beachgoer could violate the law.

Mr. Ehline said he worries that as drone technology becomes more pervasive, legislators and judges will promote government drone use while restricting private citizens' access.

"Law enforcement will argue, 'We have the right to record using drones, but you don't,'" Mr. Ehline said. "And here in California, it's usually a pro-government position (taken by the courts)."

A representative from the Santa Barbara County Sheriff's Department and District Attorney Joyce Dudley both told the News-Press that local law enforcement is not, to their knowledge, using drones.

Drones could be a double-edged sword, Mr. Ehline said, holding law enforcement accountable while making state-sponsored invasions of privacy easy.

"I'd love it if as soon as I got pulled over, a drone would launch from the roof of my car and begin recording the incident," Mr. Ehline said, citing the case of Rialto, where reports of police misconduct dropped over 80 percent after officers started to be systematically recorded on the job.

But in Rialto the officers carry the cameras recording them.

While drones could keep overzealous cops in check, they could also provide the government with a free source of warrantless surveillance, Mr. Ehline warned, saying that delivery drones - such as those Amazon is trying to get approved - could be tapped.

Mr. Ehline speculated that Amazon, eager to maintain business opportunities, might readily play along with government requests for drone data.

For now, the guidelines on private drone generally seem to be:

1. Fly low, below 400 feet.

"Hobbyists and recreational users of model aircraft currently don't need any special licensing but are encouraged to follow guidelines that are outlined in a 1981 circular," Mr. Baldrige said. "The guidelines say model aircraft should be operated at a site that is a 'sufficient distance from populated areas' and not flown above 400 feet."

2. Keep your drone in sight to avoid charges of recklessness or endangering others.



A DJI Quadcopter hovers above Lizard's Mouth.

"I am always in control of my drone and always keep line of sight in view," Mr. Baldrige said.

3. Keep your distance.

"You would want to, of course, keep a general expectation of privacy in public, such as (not hovering) the drone on private property like to say look into windows, but once you reach a certain altitude say 50-plus feet about as high as a palm tree then you are more filming the public scenery and landscape," Mr. Baldrige said. "I have not seen or heard of any cases in Santa Barbara where people were concerned that

(the flight of a private drone) violated their privacy."

Ms. Dudley said she too is not aware of any local lawsuits brought on by private drone use.

The law is changing to accommodate drones, albeit slowly.

The FAA is working to develop rules that would incorporate drones into national airspace, but federal watchdogs reported that the agency is behind schedule.

"The (FAA) will not meet the September 2015 deadline for safe (drone) integration and it is uncertain when this will be achieved," Calvin Scovel III, the Transportation Department's inspector general, told the House Transportation subcommittee on aviation last month.

Drone-related legislation is pending in the California Assembly.

AB 2306, scheduled to be heard in committee Tuesday, was introduced last month, and the bill's text reads as follows:

"It is the intent of the Legislature to enact legislation that would prohibit the use of an unmanned aircraft system to invade a person's privacy."

But what exactly counts as an invasion of privacy is hard to say.

Sen. Dianne Feinstein, chairwoman of the Senate Intelligence Committee, has defended NSA surveillance programs in the past, but a personal experience with drones is making her rethink her position on personal privacy.

"I'm in my home and there's a demonstration out front, and I go to peek out the window and there's a drone facing me," the senator told CBS' 60 minutes last week.

The encounter raised questions for Mrs. Feinstein.

"When is a drone picture a benefit to society?" she asked. "When does it become stalking? When does it invade privacy? How close to a home can a drone go?"

From a legal perspective, those answers largely remain to be determined.

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