

DRONE ON: HOW FLYING ROBOTS WILL AFFECT OUR LIVES, LAWS AND INSURANCE

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Introduction

When Drones Go Bad



Federal Aviation
Administration

Bride and Groom
Drone Falls on Spectator
Downhill Skier



**NO
DRONE
ZONE**



Federal Aviation
Administration

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DRONE INJURIES LAWYER BLOG

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DRONE INJURY LAW ON DRONE INJURY CLAIMS

Drone usage in the United States is skyrocketing. Unfortunately, legislatures cannot regulate drone safety at the same pace. This leads to increasing numbers of drone injury lawsuits resulting from drone negligence.

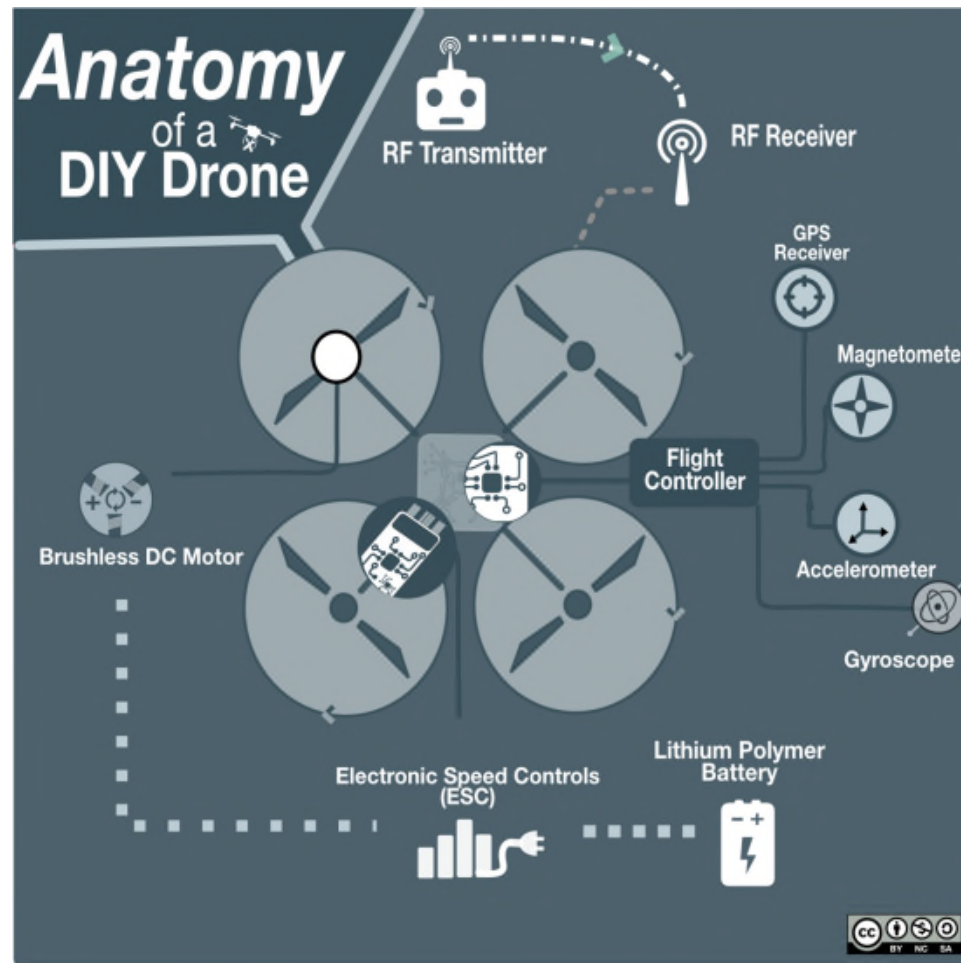
What Is A Drone?



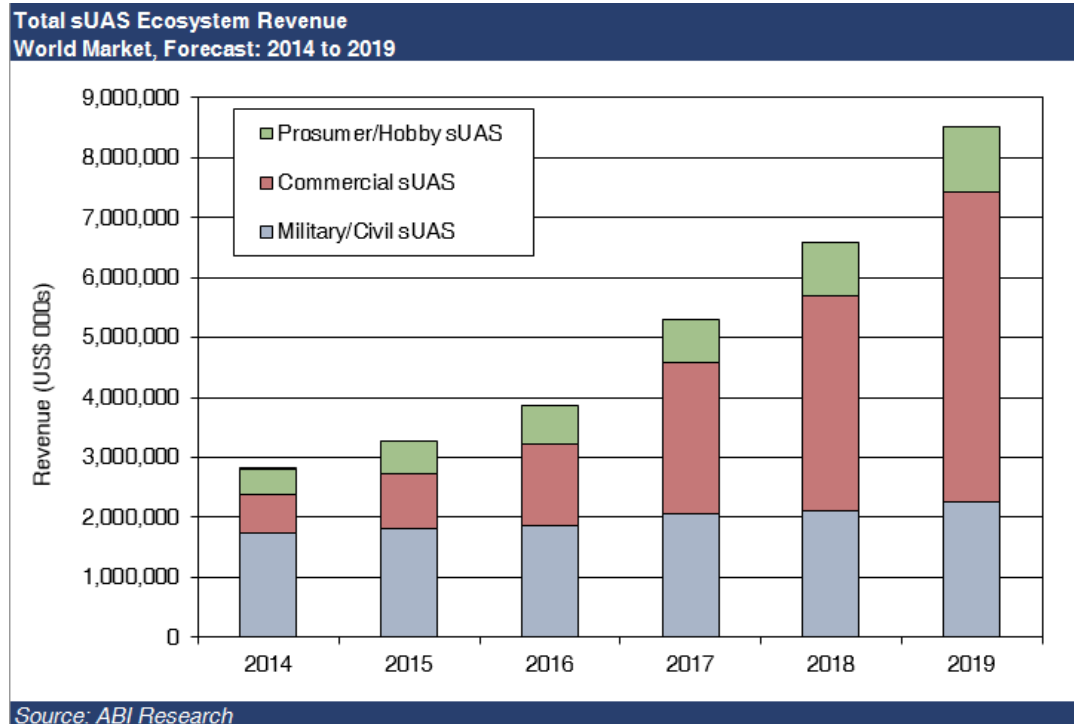
Drone = Unmanned Aerial Vehicle = UAV = UAS



Anatomy Of A Drone



Drone Industry Growth



Top Commercial Uses for Drones

- Entertainment/Photography
- Real Estate
- Search and Rescue
- Utilities
- Mapping
- Journalism
- Construction
- Utilities
- Claim Adjusting
- Package Delivery



Legal Issues

Airspace Classes



AC 91-57

DATE June 9, 1981

ADVISORY CIRCULAR



DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
Washington, D.C.

Subject: MODEL AIRCRAFT OPERATING STANDARDS

1. **PURPOSE.** This advisory circular outlines, and encourages voluntary compliance with, safety standards for model aircraft operators.

2. **BACKGROUND.** Modelers, generally, are concerned about safety and so exercise good judgment when flying model aircraft. However, model aircraft can at times pose a hazard to full-scale aircraft in flight and to persons and property on the surface. Compliance with the following standards will help reduce the potential for that hazard and create a good neighbor environment with affected communities and airspace users.

3. **OPERATING STANDARDS.**

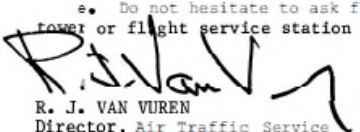
a. Select an operating site that is of sufficient distance from populated areas. The selected site should be away from noise sensitive areas such as parks, schools, hospitals, churches, etc.

b. Do not operate model aircraft in the presence of spectators until the aircraft is successfully flight tested and proven airworthy.

c. Do not fly model aircraft higher than 400 feet above the surface. When flying aircraft within 3 miles of an airport, notify the airport operator, or when an air traffic facility is located at the airport, notify the control tower, or flight service station.

d. Give right of way to, and avoid flying in the proximity of, full-scale aircraft. Use observers to help if possible.

e. Do not hesitate to ask for assistance from any airport traffic control tower or flight service station concerning compliance with these standards.


R. J. VAN VUREN
Director, Air Traffic Service

Initiated by: AAT-220

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Drone Law: A Short History

- **1981 Model Aircraft Guidelines (AC 91-57)**
 - Avoid populated areas
 - No flight above 400' AGL
 - Avoid other aircraft
 - Notify ATC within 3 miles of airport
- **2012 FAA Modernization and Reform Act (FMRA)**
 - Instructed FAA to create rules for operation of UAVs under 55 lbs (commercial AND recreational activities)
 - No further regulation of small recreational UAVs pending passage, under specified conditions
 - Section 333 provides for commercial operations pending passage
 - Does NOT create new law until passage (expected 2017-2018)

Drone Law: A Short History (cont'd)

Pirker Case

- 2014 FAA Enforcement Case Against Commercial Drone Operator for University of Virginia drone videos
- Violation of FAR 91.13 (“no person may operate an aircraft in a careless or reckless manner”)
- Per NTSB Appeals Board: UAV is considered an “aircraft” for purposes of FAA regulations
- *Pirker* did NOT apply federal regulations other than FAR 91.13 to any drone operations
- *Pirker* MAY provide support for insurance policy exclusions for “aircraft” operations

Drone Law: A Short History (cont'd)

2015 Notice of Proposed Rule-Making (NPRM)

- Proposed FAR part 107
- Would apply to both recreational and commercial operations
- Requires drone operator certificate
- Training and recurrency requirements
- Operational Limitations
 - Less than 55 pounds
 - Below 500' AGL
 - Within visual line-of-sight daytime operations only
 - Notification to ATC and/or permission in controlled airspace
 - No flight over persons
 - No careless or reckless flight
- Does NOT create new law until passage (expected 2017-2018)

Current FAA “Rules” for Commercial Use

FMRA Section 333 Exemption

- According to 2014 FAA “Interpretation,” any aircraft operation in the national airspace requires a certificated and registered aircraft, a licensed pilot, and operational approval (this “Interpretation is being challenged in several court cases
- Case-by-case authorization for certain unmanned aircraft to perform commercial operations prior to the finalization of the Small UAS Rule, which will be the primary method for authorizing small UAS operations once it is complete
- Despite the argument that there are no current restrictions on commercial drone operations, the Section 333 exemption process arguably provides operators a competitive advantage in the UAS market
- Section 333 exemptions are not economically viable for most small commercial drone operators
- Section 333 will be moot upon passage of proposed Part 107
- There have been NO documented enforcement actions against commercial operators for alleged violations other than pursuant to “careless and reckless” provision

Current FAA “Rules” for Recreational Use

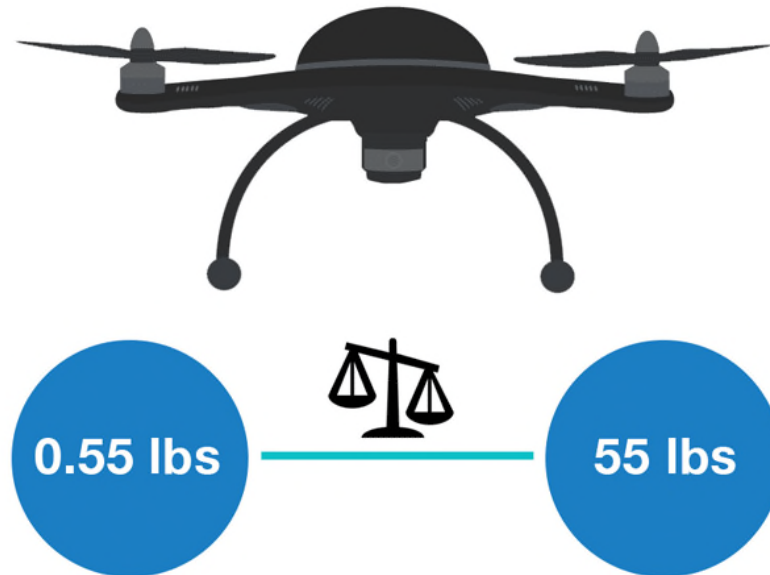
Model Aircraft Guidelines Per FMRA

- Follow community-based safety guidelines, as developed by organizations such as the Academy of Model Aeronautics (AMA).
- Fly no higher than 400 feet and remain below any surrounding obstacles when possible.
- Keep your sUAS in eyesight at all times, and use an observer to assist if needed.
- Remain well clear of and do not interfere with manned aircraft operations, and you must see and avoid other aircraft and obstacles at all times.
- Do not intentionally fly over unprotected persons or moving vehicles, and remain at least 25 feet away from individuals and vulnerable property.
- Contact the airport and control tower before flying within five miles of an airport or heliport.

FAA Registration Requirement for sUAS

Do I need to Register My Drone?

You need to register and label your aircraft if it weighs between 0.55 lbs. (250 grams) and up to 55 lbs. (25 kg)



If you fail to register your drone and properly label you may be subject to civil and criminal penalties.

Legal Issues On The Horizon

- Regulatory Issues (preemption = federal vs. state/municipal law conflict)
- Tort Liability
- Insurance Coverage Issues



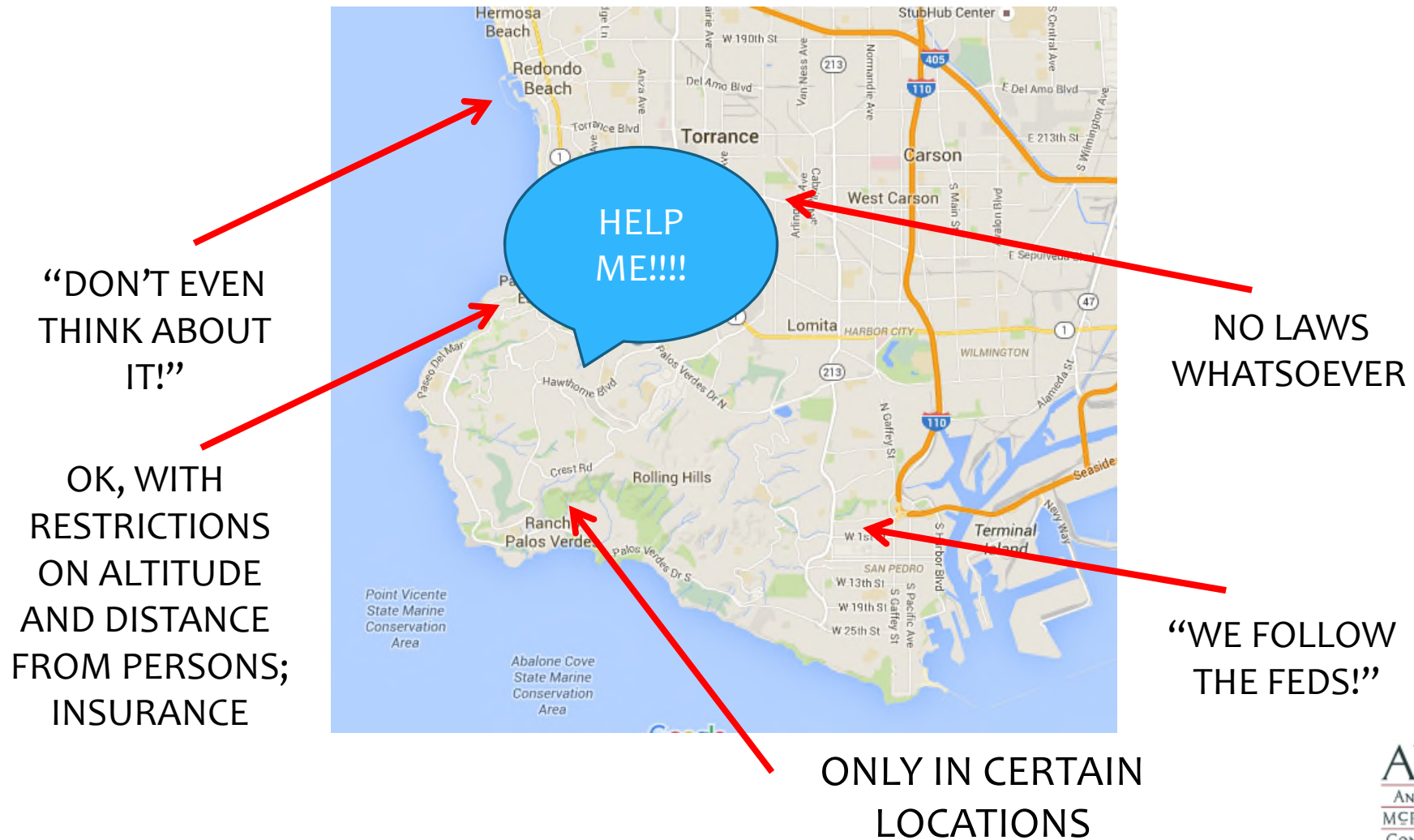
Federal Preemption

United States v. Causby

- 1946 U.S. Supreme Court Case
- Army Planes Using Airport Near North Carolina Chicken Farm
- Flights Over Farm Were 83 Feet AGL
- Noise Scared the Chickens
- Causby Sued for “Taking” Under Fifth Amendment
- Supreme Court says that landowner owns “at least as much of the space above the ground as he can occupy or use in connection with the land.”
- What effect does this law have on state and local laws regulating drones above private property?
- Case does NOT say that landowners can prohibit aircraft operations



Local Laws: Can I Fly?



Examples of Local Laws

CITY OF ROLLING HILLS ESTATES

8.36.040 - Model aircraft prohibition. No person shall fly a model aircraft within the city limits. For the purpose of this section, "model aircraft" means and includes any model aircraft which maintains flight by means of an electric motor or fueled engine. (Prior code § 685)

Examples of Local Laws

CITY OF PALOS VERDES ESTATES

8.24.020 Gliders and model airplanes – Distance from dwellings. It is unlawful for any person to fly any powered model airplane or radio-controlled glider at any place within one hundred feet of any dwelling. (Ord. 701 § 2 (Exh. 1), 2012; Ord. 321 § 1, 1976)

8.24.025 Gliders and model airplanes – Requirements for flight

- A. It is unlawful for any person to launch any powered model airplane or radio-controlled glider from any place within the Bluff Cove area of the city other than from an area posted by the city as being a permissible area for such launching. Areas to be so posted shall be determined by motion or resolution of the city council.
- B. It is unlawful for any person to launch or fly any powered model airplane or radio-controlled glider within the city unless such person is an active member of the Academy of Model Aeronautics or has a policy of liability insurance in the amount established by resolution of the city council sufficient to insure against any claim or damage arising from the flying of a powered model airplane or radio-controlled glider, and has upon his or her person proof of such membership or of such insurance policy, which shall be made available upon request of any city employee. (Ord. 701 § 2 (Exh. 1), 2012; Ord. 588 § 1, 1995)

Examples of Valid State/Local Laws

- Laws regulating public property from which drones can be launched
- Laws re trespass, nuisance and invasion of privacy (below “navigable airspace”)
- Laws restricting their own agencies’ drone operations

FAA 2016 Reauthorization Act

13 **SEC. 2142. EFFECT ON OTHER LAWS.**

14 (a) **FEDERAL PREEMPTION.**—No State or political
15 subdivision of a State may enact or enforce any law, regu-
16 lation, or other provision having the force and effect of
17 law relating to the design, manufacture, testing, licensing,
18 registration, certification, operation, or maintenance of an
19 unmanned aircraft system, including airspace, altitude,
20 flight paths, equipment or technology requirements, pur-
21 pose of operations, and pilot, operator, and observer quali-
22 fications, training, and certification.

Potential Tort Liability

- Trespass
- Nuisance
- Invasion of Privacy
- Personal Injury
- Property Damage

Trespass

Civil Code 1708.83. (a) A person wrongfully occupies real property and is liable for damages pursuant to Section 3334 if, without express permission of the person or entity with the legal authority to grant access or without legal authority, he or she operates an unmanned aircraft or unmanned aircraft system less than 350 feet above ground level within the airspace overlaying the real property.

California SB-142 vetoed by Gov. Brown September, 2015

Invasion of Privacy

Civil Code 1708.8. (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land or into the airspace above the land of another person without permission or otherwise committed a trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of any device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the device was used.

California AB-856 enacted September, 2015

Nuisance

- Civil Code section 3479: “Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.”
- Who owns the airspace? i.e. *Causby*

Coverage and Risk Management Issues

Identifying the Risk

Identifying the risks associated with UAS

VEHICLE HULL PHYSICAL DAMAGE

- Who's qualified to fly them?
- Who's qualified to train them?
- What are the values of the vehicles?
- Who can repair them?
- What level of damage occurs on average?
- What support and parts inventories are available?
- What is the cost of repair?

THIRD PARTY LEGAL LIABILITY

- Who's qualified to fly them?
- Who's qualified to train them?
- What type of damage can they cause to property?
- What type of bodily injury can they cause?
- What failure mode measures are built into the systems?
- Any known losses?
- Privacy & Personal Injury?

Aviation Coverages

Drone Manufacturer, Owner and Operator Coverage

Hull Coverage

- Loss or damage to the drone and associated equipment on an agreed value basis.

Third Party Legal Liability Coverage - Limits to \$100,000,000 Combined Single Limit and Higher

- Manufacturer Product Liability
- Third Party Legal Liability
- Premises Liability
- Aviation and Premises War Risk Liability
- Aviation and Premises Medical Payments
- Fire Legal Liability
- Independent Contractors Liability
- Personal Injury
- Advertising Liability
- Contractual Liability
- Fellow Employee Coverage

USAIG UAS Policy Definitions

Unmanned Aircraft Liability Hazard

The insurance afforded by this policy applies to *bodily injury* or *property damage* arising out of any *unmanned aircraft* which is owned by, in charge of, or in the care, custody or control of the *Named Insured*, or for the operation, maintenance or use of which the *Named Insured* is or may be held legally liable.

Definitions applicable to the **Unmanned Aircraft Liability Hazard**:

UNMANNED AIRCRAFT: *Unmanned Aircraft* means unmanned aerial vehicles designed for navigation in the atmosphere of the earth and equipped with controls for the purpose of directing the intentional take-off of the vehicle for flight, the flight of the vehicle and the intentional safe landing of the vehicle following flight. The controls for this vehicle are not located within the *unmanned aircraft*.

Coverage Issues

Homeowners' and CGL Policies

- Exclusion for claims arising from operation of “aircraft”
- Most policies fail to define “aircraft”
- Cases have not been consistent in limiting “aircraft” to certain types of operations; i.e. gliders, parachutes, balloons
- What is the common definition of “aircraft” and does it apply to UAVs?
- What is the effect of the *Pirker* decision on the inclusion of UAVs in the definition of “aircraft?”
- Exclusion for “commercial” and “business” pursuits
- Exclusion for intentional torts
- Use of endorsements to exclude/include UAVs

Example Homeowners' Policy #1

SECTION II - EXCLUSIONS

1. Coverage L and Coverage M do not apply to:
 - a. **bodily injury or property damage:**
 - (1) which is either expected or intended by the **insured**; or
 - (2) which is the result of willful and malicious acts of the **insured**;
 - b. **bodily injury or property damage** arising out of **business** pursuits of any **insured** or the rental or holding for rental of any part of any premises by any **insured**. This exclusion does not apply:
 - (1) to activities which are ordinarily incident to non-**business** pursuits;
 - (2) with respect to Coverage L to the occasional or part-time **business** pursuits of an **insured** who is under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders:
 - copy one part and rent or hold for rental the other part; or
 - (5) to farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations;
- c. **bodily injury or property damage** arising out of the rendering or failing to render professional services;
- d. **bodily injury or property damage** arising out of any premises currently owned or rented to any **insured** which is not an **insured location**. This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by an **insured**;
- e. **bodily injury or property damage** arising out of the ownership, maintenance, use, loading or unloading of:
 - (1) an aircraft;
 - (2) a **motor vehicle** owned or operated by or rented or loaned to any **insured**; or
 - (3) a watercraft;

Example Homeowners' Policy #2

SECTION II - EXCLUSIONS

g. Arising out of:

- (1) The ownership, maintenance, use, loading or unloading of: or
- (2) The entrustment by any "insured" to any person; or
- (3) Vicarious liability, whether or not statutorily imposed, for the actions of anyone using:

an "aircraft" or "hovercraft".

DEFINITIONS

2. "**Aircraft**" means any conveyance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

AMA CGL Policy “Model Aircraft” Endorsement

EXCLUSION G., AIRCRAFT, AUTO OR WATERCRAFT AMENDED

Exclusion g. is amended to include the following:

g. (6) “Bodily injury” and “property damage” arising out of “model aircraft”, “model watercraft” or “model automobiles”.

For the purposes of this endorsement, “model aircraft” means any aircraft that is not capable of carrying a human passenger and weighs 55 pounds or less with fuel, unless a special waiver has been granted by the Academy of Model Aeronautics, Inc. allowing the “model aircraft” to weigh up to 125 pounds including fuel.

This definition includes model rockets if the weight of such rocket is 3.5 pounds or less.

This definition includes “model hot air balloons” and “model blimps” which are non-human carrying, lighter than air aerostats capable of sustained flight in the atmosphere intended to be used only for recreational or competition activity with a mass (weight) of no more than 55 pounds and lift is provided by lighter than air gases or hot air. The model shall not exceed any limitations as established in the Academy of Model Aeronautics National Model Aircraft Safety Code.

This definition does not include a “model aircraft” during periods of autonomous flight unless the “model aircraft” has been granted a special waiver by the Academy of Model Aeronautics, Inc. allowing such flight and such flight is within the guidelines established by the special waiver.

2015 UAS ISO CGL Forms

Unmanned Aircraft Exposures

Form Number	Form Name	Coverage A	Coverage B
CG 21 09	Exclusion – Unmanned Aircraft	Excluded	Excluded
CG 21 10	Exclusion – Unmanned Aircraft (Coverage A Only)	Excluded	Not applicable
CG 21 11	Exclusion – Unmanned Aircraft (Coverage B Only)	Not applicable	Excluded
CG 24 50	Limited Coverage For Designated Unmanned Aircraft	Excluded except for designated UAS	Excluded except for designated UAS
CG 24 51	Limited Coverage For Designated Unmanned Aircraft (Coverage A Only)	Excluded except for designated UAS	Not applicable
CG 24 52	Limited Coverage For Designated Unmanned Aircraft (Coverage B Only)	Not applicable	Excluded except for designated UAS

2015 ISO CGL Policy Definition of UAS

The following definition is added to the **Definitions** section:

"Unmanned aircraft" means an aircraft that is not:

1. Designed;
2. Manufactured; or
3. Modified after manufacture;

to be controlled directly by a person from within or on the aircraft.

When Drones Go Bad (Part II)



Gorillas



**NO
DRONE
ZONE**



Questions?

