



DECEMBER 2015 ■ NO. 3

Aviation

Issues Arising from Drones on College Campuses: Are You Prepared?

Action Item: Colleges and universities must give careful consideration as to how drones are being used, regulated, and/or restricted, so as not to run afoul of federal, state, and local laws and regulations. In addition, there are risk management and insurance coverage issues to be navigated on this topic. Moreover, there are also a range of policy considerations, such as how drone usages or research/development impact college core values, ethics, security, privacy, civil liberties, and codes of conduct.

Colleges and universities have been using Unmanned Aerial Vehicles (“UAVs”) or Unmanned Aircraft Systems (“UASs”) (a/k/a “drones”) for decades for research and development. However, due to the explosion of drone usage and popularity in recent years, colleges and universities are now confronting other topics arising out of the use of drones on campus. Colleges are offering UAV/UAS-focused courses or degrees; using drones in journalism curriculum; using drones in connection with campus clubs; and using drones as part of campus safety and security initiatives. As a result, higher education institutions are confronting a myriad of issues that require a balancing of safety, security, risk management, privacy, insurance, regulatory, and legal topics.

Technology has outpaced regulation, and regulations are at the federal, state, and local levels, causing a lot of confusion and uncertainty. Drones equipped with infrared cameras, video cameras, and data collection capabilities raise individual privacy concerns. A malfunctioning or carelessly operated drone can result in personal injury or property damage. Drones with data collection capabilities may be susceptible to hacking and raise cybersecurity concerns. There is also the potential that a drone could be used as a weapon. Insurance coverage is another topic that must be analyzed. In addition, many colleges and universities use drones as part of lucrative research and development initiatives, which require a balancing of safety, security, and privacy issues.

The Regulatory Landscape

At the federal level, the Federal Aviation Administration (“FAA”) governs and regulates the use of drones in our national airspace. There are three categories of drones regulated by the FAA: 1) recreational/hobby (the so-called “model aircraft” exception category); 2) commercial; 3) and public. Most higher education institutions have been using drones under the model aircraft exception category, which limits operations for recreational and hobby use of drones weighing no more

than 55 pounds, that fly below 400 feet, away from airports and air traffic, and within sight of the operator. In an effort to clamp down on the proliferation of careless or reckless uses of drones (that can result in civil and/or criminal sanctions), the FAA recently updated and clarified its regulatory authority over model aircraft in a new Advisory Circular No. 91-57A (September 2, 2015). The new Circular provides guidance as to when a drone operation is considered a model aircraft operation, describes operations that are considered careless or reckless, establishes certain restrictions on model aircraft operations, and continues the less than 400 feet above the ground flight restriction.

Moreover, in a further effort to regulate drones and link an operator to a drone if there is an accident, the FAA created a drone registration task force, which recently released its final report that included recommendations on how the FAA should implement mandatory registration by owners of commercial and model aircraft drones. Quickly after the release of those recommendations—and no doubt in an effort to get ahead of the holiday rush and perhaps a drone-buying spree—on December 14, 2015, the FAA announced a new UAS registration rule for recreational and hobby owners of small UAS's weighing more than 0.55 pounds (250 grams) and less than 55 pounds (approximately 25 kilograms), including all payloads such as cameras. Under this rule, any owner of a small UAS who has previously operated an unmanned aircraft exclusively as a model aircraft prior to December 21, 2015, must now register with the FAA no later than February 19, 2016. Owners who purchased a small UAS for use as a model aircraft after December 21, 2015, must register before the first flight outdoors. Registration (valid for three years) is free until January 20, 2016, and five dollars thereafter. Registration will be via a government website where the drone owner will be required to be over 13 years of age, and provide a name, address, and email address. A registration number will be provided that will need to be affixed to the drone. Failure to comply with the registration process can result in up to \$250,000 in fines and up to three years in prison.

For other non-hobby/recreational drone uses such as research/development, and drones flying above 400 feet,

public and private entities that wish to operate drones in public airspace must apply for a Certificate of Authorization ("COA"), which are issued on a case by case basis. To date, approximately 25 colleges and universities have applied for and been granted COAs.

Restrictions/Policies/Procedures

As colleges try to grapple with the myriad of issues that drones implicate, many are instituting policies and procedures regulating, restricting, and in several instances, completely banning the use of drones on, in the airspace above, or near campus. Rationale cited for such policies include student safety, security, and privacy. Exceptions have been allowed for "official institutional use", or research/teaching use. Restrictions may include advance permission or permits, physical location restrictions on usage, as well as penalties for violation of the policies.

Insurance Considerations

Another key consideration is insurance coverage. Traditional commercial general liability policies may not provide coverage for claims arising out of drone usage, since they typically exclude coverage for claims arising out of the use of "aircraft." In addition, many insurers are issuing endorsements and/or exclusions to deal with the variety of possible drone-related claims. Some insurers have also started writing drone-specific insurance policies to address certain risks, such as:

- unlawful use (such as when a COA was required, but not obtained);
- data breaches/hacking of systems resulting in stealing of proprietary, sensitive, or confidential data;
- privacy violations resulting from such things as unauthorized photography or data collection, that could result in liability for trespassing, harassment, and other privacy torts;
- property damage and bodily injury; and
- professional liability claims against drone pilots.

Given the uncertainties in this area, insurance coverage battles will no doubt ensue.

Congress Is Likely to Weigh-In on the Drone Debate

Congress is certain to weigh-in on the fray next year when it moves legislation to reauthorize the FAA. So far, Congress has acted to extend the basic programs of the FAA for six months, or until March 31, 2016, (P.L. 114-55), but has not addressed drones in any comprehensive manner. It has also taken some initial steps to either regulate drones or provide direction to the FAA to do the same. For example, the House passed legislation requiring the Secretary of Homeland Security to research how certain commercially available small and medium-sized UAS's could be used in an attack, and how to prevent or mitigate the risk of such an attack (H.R. 1646, an Act; referred to the Senate Committee on Homeland Security and Governmental Affairs.) Several senators have also introduced drone-related bills, including Senators Feinstein, Booker, and Schumer (e.g., S. 1314, S. 1608). These bills take different approaches to the regulation of drones, but we certainly can expect the sponsors of these bills to push to get them included in permanent FAA reauthorization, which will have to take place early next year. Any college or university interested in the final outcome of this process should make their views known either to their Representatives or federal lobbyists.

Caution Is Advised

Due to lack of regulatory clarity, confusion abounds given the fact that there are not only federal, but also state and local laws and regulations. Given how slowly the FAA has proceeded with efforts at drone regulation (with the exception of the new "hobby" drone registration rule, above), many states and local governments have instituted laws regulating certain aspects of drones, often imposing fines and even criminal penalties for violations.

Colleges and universities must give careful consideration as to how drones are being used, regulated and/or restricted, so as not to run afoul of federal, state, and local laws and regulations. In addition, there are risk management and insurance coverage issues to be navigated on this topic. Moreover, there are also a range of policy considerations, such as how drone usages or research/development impact college core values, ethics, security, privacy, civil liberties, and codes of conduct. — © 2015, BLANK ROME LLP.

For additional information, please contact:

Elaine D. Solomon

215.569.5448 | Solomon@BlankRome.com

Joan M. Bondareff (re: Congressional content)

202.772.5911 | Bondareff@BlankRome.com