



**The Journal of Robotics,
Artificial Intelligence & Law**

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Risk Management and Insurance Issues for Your UAS Operations: Are You Prepared?

Elaine D. Solomon*

The Federal Aviation Administration has issued new Part 107 regulations concerning small unmanned aircraft systems (“sUAS”), boosting investment in the expanding commercial market. As the Agency continues to allow more and more commercial sUAS operations, the usage of sUAS will increase dramatically. The author of this article discusses proper risk management and insurance coverage for sUAS operations.

The Federal Aviation Administration (“FAA”) has promulgated new Part 107 regulations¹ concerning small unmanned aircraft systems (“sUAS”) (popularly known as drones), boosting investment in the expanding commercial UAS market. Drones are used in a number of industries such as agriculture, oil and gas, construction, journalism, real estate, and the motion picture and television industries. Additional FAA regulations, which would allow greater flexibility for commercial sUAS operations outside of the restrictions of Part 107, are expected in the next year or so, including allowing sUAS operations at night, above people, or beyond visual line-of-sight (“BVLOS”). The rapid development of UAS technology has created a burgeoning market for UAS, with the estimated global market for UAS expected to reach \$93 billion by 2021.² The potential usages of UAS is limited only by our imagination.

Whether you are a drone operator, manufacturer, or are allowing third parties to operate drones on your property, developing an overall risk management and insurance strategy is critical.

The Insurance Industry

The insurance market has started tackling issues relevant to drones, and several insurers have started writing policies specific to UAS, or endorsements that allow policyholders to tailor coverage

for their operations. Insurance coverage considerations include whether to purchase a specific UAS insurance policy, whether current policies will be interpreted to encompass drone-related claims, whether the insurance policy contains a UAS exclusion, and/or whether the insurance carrier has issued an UAS exclusion in light of the proliferation of drones and drone issues. Even hobby and recreational drone operators should consider whether there is coverage under a homeowners policy, or a separate drone policy is warranted.

Several types of insurance come into play with regard to UAS. The first and perhaps most obvious is hull insurance—that is, insurance against damage to the UAS itself, as well as any equipment installed on or carried by the UAS. The second major type of insurance is commercial general liability (“CGL”) insurance, which includes coverage for bodily injury and property damage. In addition, product liability coverage is needed for manufacturers, distributors, and related UAS service providers, as well as technology and avionics companies in the industry. If a particular drone usage is deemed to be an ultra-hazardous activity, then some of these parties may be subject to strict liability. The possibility of cybersecurity, data breach, and hacking issues also raises insurance considerations. Cyber risk policies may or may not provide coverage in light of certain exclusions, such as those related to unauthorized collection of data. Moreover, drone capabilities create even more potential for violation of privacy, especially with respect to data collection and image capturing. Commercial drone use may result in privacy, copyright infringement, trespass, and other personal and advertising injuries. Risk factors that drive the cost of coverage include the type of equipment, the operator’s experience and training, and the intended usage of the UAS.

CGL policies may or may not cover UAS. The typical CGL policy includes an exclusion under Coverage A (bodily injury and property damage) for ownership, maintenance, use, or entrustment to others of aircraft. Coverage disputes will no doubt arise as to whether the “aircraft” exclusion applies to UAS. “Aircraft” is typically not defined in a standard CGL policy. However, the FAA has taken the position that UAS are aircraft. Even so, simply because federal law defines a drone as an aircraft does not automatically translate to the same definition for insurance purposes. The flip side of this is that an insured may argue that the “aircraft” policy exclusion is ambiguous, and thus there is coverage.

Coverage B in a CGL policy (personal and advertising injury) does not typically contain an aircraft exclusion, but insurers may still argue that there is no coverage for drone operations.

In addition, the insurance market will have to consider possible defendants in potential claims or lawsuits. The FAA could be sued for its authorization of drone use in certain airspace. The owner and/or operator of a drone could be sued on several bases, including negligent operation or negligent training or hiring of a pilot, and the pilot could also be sued for his or her own negligence. Companies or governmental entities could be subject to liability for drone usage on their property by employees or third parties. Employers may be subject to employment lawsuits by employees if drones are improperly used in the workplace. Product manufacturers will also need insurance to guard against suits for software malfunctions, design and manufacturing defects, inadequate warnings, breach of warranty, or failure to comply with to-be-determined safety standards. Installers or assemblers of UAS could be found liable if their actions result in a defect or a dangerous condition. Moreover, similar to flight schools, drone operation training facilities may be subject to liability. If a particular drone usage is deemed to be an ultra-hazardous activity, then some of these parties may be subject to strict liability.

Risk Management/Risk Transfer Pointers

In addition to evaluating insurance coverage, individuals or companies conducting UAS operations, or even utilizing the services of third-party UAS companies in their operations or on their property, will want to consider ways to manage risk associated with those UAS activities. Some considerations include the following:

- Gather information regarding the type of drone that will be used and its capabilities, the name and experience of the Remote Pilot in Command, and the intended use, location, and date(s) of use, as well as all participants in the UAS operations;
- Assess whether the UAS operations will pose a hazard to persons/property/safety;
- Make sure that the drone is properly registered and owner identification is affixed to the UAS;

- Have the third-party UAS operator certify that they are complying with federal, state, and local regulations, as well as any policies/procedures put in place by you or your business;
- Make sure that the third-party UAS operator has proper and adequate insurance coverage (amount and type, as well as listing you and/or your business as an insured or additional insured on their policy, and that they provide proof of insurance);
- Indemnification agreements will need to be crafted to protect your interests, such that the third party agrees to indemnify you and/or your business from any liability arising out of the UAS operations. In addition, it would be prudent to have the third party sign a release of any liability on your part for such operations (to go hand and hand with any such agreements, the third party should have insurance coverage under their policy for any contractual liability that they assume as a third party);
- Determine how any data or images will be collected, and what policies or procedures are in place regarding what will be done with that data, as well as data retention parameters;
- Make sure that there are reporting procedures for any accidents or incidents and that there is a contingency plan for emergencies;
- Download the app B4UFLY, which provides the FAA's list of do-not-fly zones for drones and advises drone operators where it is okay to fly;
- Ensure that the UAS operations do not interfere with privacy rights, and that there will be proper respect for property/property owners;
- Make sure that appropriate pre-flight and post-flight checks of the UAS will be conducted; and
- Consider weather and environmental issues, as well as terrain.

The above considerations are especially important when exercising due diligence concerning third-party drone operators who may be participating in your business operations, or conducting such operations on your property. In addition to the above, it is prudent to continually monitor your existing insurance coverage to ensure it addresses any new business operations, additional risks,

and territories in which the UAS is being operated. Further, if your operations are large enough, consider having someone in charge of UAS operations who can coordinate all aspects of operations, including policies/procedures governing UAS operations, and approvals and other aspects of any third-party UAS operations, as well as insurance coverage issues.

With respect to potential for data breaches or dissemination of private information, in February 2015, President Obama called on the National Telecommunications and Information Administration to convene a multi-stakeholder process to develop and communicate best practices to promote the responsible use of UAS in a way that does not diminish rights and freedoms. In May 2016, a consensus was reached on a set of privacy “best practices” for commercial and non-commercial UAS operations that involve data collection—focusing on the collection, use, or disclosure of data that identifies a particular person, and/or will likely be linked to a person’s name or other personally identifiable information. The best practices state that UAS operators should comply with all applicable laws and regulations, and that they are not intended to set legal standards or serve as a template for future statutory or regulatory obligations. Further, the best practices state that they specifically do not apply to news gathering and news reporting organizations, which are strongly protected by U.S. law, including the First Amendment to the Constitution. These best practices are prudent for UAS operations in general.

Highlights of the five voluntary best practices are as follows:

- *Inform Others of Your Use of UAS.* UAS operators should make a reasonable effort to provide prior notice to individuals of the general time frame and area that a UAS may be collecting data. Further, a privacy policy should be utilized, which incorporates six stated objectives.
- *Show Care When Operating UAS or Collecting and Storing Covered Data.* Unless the UAS operator has consent of the data subjects or a compelling need to do otherwise, the operator should avoid using the UAS for the specific purpose of intentionally collecting covered data where individuals have a reasonable expectation of privacy.
- *Limit the Use and Sharing of Covered Data.* Absent consent, UAS operators should not use personal information for employment eligibility; promotion or retention of employees;

credit eligibility; or for purposes of healthcare treatment eligibility other than with permission, or when permitted by and subject to the requirements of a sector-specific regulatory framework.

- *Secure Covered Data.* UAS operators should take measures to manage security risks of covered data by implementing a program that contains reasonable administrative, technical, and physical safeguards.
- *Monitor and Comply with Evolving Federal, State, and Local UAS Laws.* Monitor evolving applicable laws, as well as the UAS operators' own privacy and security policies through appropriate internal processes.

Conclusion

As the FAA continues to allow more and more commercial sUAS operations, the usage of sUAS will increase dramatically. However, proper risk management and insurance coverage is essential so that sUAS operations can be performed safely, with proper due diligence.

Notes

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1. 14 C.F.R. Part 107—Small Unmanned Aircraft Systems. See also the FAA's Fact Sheet regarding Part 107 at http://www.faa.gov/uas/media/Part_107_Summary.pdf.

2. Press Release, Teal Group Corp., *UAV Production Will Total \$93 Billion* (Aug. 19, 2015), available at <http://tealgroup.com/index.php/teal-group-news-media/item/press-release-uav-production-will-total-93-billion>.