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IN THIS ISSUE

This article addresses the legal implications of drone usage and the developing area of law surrounding the same.

Flying Foul Play: Legal Issues Take Flight in Monday Night Football's Drone Incident

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Sports fans may recall a bizarre incident in November 2023 during the Monday Night Football Ravens-Bengals matchup- a small drone made an unexpected appearance overhead at the M&T Bank Stadium, causing chaos and two delays of game. This particular drone captured the fans' attention in large part because of its highly visible flashing green and red lights, and perhaps because of the timing of its appearance. Despite the flurry of media attention that this incident produced, in fact, five unauthorized drone incursions occurred *at that same game*, and similar unauthorized overflights of major sports events have been occurring for years.

These "Flying Foul Plays" as we have nicknamed them highlight the legal challenges surrounding the increasing use of more sophisticated drones and the potential consequences of their misuse. In the case of the Ravens-Bengals incident, the drone operator may have violated airspace regulations, potentially trespassing on private property, and endangering the safety of players and spectators. These incidents raise concerns about the need for stricter enforcement of drone regulations, the practicality of such enforcement, and the potential liability of drone operators for any harm caused. Let's delve into the legal issues that emerged from this latest "Flying Foul Play" and explore the implications for both drone operators and the general public.

Navigating the Skies: Drone Laws and Regulations.

The Monday Night Football incident raises questions about the legality of flying drones over both private property and public gatherings, especially in crowded areas such as stadiums. While drone technology has rapidly advanced, regulations have struggled to keep pace and are often confusing in that both state and federal law may apply with different consequences. Federal law regulates many, though not all, aspects of drone (aka, unmanned aerial systems, or UAS) usage, including authority to operate a drone, required markings, and methods of flying. The Federal Aviation Administration (FAA) generally regulates drones in certain airspace, and the FAA rules vary depending on whether a drone is used for recreational, commercial, or public safety purposes.

The federal rules governing drones weighing *under* 55 pounds are found in 14 C.F.R. Part 107 in the federal regulations; drones in that weight classification are considered to be "small" UAS's. The FAA has established guidelines for such drone operators, including restrictions on flying over people and stadiums. Violating these regulations can result in fines and other legal consequences.

Regardless of intended use, drones weighing *more* than 55 pounds must be registered with the FAA. Although recreational operators are not required to obtain an operator permit for such drones, they are

still required to pass a use test known as The Recreational UAS Safety Test (TRUST). Commercial and government pilots, however, are required to obtain a valid Airman Certificate, which includes more comprehensive examination to show proficiency in operation and the airman's knowledge of FAA airspace and federal regulations.

In addition to the federal regulations, some states like North Carolina, have enacted separate drone law statutes that impose additional standards or restrictions on drone operators. In many states, there are already drone restrictions for flights over or near prisons, schools, airports, or nuclear power plants. As we understood it, Maryland did not have any specific state laws about drone operations applicable to stadiums at the time, but a disruptive event like the Monday Night Football incident could lead to the state legislature adopting new stringent restrictions. A good collection of resources for drone laws in Maryland can be found online: Drone Laws in Maryland - [Updated November 19, 2023] (drone-laws.com) as a starting point, but drone operators may need guidance from aviation lawyers on the application of these laws. In any case, the Federal Aviation Regulations are the main source of regulations for drone operations.

Where am I not allowed to fly my drone?

The FAA has a name for those places where UAS's are not permitted to fly: **"No Drone Zones."** To cut to the chase, FAA regulations prohibit unauthorized drone flying at certain stadiums during sporting events (and for one

hour on each end of an event) including, specifically, NFL games. More precisely, flights are prohibited within a three-nautical mile radius of those events. Exceptions permit media and event management drone operations, but with specific protocols in place. Other restricted areas include near airports and certain security sensitive areas.

In the Monday Night Football incident, another issue to consider was the close proximity to Washington, D.C. airspace, which is some of the most restricted airspace in the country. This airspace has a complex set of protocols for drone flights specifically, most of which require FAA authorization, so whether flying for recreational or other use, drone operators need to make themselves aware and fully understand the rules in the national capital area.

According to Part 107 of the federal regulations, recreational drone pilots are limited to a maximum altitude of 400 feet AGL (above-ground-level) in Class G *uncontrolled* airspace. In *controlled* airspace, Class B, C, D, and E, they are also limited to 400 feet AGL only with pre-authorization through Low Altitude Authorization and Notification Capability (LAANC), or the "FAADroneZone" service. Commercial drone operators are generally required to get permission from the FAA before flying in any controlled airspace. A drone operator does not need FAA permission or a waiver to operate under Part 107 rules, but when a drone operator seeks to deviate from the rules, an FAA waiver is required.

How will they know it is my drone?

Because of the increased use of drones and the need to monitor their use, the FAA requires registered drones to have remote ID capabilities – that is a broadcast module to enable electronic identification of a drone’s registry. The regulations set September 16, 2023, as the date by which drones were required to comply, but as that date has come and gone, there is some uncertainty as to whether, how and when the FAA will actively enforce the requirement. The FAA is currently signaling that March 16, 2024 will be the new target date for compliance, after which more enforcement actions may take place. More to come on that, though.

There are some areas, called FAA-Recognized Identification Areas, or FRIA’s, where drones may be flown without having the remote ID equipment. These FRIA’s are established for certain organizations with community affiliations such as schools and similar organizations. These areas can be found online on the FAA’s website.

For the Monday Night Football incident, law enforcement is called upon to investigate drone operators who have violated state or federal laws. Yet, the police powers are often limited. There is now some discussion in the industry as to whether congress or local legislatures should give police authority to intercept drones and/or “take them down” when public safety is a concern. At the moment, the FAA provides a public safety and law enforcement toolkit to assist law enforcement and public safety entities in

handling situations with drones to help investigate operators who have violated the law.

What about privacy?

The presence of a drone hovering over a stadium also raises privacy concerns. While spectators attending sporting events might not be surprised by being spotted by a drone, the unauthorized use of a drone can, nevertheless, infringe upon a person’s privacy. In other settings, drones equipped with cameras might be used for surveillance for many different reasons, potentially violating individuals' privacy rights, and which may be especially concerning around homes, schools, and areas where people have an expectation of privacy. On the flip side, police, fire and rescue responders have made valuable use of drones for law enforcement and public safety purposes, and drone use for commercial purposes have their public value as well. Striking a balance between the benefits of drone technology and the protection of personal privacy remains a significant legal challenge.

Federal law has only minimal provisions that directly protect individuals’ privacy rights from drone surveillance, however a number of state, local and tribal governments have taken the initiative to address the concern. In North Carolina, for instance, state law includes restrictions on surveillance over private homes, land and photographing individuals without their consent. See N.C. Gen. Stat. § 15A-300, N.C. Gen. Stat. § 14-401.25. Some reasonable exceptions do apply, such as for important or newsworthy

events, a limited range of law enforcement situations, and emergency management. Again, there is a balance between the rights of drone operators to use their drone's video capabilities for the public good and the protections of a private citizen's rights to privacy and private land ownership. Nevertheless, recurring aerial intrusions, like the Monday Night Football incident, highlight the need for greater awareness by drone operators for the laws protecting individuals' privacy.

But is it a crime?

While the drone incident during Monday Night Football may have been an act of mischief or a misguided attempt at capturing footage, it is essential to consider the potential criminal charges that could arise from such incidents. So far, most drone incidents have been inconsequential and without legal sanctions, especially where no actual damage or injury to persons has occurred.

However, as an example of what can happen, in a 2019 incident in Washington Township, Pennsylvania, a quiet neighborhood experienced a series of aerial bombardments of homemade bombs dropped from a drone. The perpetrator (seeking retribution after a failed relationship) was, of course, charged with felonies related to the weapons themselves, although the only charge related to the UAS itself was for unlawful operation of an unregistered drone. While the FAA can impose civil penalties for drone misuse, it is typically local jurisdictions that, by and large,

must deal with criminal acts that are committed using drones. States such as North Carolina have made efforts to address privacy rights, and do have criminal statutes that make violations of certain drone laws a misdemeanor that carries fines as well. Even so, such laws do not address the more egregious use of drones such as the Pennsylvania case.

Flying Foul Play Conclusion.

As drone technology continues to evolve, lawmakers and regulatory bodies must adapt to address the legal challenges posed by these unmanned aerial systems. Striking a balance between the benefits of drone usage and the protection of public safety, privacy, and property rights remains a crucial task for the legal system. Ultimately, illegal drone incursions on sporting events and other public gatherings serve as a wake-up call, urging us to navigate the skies responsibly and ensure that the legal framework surrounding drones keeps pace with technological advancements.

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