



Workshop Report

# UAS Law and Policy: Toward a Framework for State and Local Governments

Syracuse University College of Law  
March 10, 2017



Syracuse University  
Institute for National Security  
and Counterterrorism

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**UAS Law and Policy:**  
Toward a Framework for State and  
Local Governments

March 10, 2017

8:30 a.m. - 4 p.m.

Institute for National Security and Counterterrorism  
Syracuse University College of Law

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## WORKSHOP PARTICIPANTS

### PRIMARY DISCUSSANTS

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**Reggie Govan**, former Chief Counsel, Federal Aviation Administration

**Robert Heverly**, Associate Professor of Law, Albany Law School

**Ben Husch**, Natural Resources and Infrastructure Committee Director, National Conference of State Legislatures

**Frank Matus**, Thales Air Traffic Management, Director, Strategy & Business Development

**Henry Perritt**, Professor of Law and former Dean, IIT Chicago-Kent College of Law

**Troy A. Rule**, Professor of Law, Arizona State University O'Connor College of Law

**Katie B. Thomson**, Morrison & Foerster LLP; former General Counsel, US Department of Transportation; former Chief Counsel, Federal Aviation Administration

**Rick Trunfio**, First Chief Assistant District Attorney, Onondaga County (NY) District Attorney; Adjunct Professor, SU Maxwell School

### MODERATORS

**Nathan Sales**, Associate Professor of Law, Syracuse University College of Law

**Katie B. Thomson**, Morrison & Foerster LLP; former General Counsel, US Department of Transportation; former Chief Counsel, Federal Aviation Administration

### PROJECT COORDINATORS

**Keli A. Perrin**, Assistant Director, Institute for National Security and Counterterrorism

**Laurie Hobart**, Research Associate, Institute for National Security and Counterterrorism; Legal Writing Professor, Syracuse University College of Law

## WORKSHOP SUMMARY

Syracuse University’s Institute of National Security and Counterterrorism (INSCT) hosted a one-day workshop on Unmanned Aerial Systems (UAS or “drone”) on March 10, 2017. INSCT selected two topics at the forefront of UAS law and policy development:

- Whether and when federal regulation preempts state regulation of UAS; and
- How to safeguard privacy.

Both of those subjects are currently under consideration by the Federal Aviation Administration Drone Advisory Committee. INSCT invited scholars and practitioners to meet to share their expert opinions.

After a full day of engaged discussion, the workshop participants found some points of agreement while continuing to differ on others. Participants shared a common goal of fostering the development of UAS technology. They also generally agreed to the following language:

The FAA has jurisdiction over navigable airspace and aviation safety and efficiency, while states have jurisdiction under their police power, for example, over property rights and trespass. These two authorities are not necessarily incompatible and a number of important disagreements remain about defining the boundary between these authorities.

Workshop participants expressed significant disagreement whether the FAA or the states have primacy in regulating airspace over private and public property at altitudes lower than typical for manned flight. Some participants contended that the FAA has the authority to regulate to the ground, whereas others viewed state and local governments as the appropriate authorities to determine whether UAS might fly in airspace under 400 or 500 feet. Advocates for federal authority generally favored a uniform, national approach to regulating lower altitude airspace, whereas advocates for state and local authority preferred allowing individual communities to zone that space according to their own perceived needs. Participants also disagreed more generally whether new regulations specific to UAS are necessary to protect privacy and safety interests.

This report summarizes the debate and insights that emerged from the workshop.



## WELCOME ADDRESS

William Banks, Director, INSCT

This workshop is intended to start a conversation about how to develop effective law and policy in the context of the rapidly evolving technology of UAS. Law often seems to play catch-up; and in this realm of the law, we are running behind where we need to be. To create useful and practical UAS law and policy, legal experts should engage with policymakers and representatives from the technology sector.

It is toward this end that the Institute for National Security and Counterterrorism has invited workshop discussants and observers from a variety of fields: academics in law, engineering, and information studies; legal practitioners from the private and public sectors; federal, state, and local government officials; and industry experts in aviation, regulation, and engineering.

In fact, what makes our Institute so distinctive is illustrated by the nature of this workshop and the composition of the group gathered around this table. Our best work, our most interesting work, is work that crosses boundaries, and this workshop is a perfect manifestation of what we are about. We therefore hope to spark discussion in a way that will be productive for all involved in and for the burgeoning field of unmanned aircraft systems.

Welcome.

## MORNING SESSION

### I. FRAMING THE PROBLEM: PREEMPTION AND THE RELATIONSHIP BETWEEN FEDERAL AND STATE AUTHORITIES



#### A. Introduction

The morning session began with a discussion of the legal doctrine of preemption.

As moderator Professor Nathan Sales framed it, the broad question for discussion was:

What is the distribution of regulatory authority and responsibility between the federal government and state and local governments?

Sales suggested that UAS use sits at the intersection of two competing bodies of well-established law. The federal government has maintained dominant and in some areas even exclusive regulatory authority over aircraft, such as standards for manufacturing and operating them. At the same time, states have been responsible for maintaining and enforcing laws regarding land use, nuisance, trespass, and zoning. Preemption questions arise out of the intersection of federal and state law. Which should predominate, and in what context is an accommodation or an overlapping jurisdiction between federal and state authorities possible?

#### B. Background<sup>1</sup>

Preemption is a legal doctrine under which, by operation of the Supremacy Clause, federal law trumps and voids state and local laws in three instances:

- (1) When Congress has expressly reserved an area for federal regulation, either explicitly in the language of a statute or implicitly in its structure and purpose;
- (2) When state law conflicts with federal law; or
- (3) When “federal law so thoroughly occupies a legislative field ‘as to make reasonable the inference that Congress left no room for the States to supplant it.’”<sup>2</sup>

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1 Workshop participants were experts about UAS law and policy; the workshop, therefore, did not address general background matters summarized here. For more in-depth background reading, please see the pre-workshop reading list included in this report. Workshop participants authored most of those readings.

2 *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (internal citations and quotations omitted).

In 2012 Congress mandated that the FAA develop a comprehensive plan to safely accelerate the integration of civil UAS into the national airspace system.<sup>3</sup> In 2016, after notice and comment, the FAA issued Part 107 of the Federal Aviation Regulations, the first comprehensive regulatory framework for UAS operations in the national airspace. Part 107 addresses small UAS weighing greater than 0.55 lbs and less than 55 lbs. It allows drone operators to fly registered, commercial, small UAS below 400 feet under a host of restrictions, such as that the UAS must always remain in the visual line of sight of the operator and not fly over unsheltered people unassociated with the operation.<sup>4</sup>

In an advisory document released by the FAA Chief Counsel in 2015, the FAA asserted broad regulatory authority over aviation safety and operation regulations.<sup>5</sup> That document suggests that the states should consult with FAA before implementing any operational restriction on flight altitude or flight paths, imposing operational bans, or placing any restriction on navigable airspace.<sup>6</sup> The FAA provides the example of a city ordinance banning anyone from operating UAS within a city airspace or within a certain distance of landmarks as being potentially problematic because “[f]ederal courts strictly scrutinize state and local regulation of overflight.”<sup>7</sup> Additionally, “[m]andating equipment or training for UAS related to aviation safety would likely be preempted.”<sup>8</sup>

According to that same FAA document, laws traditionally related to state and local police power, including land use, zoning, privacy, trespass, and law enforcement operations, are generally not subject to federal regulation.<sup>9</sup> The FAA provided the following examples of areas of law and policy reserved to the states:

- Warrant requirements for law enforcement surveillance
- Laws specifying UAS may not be used for voyeurism
- Prohibitions on UAS use for hunting or fishing or harassing someone who is hunting or fishing
- Prohibitions on attaching firearms or weapons to UAS<sup>10</sup>

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3 FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11 (2012).

4 Summary of Small Unmanned Aircraft Rule (Part 107), FAA News, June 21, 2016.

5 Federal Aviation Administration, Office of the Chief Counsel, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Dec. 17, 2015.

6 *Id.* at 3.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*



## C. Differing Perspectives

The workshop opened with a discussion of what the law currently is and what it ought to be. Participants offered varying perspectives, which generally split into two camps: one tending to advocate for federal preemption and the other for state and local regulation.

### 1. Federal Preemption Advocates

Some workshop participants took the view that Congress has provided the FAA with the authority to regulate to the ground. In that view, the FAA's mandate is very broad and its jurisdiction exclusive. The FAA has sovereignty over all navigable airspace, including issues related to the safety of flight, the efficient management of airspace, and the protection of people and property on the ground.<sup>11</sup> The law's current, broad conception of federal regulation would prohibit not only inconsistent state or local regulation but also complimentary state and local regulation.

*Advocates for federal preemption are generally wary of a patchwork quilt effect if UAS are subject to hundreds or even thousands of conflicting sets of state and municipal regulations.*

UAS might present the possibility for a paradigm shift away from such federal authority, but such a shift has not yet happened in either the courts or Congress. The FAA is actively considering the role and responsibility of state and local governments. Proposals are being developed in the agency. Additionally, the Drone Advisory Committee has been tasked with reviewing the role of state and local governments. It is to report a set of recommendations via white paper to the FAA this summer, 2017.

Advocates for federal preemption are generally wary of a patchwork quilt effect if UAS are subject to hundreds or even thousands of conflicting sets of state and municipal regulations, and even further inconsistency if local courts are allowed to interpret FAA regulations.

At least one participant recommended that while the FAA's Part 107 was productive, state and local governments should hold off issuing any further regulation because UAS have not yet been shown to cause any significant harm or threat of harm. Rather, it was urged, the UAS technology and industry should be allowed to develop without undue restraint. Society might better wait for lawsuits to arise so that courts could more effectively resolve questions of specific harm. Other participants countered that waiting for the right lawsuits to foster productive law would take too long.

### 2. State Regulation Advocates

Some participants argued that the law is not yet settled in favor of broad federal preemption. Under that view, allowing the FAA to regulate to the ground would interfere with the ability of state and local governments to regulate areas traditionally reserved for them, such as land use, zoning, trespass, and privacy. Those participants held the view that there is no well-established legal paradigm providing federal authority over low altitude airspace. State and local governments have long been regulating low

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11 See 49 U.S.C. §§ 40103.

altitude airspace. Examples include height restrictions, building setbacks, condominium laws, and firework display regulations. It is not clear what is the law; the better question is, what ought it be?

Supporters of state action argued that the fact that 38 states have considered UAS regulation in the past year suggests that many people do not see the law as dictating that only the FAA should regulate airspace. Additionally, FAA regulation to the ground is inconsistent with the 1946 case *United States v. Causby*, where the Supreme Court held that although a private property owner did not own airspace to the heavens, he did have a right to “at least as much of the space above the ground as he can occupy or use in connection with the land.”<sup>12</sup> *Causby* made clear that landowners have rights in their airspace: to any space they can occupy and use, where “use” is broadly interpreted and could mean that the airspace provides a barrier of privacy.

*Some participants argued that allowing the FAA to regulate to the ground would interfere with the ability of state and local governments to regulate areas traditionally reserved for them, such as land use, zoning, trespassing, and privacy.*

Supporters of state initiatives conceded that the patchwork quilt issue is real. They acknowledged that the federal government might be the best body to regulate areas that benefit from uniformity, such as the establishment of manufacturing standards. However, with respect to land use and zoning, the FAA lacks the knowledge and resources to regulate local zoning. Local and state officials are better situated and better equipped to regulate drone issues, especially as they relate to conflicts with land use. Local zoning would allow communities to control where UAS were welcome and not welcome, providing an *ex ante* approach to conflict avoidance.

If it is determined that the FAA has jurisdiction all the way to the ground, billions of dollars will have transferred to the federal government and those few big companies that have received exemptions to operate UAS more extensively than Part 107 typically allows. Landowners across the country have something to lose, but other interests are more politically powerful.

The workshop very briefly discussed whether a state could preempt legislation by local municipalities, or legislate a moratorium or ban on municipal legislation about UAS. The general sense seemed to be that a state may preempt its municipalities. As one participant suggested, it is difficult to dispute the authority of a state to preempt because a state delegates authority to its municipalities and can take it back. Still, that same participant added, preemption is not always good policy. Local governments may have more nuanced information regarding how UAS should be used and zoned in their communities.

## D. The Conflict

It might seem counterintuitive that a conflict exists between FAA authority and state and local authority when the FAA has specifically stated that state and local authorities might regulate certain areas, such as privacy, trespass, nuisance, and local law enforcement use of UAS. The conflict is crystalized, however, when one considers that Part 107 allows for some UAS flight under 400 feet, yet many states have

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12 *United States v. Causby*, 328 U.S. 256, 264 (1946)

passed privacy legislation restricting UAS flights under certain altitudes. Nevada, for example, has made it a misdemeanor to fly a UAS below 250 feet over private property; Oregon has provided landowners with a cause of action against a UAS operator who, after a first warning, flies over the landowner's property a second time below 400 feet.<sup>13</sup>

Part 107 arose from a Congressional mandate that the FAA integrate UAS into the national airspace, a mandate seemingly consistent with the FAA's responsibilities for ensuring safety and efficiency in the national airspace as well as protecting people on the ground. However, as one participant put it, given that almost half of the states are dealing with the issue of regulating low-level UAS flights in response to constituent concerns about privacy, further discussion and consideration are needed.

*Part 107 arose from a Congressional mandate that the FAA integrate UAS into the national airspace, a mandate seemingly consistent with the FAA's responsibilities for ensuring safety and efficiency in the national airspace as well as protecting people on the ground.*

A hypothetical example of the conflict might look like this: Amazon wants, and receives FAA permission, to use UAS to deliver its products. A state, however, prohibits any aircraft operations below 500 feet.

Some participants took the view a conflict between Part 107 and a state or local regulation creates a straightforward case of conflict preemption, where the state or local regulation is invalid. At least one workshop participant contested, however, whether Part 107 is a valid exercise of federal authority in the first place.

Some participants reported that political constituents are placing great pressure on local governments to deal with problems arising from UAS. A sheriff's office in Texas, for example, might receive multiple complaints from people upset about drones flying or landing in their backyards as well as from people upset about others discharging their weapons at drones. (Whether such complaints raise questions that could be dealt with by tort and trespass law was discussed in the afternoon session of the workshop.) Regardless of the preemption question, it was argued, state and local legislatures are responding to constituents.

Participants also discussed the related questions: Is there a line where personal property ends? Who gets to say? Is *Causby* still relevant given that it was decided before the FAA was created? If drones are inherently different from manned aircraft, is altitude even the relevant issue anymore?

## E. Commerce Clause and Economic Growth:

Discussion also touched upon the Commerce Clause. Participants noted that the FAA has no authority with respect to promoting commerce, but discussed whether there is a larger (non-FAA) federal interest in promoting the development of the potentially lucrative UAS industry. Participants considered what the result would be if a state law prohibiting UAS flight under 500 feet conflicted with federally

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13 Nev. Rev. STAT. § 493.103 (2015); OR. Rev. Stat. § 837.380 (2013)

approved Amazon UAS delivery routes. Would there be legitimate basis under the Commerce Clause for displacing the state regulation? Participants argued both ways.

On a related note, state-centric participants suggested that allowing state and local regulation is the best way to encourage industry growth. States and municipalities would be able to put out a welcome mat or erect stop signs. Those areas that wanted to welcome the UAS industry would compete for investors. Interested states and municipalities might be incentivized to establish clarity in their regulations, and to provide for UAS-welcoming provisions in their regulations.

## II. PROPOSED SOLUTIONS AND CRITIQUES

Participants had varying proposals for addressing the conflict between competing authorities with respect to land use, as well as the patchwork quilt problem. Individual workshop participants suggested the following approaches, though none of the approaches was universally endorsed. Participant criticisms of each proposal are also noted.

1. Strengthen and clarify property rules. To do so, society could establish a bright line rule about landowners' and lessees' right to exclude UAS and any other aircraft in the space above their land. Two variations of this approach are:
  - a. Use the "tree line" as the minimum altitude for UAS operations. This might address the political reality that people have a sense of control over their private property.
    - i. *Criticism: This approach may not address landowners' privacy and use concerns fully, nor acknowledge traditional state regulatory powers in airspace higher than the tree line. This approach may conflict with Part 107.*
  - b. Restrict all aircraft, including UAS, to 500 feet and above; use the 400 to 500 feet range as a "buffer zone"; and preserve all airspace 400 feet and below for state and local regulation. This suggestion is based on the rationale that FAA has long held authority over manned aircraft in airspace above 500 feet in most places, whereas the space below 400 feet presents the possibility for land use conflicts and is within the police power of the states.
    - i. *Criticism: This approach conflicts with Part 107.*
2. Create a national database incorporating state and local preferences for UAS operations and restrictions. Two variations of this approach are:
  - a. Create a centralized system where local ordinances are uploaded and translated into geofencing rules that drones, via software, will understand. The result would be the automatic enforcement of the ordinances.
    - i. *Criticism: One complication for this approach is whether a multiplicity of local regulations that are non UAS-specific, such as general property laws, could be incorporated effectively.*
  - b. Create a similar system where UAS industry would incorporate data points about state and local preferences, rather than local ordinances; industry would then self-regulate via geofencing to respect those preferences.

- i. *Criticism: This approach is likely less democratic than a system incorporating local ordinances. This approach would give industry more power over UAS operations instead of leaving land use regulation to local officials, who were elected for that purpose.*

Participants noted that the technology required for a centralized system of ordinances or data points is not yet ready, but is perhaps only two or three years from implementation.

Finally, some participants raised the issue of potential collaboration between the FAA and state authorities. One participant raised the question of whether authority could be shared in an organized system, much as authority is shared between federal and state authorities in other contexts, such as air pollution and operational safety and health regulation. The workshop revisited the topic of federal and state collaboration in the second afternoon session.

## AFTERNOON SESSION

The afternoon session, moderated by former DOT General Counsel and former FAA Chief Counsel Katie Thomson, divided into two topic areas.

- (1) Privacy with respect to UAS and the federal-state relationship;
- (2) An “animated” attempt to reach a consensus recommendation with respect to the FAA’s authority and state and local authority.



The workshop sought a resolution that not only took into account existing law but also practical and political concerns and the economic advantages of UAS innovation.

### I. PRIVACY

The workshop first discussed what a reasonable expectation of privacy means in modern society. The workshop addressed that question in two main areas: the traditionally private realm of the home and the less protected realm of public space.<sup>14</sup> (As stated in the pre-workshop materials, this workshop was not intended to touch upon law enforcement use of UAS; discussion was therefore largely limited to commercial and private citizen use of UAS.)

#### A. UAS and Privacy at Home

With respect to the home and private property, one participant suggested that property laws could be used to help ensure privacy in the age of UAS. If property laws were clarified or bolstered to include a certain altitude of airspace over land, then trespass laws could be enforced against prying drones. Another participant raised a commonly cited swimming pool example: a neighbor might, without ever crossing over the property lines or a high privacy fence, hover a drone in a position where it could photograph or video swimmers from the next yard at a 45° angle. Trespass laws would not cover that situation, but arguably zoning laws could: communities might tailor zoning regulations to allow or disallow UAS at certain times or in certain areas.

Some participants suggested that existing laws, such voyeurism or “Peeping Tom” statutes, could also address the issue of peeping drones, such that no new, UAS-specific laws were required. This suggestion

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14 It was generally accepted among workshop participants that while there could be federal legislation about privacy and UAS, the FAA traditionally has no equities in the privacy debate, and in many ways, privacy is an issue reserved for the states. That said, there was a sense that if the FAA is going to move forward on integrating UAS into the national airspace, and if the FAA is going to wrestle with UAS cybersecurity issues as mandated by Congress in 2016, the FAA may have to deal with privacy and Fourth Amendment issues.

was quickly met with the objection that enforcing criminal laws requires proving them beyond a reasonable doubt to a jury, and that is difficult in the context of drones. Some of the elements necessary to prove a crime may not be present or easy to prove in the context of a UAS-related privacy violation. For example, a prosecutor might have to prove that it was a drone operator's intent to take pictures of a certain subject, but the drone operator might successfully argue that the material was collected incidentally. Current laws might have the potential to apply to UAS but likely need to be modified, or specific new statutes passed.

## B. UAS and Privacy in Public Spaces

Participants discussed whether UAS technology differed substantially from other technology with the capability to photograph or otherwise monitor people in public. In major cities as well as in public stores and other venues, video surveillance by stationary cameras is already the norm. It was suggested that the mobility and discrete size of small or micro UAS might allow them heightened surveillance capabilities, such as mobile video tracking, GPS tracking, and artificial intelligence capabilities, including facial recognition.

One issue raised by legal scholarship<sup>15</sup> included in the pre-workshop readings is whether an increase in surveillance of the physical body—rather than just of internet or cell phone activity—will cause people to modify their behavior in public in potentially negative ways, such as by becoming less open, truthful, or creative. And if so, is there a government interest in preventing such a shift to less desirable behaviors in order to foster a free and democratic society?

Scholars Yang Wan, Yaxing Yao, and Huichan Xia from Syracuse University's School of Information (iSchool) introduced some of their research<sup>16</sup> regarding the public's expectations of privacy. Their findings suggested that people often do expect privacy in public: for example, an individual shopping at a mall with a friend may expect that their conversation is private and not recorded, regardless of whether the law recognizes that expectation as reasonable. Other participants asked whether providing notice, or the ability to obtain information about a drone, would be enough to address those privacy concerns, noting that there is or could be an "app for that." In response, the iSchool scholars explained that in a follow-up study, the majority of participants thought that having to use a mobile phone application was overly burdensome on them. They would have to be aware of the app and install it. Most of the study participants thought there should be some minimal standard or protection, via regulation, so that they did not have to do that work.

*One issue raised by legal scholarship ... is whether an increase in surveillance of the physical body—rather than just of internet or cell phone activity—will cause people to modify their behavior in public in potentially negative ways, such as by becoming less open, truthful, or creative*

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15 See Margot Kaminski's article *Regulating Real-World Surveillance*, 90 Wash. L. Rev. 1113 (2015), included in the pre-workshop readings.

16 Yang Wang, Yaxing Yao, and Huichan Xia. "Flying Eyes and Hidden Controllers: A Qualitative Study of People's Privacy Perceptions of Civilian Drones in The US, Proceedings on Privacy Enhancing Technologies," (2016), available at <https://www.degruyter.com/view/j/popets.2016.2016.issue-3/popets-2016-0022/popets-2016-0022.xml>.

The workshop discussed whether the Fair Information Practices Principles might have relevance in the drone surveillance context:

- Whether an individual should have a right to notice about what data is being collected about her;
- Whether drone operators must provide the public with transparency about what data they are collecting and when and where;
- Whether law or practice should impose use limitations on what drone operators or owners can do with collected information.

The National Telecommunications and Information Administration (NTIA) also convened a diverse group of stakeholders and in 2016 came out with a set of privacy principles that are non-binding best practices.

Both the FIPPs and the NTIA principles were criticized on First Amendment grounds. There are some contexts, it was argued, such as helicopter news and photo journalism where society benefits from people being able to collect the personally identifiable information of others without their consent. Creating a carve-out of privacy principles for journalists only does not fully address the First Amendment critique. Despite this critique, there was still a sense in the room that the First Amendment should not prevent all efforts toward regulation or self-regulation for the protection of privacy interests.

Workshop participants briefly highlighted another challenging issue: who owns the data collected? It was suggested that data retention regulation is mostly a state and local issue, but could be handled by Congressional action.

## **II. CONSENSUS BUILDING: POTENTIAL PATH(S) FORWARD**

The goal of the final session was to find areas of agreement. The workshop tried diligently and earnestly to reach a common recommendation with respect to the relationship between federal and state authorities, and even potential collaboration between the two.

Ultimately, the workshop participants could not agree upon definite language. A sticking point was whether a collaborative scheme might suggest, incorrectly in the view of some participants, that states were in any way required to coordinate with the FAA or seek FAA approval before taking regulatory action on their own. Some participants also suggested that state and local governments need additional capacity (resources and funds) to deal with regulating UAS, and until that capacity was there, moving forward in a collaborative way with the FAA would be difficult.

Two versions of proposed text emerged:

### *Version 1*

- The FAA has jurisdiction over navigable airspace and aviation safety and efficiency, while states have jurisdiction under their police power, for example, over property rights and trespass. These two authorities are not necessarily incompatible and a number of important disagreements remain about defining the boundary between these authorities. Therefore, we



encourage the FAA and the states to cooperate in developing one or more frameworks in which states would use their powers to regulate drones for a limited period of time.

- This process would be voluntarily process and no FAA approval is required prior to state action.
- Further exploration is required as to how this process may work effectively.
- With respect to drone regulatory issues, funding needs to be addressed at federal and state levels and by the private sector.

### *Version 2*

- The FAA has jurisdiction over navigable airspace and aviation safety and efficiency, while states have jurisdiction under their police power, for example, over property rights and trespass. These two authorities are not necessarily incompatible and a number of important disagreements remain about defining the boundary between these authorities. Therefore, we encourage the FAA and the States to explore the role of state law in small UAS regulation and to work to reconcile differences in this area of the law.

## CONCLUSION

INSCT is grateful to all participants for their vigorous discussion of key legal and policy issues present in the growing field of UAS.

Some areas for further research or consideration might include:

- Whether, in the age of UAS, a landowner or lessee has a right to the use and enjoyment airspace to a certain altitude over private property.
- Whether there should be some consistency—even a bright line rule—with respect to where and how states may regulate the airspace over private and public privacy, via trespass and zoning laws.
- Whether, after careful examination of existing law, state penal and civil codes adequately cover potential UAS-related offenses or need to be updated.
- Whether regulations should be enacted requiring notice to landowners and lessees of flights over private property, requiring the publishing of flight paths and purposes in an easily accessible place online or elsewhere, or restricting the collection, retention, or use of surveillance data.
- Whether regulations should be enacted to address UAS use in public spaces, such as regulations requiring notice to and/or consent of individuals subject to possible surveillance, and restricting the retention or use of data collected.
- Whether limits should be placed on government and law enforcement use of UAS, such as warrant requirements and restrictions on the scope of warrants.
- Whether limits should be placed on private, third-party sharing of data with government officials.



## PRE-WORKSHOP READING LIST

A. Michael Froomkin & Zak Colangelo, Self-Defense Against Robots and Drones, 48 Conn. L. Rev. 1 (2015).

Robert A. Heverly, The State of Drones: State Authority to Regulate Drones, 8 Alb. Gov't L. Rev. 29 (2015).

Margot E. Kaminski, Drone Federalism: Civilian Drones and the Things They Carry, 4 Cal. L. Rev. 57 (2013).

Margot Kaminski, Regulating Real-World Surveillance, 90 Wash. L. Rev. 1113 (2015).

NYS Statutes Applicable to Illegal Uses of UAS, INSCT Workshop Packet (2017)

Henry H. Perritt Jr. & Albert J. Plawinski, One Centimeter Over My Back Yard: Where Does Federal Preemption of State Drone Regulation Start? 17 N.C. J.L. & Tech 307 (2015).

Troy A. Rule, Drone Zoning, 95 N.C. L. Rev. 133 (2016).

Federal Aviation Administration, Office of the Chief Counsel, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Dec. 17, 2015.

Taking Off: State Unmanned Aircraft Systems, National Conference of State Legislatures.

## AGENDA

8:30 - 8:45 a.m. Welcome & Coffee

8:45 - 9:00 a.m. William C. Banks, Director, INSCIT: Welcome & Introductions

9:00 - 10:15 a.m. Morning Session: Federal Preemption of UAS Regulation

With its 2016 adoption of Part 107, the FAA provided some clarity regarding the operation of small unmanned aircraft. Nonetheless, the states, their agencies, and local governments face considerable challenges in fostering the UAS industry while fulfilling their traditional roles in regulating for the health, safety, and welfare of their citizens. State and municipal efforts to address the potential harms of ubiquitous UAS adoption are subject to preemption analysis. If a state wants to legislate, how can legislation be crafted to avoid preemption? What areas related to private individual and commercial use of UAS are the most likely to withstand preemption challenges? Which restrictions on time, place, and manner for landing, launching and operating UAS are preempted by FAA regulation? To what extent might municipalities enact rules related to device identification, notification of flights, and restrictions on flying over private property?

10:15 - 10:45 a.m. Networking Break

10:45 a.m. - 12:00 p.m. Morning Session (Cont.)

12:00 - 1:00 p.m. Buffet Lunch

1:00 - 2:15 p.m. Afternoon Session: Protecting Privacy Interests

The FAA has stated that laws related to state and local police power—including privacy and trespass—generally are not subject to federal regulation. Scholars and practitioners have discussed whether states can use existing law to provide protection from harms such as stalking, trespass, nuisance, and unlawful surveillance. Using New York State law as a basis for discussion, participants will evaluate the extent of protection provided considering UAS capabilities and whether there are gaps requiring new rules or amendments in additional areas. What is the best way to provide notice and protection from non-government surveillance in both private and public spaces? What role do state and local governments have in regulating mass data collection? Should state and local governments regulate to allow for or restrict any self-help by citizens against UAS intrusions, and if so how? Which level of government is best suited to define property rights in airspace incident to land for purposes of trespass and nuisance?

2:15 - 2:45 p.m. Networking Break

2:45 - 4:00 p.m. Afternoon Session (Cont.)

4:00 p.m. Closing Remarks

# Syracuse University

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