
Risk Management Perspective on Domestic Drones Part 5 of 5 - Drone Unknowns—Coverage, Liability, Acceptable Use

Operation of drones either directly or through third party contractors exposes entities to a myriad of risks and potential liabilities, ranging from the operation of the drones to the collection and protection of all data collected. All contracts and agreements with third parties relating to the use of drones should contain provisions outlining the proposed flight operations and data privacy protections, ensuring compliance with all applicable federal, state and local requirements. Public entities are not automatically immune from liability in the event of a data breach. In addition to any federal requirements, 45 states each have their own data breach statutes. As a general rule under various data breach statutes, entities can be held liable when third-party business associates fail to use common data protection standards. Notification costs alone required per a state statute can strain an entity's budget and financial resources.

In addition to incorporating minimum data protection provisions in all contracts, entities should also include hold harmless and release provisions for third party actions. The National Transportation Safety Board (NTSB) confirmed in a landmark November 2014 decision that the FAA has the authority to levy fines and other penalties for unsafe drone operations.³⁴ There, a third party operator capturing film footage of the campus on behalf of the University of Virginia was fined \$10,000 for "unsafe operations" (the case later settled for a reduced fine of \$1,100).³⁵

Before utilizing drones, entities should, at a minimum, consider the following coverages when evaluating their exposures:

General Liability: Some insurers will provide coverage for drones at no additional charge while other insurers are currently excluding such coverage. Before owning or operate a drone, coverage related to invasion of privacy claims should be assessed.

Property: Coverage for the drone itself is not guaranteed if it is damaged; a property insurer may or may not cover this type of mobile equipment.

Aircraft or Aviation Liability: Drone liability coverage may be purchased from the aviation marketplace. Public entities considering use of drones directly or through third part contractors should become familiar with applicable FAA regulations and state statutes.

Cyber Risk Liability: Cyber liability insurance addresses gaps in coverage for expenses that may arise in the aftermath of a data breach. Depending on the policy, covered expenses may include the legal costs and costs associated with notifying all of the impacted individuals.

34 *Huerta v. Pirker*, NTSB Docket CP-217 (November 18, 2014)

35 <http://www.wsj.com/articles/u-s-federal-aviation-administration-settles-with-videographer-over-drones-1421960972>

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