

Flight Risks

Drones have been an important tool for journalists, but operators need to heed regulatory and liability issues. **BY TIMOTHY EHRHART**

Look no further than a recent report from PricewaterhouseCoopers to glean an understanding of how pervasive drones have become. The market for drones among media companies has skyrocketed to \$8.8 billion, up from zero only a few years ago.

Drones are a leap up in flexibility and cost-effectiveness (compared to options like helicopters) when journalists cover fires, hurricanes and other events that are often dangerous or otherwise hard to report from the ground. But there are some regulatory, property and liability risks that must be carefully considered.

SHIFTING RULES

One key concern is evolving regulations. On June 21, 2016, the Federal Aviation Administration (FAA) updated its rules governing unmanned aerial vehicles to ensure safety of flight and the security of people and property. Several states also have drone regulations.

The FAA's Small Unmanned Aircraft Rule (Part 107) mandates that a commercial drone must weigh less than 55 pounds, always remain within the visual line-of-sight of the drone pilot and only be used during daylight hours. Other rules include a maximum groundspeed of 100 miles per hour and a maximum altitude of 400 feet as well as restrictions governing the privacy of people and businesses.

The penalties for violating drone regulations are steep. The FAA can assess civil penalties up to \$27,500. Criminal penalties include fines up to \$250,000 and imprisonment for up to three years.

To operate a drone, users must apply to the FAA for certification. Anyone 16 years of age and older can submit an application for a remote pilot certificate. The person must pass a background check administered by the Transportation Safety Administration and an aeronautical knowledge test at an FAA-approved facility.

A media company considering the use of drones must be cognizant of these rules



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and their likely permutations in future. For now, those who seek to operate a fleet of drones should develop a handbook of permissible use, based on Part 107.

THIRD-PARTY OPTION

Media businesses can avoid these legal requirements and potential liability exposures by contracting with an outside drone company to provide services on *an as-needed basis*. The italics are there for a reason – a TV station seeking to cover a local brushfire, for instance, must be assured that a drone will be immediately available for its use.

By contracting with an outside party, a media company effectively transfers the regulatory, property and liability risks to this business, which would assume responsibility for property damages, bodily injuries and regulatory infractions. However, it is incumbent on the third-party drone operator to have ample insurance with adequate terms and conditions.

A traditional CGL (commercial general liability) policy may not adequately insure against drone liability exposures. Companies operating drones need to consider how insurance would apply to physical damage to the drone itself. Specialized liability and physical damage insurance available

through the aviation insurance market may be needed, and media companies should have their insurance advisor review the drone operator's insurance policy prior to signing the drone contract.

Like any new industry, drones are a developing market for insurers. Scant claims data exists to provide underwriters with a deeper understanding of the risks. Consequently, some insurance policies are overly conservative in the scope and amount of insurance they provide. Unfortunately, a great premium may not provide much in the way of

financial assurance in the event of a claim. Whether a company flies its own drones or retains the services of a third-party operator, questions abound. Consider whether or not an insurance policy responds to:

- 1) A lawsuit that claims invasion of privacy;
- 2) Repair or replacement of a drone that is damaged or destroyed in a crash;
- 3) The associated business income loss arising out of such damage or destruction;
- 4) Third-party claims for property damage or bodily injury;
- 5) A fatality or multiple deaths – for example, from a mid-air collision with an aircraft.

These are just a few of many risk and insurance considerations. If your media organization is already using drones or contemplating their deployment, now is the time to focus on these issues.



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