



**BEST BEST & KRIEGER <sup>LLP</sup>**  
ATTORNEYS AT LAW

# Game of Drones:

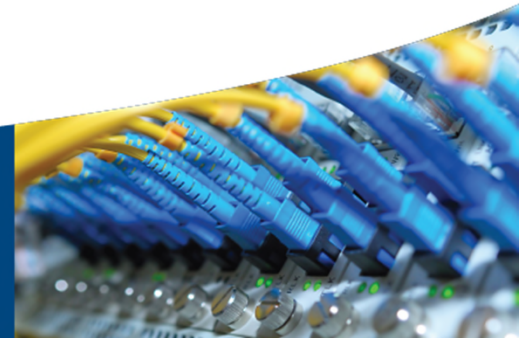
## Everything You Need To Know About Using Drones

ACM West  
March 18, 2016

PRESENTED BY

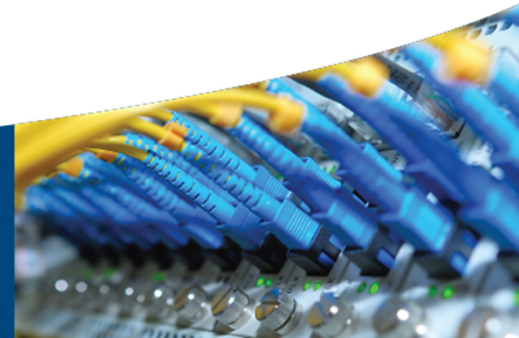
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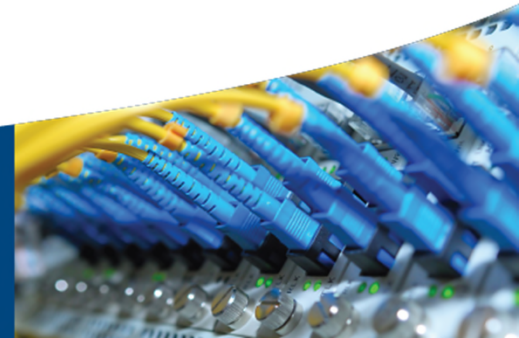


# Agenda

- What is a drone?
- Concerns over Drone Use
- Reasons for Regulation
- Current and Proposed Regulatory Structure and Enforcement
- Implications for PEG users

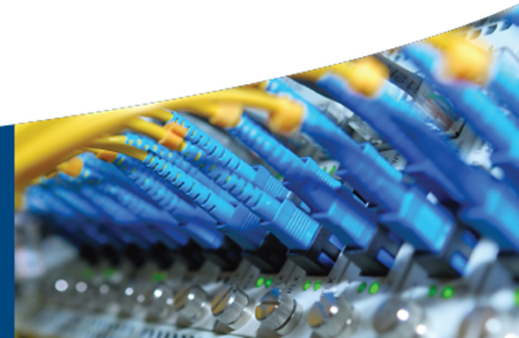


# What is a drone?



# What is a drone?

- According to the FAA, an “Unmanned Aircraft System” is:
  - the unmanned aircraft (UA) and
  - all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.

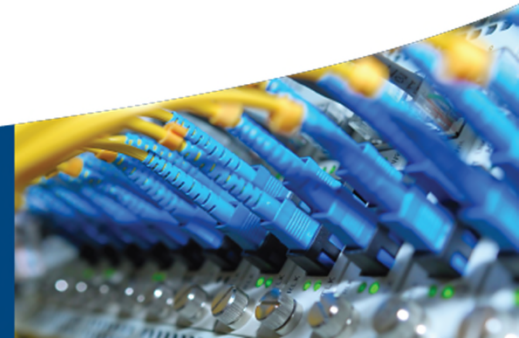


# Basically...



# What is a drone?

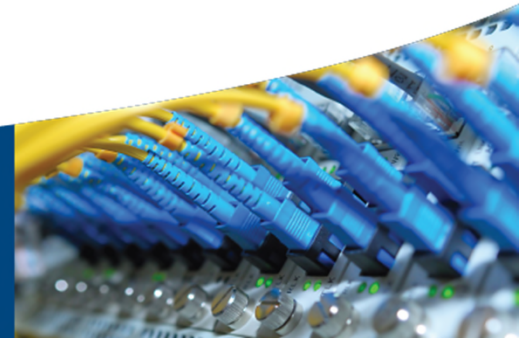
- Common features of a drone
  - Remote controlled, often via app
  - Cameras
  - Programmable as to route
  - Capable of self-landing operations if communications link is lost



# Concerns Over Drone Use



Telecommunications Law





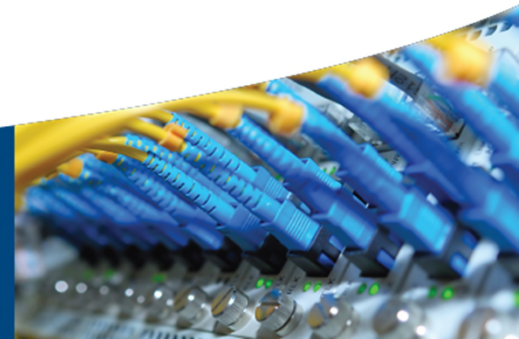
# Three general types of drone use

- Commercial Use—using the drones to make money
- Noncommercial use—using the drone for government, research, or other noncommercial purposes
- Hobbyist use—using the drone personally



# Proliferation

- FAA expected up to 1,000,000 domestically owned hobbyist drones in U.S. by end of 2015
- But biggest growth expected in commercial uses - agriculture, energy, utilities, mining, construction, real estate, news media, and film production.



# Interference with Aircraft

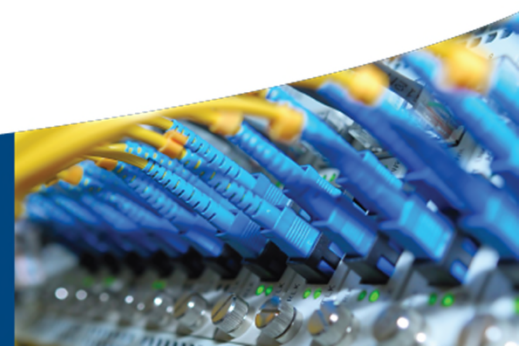


- Pilots report nearly 1,000 drone sightings April-August 2014
- Many public incidents (CA Wildfires) involve drones flying at 400 feet or higher
- FAA rules require drones to stay below 400 feet to avoid aircraft



# Interference with Firefighting Efforts

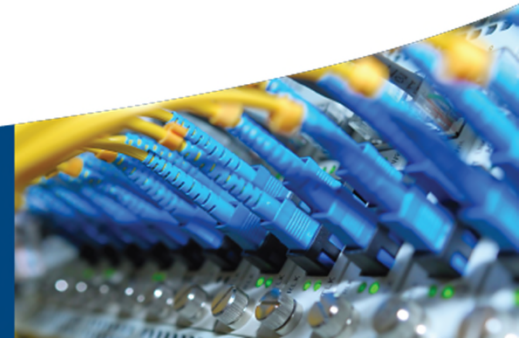
- During at least five fires last summer in CA, aircraft had to pull back to avoid potential collisions with drones
- Firefighters have launched “Know Before You Fly” education campaign



# Hazards Posed to Gov. Buildings



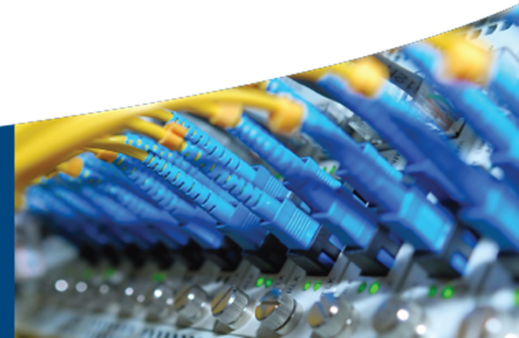
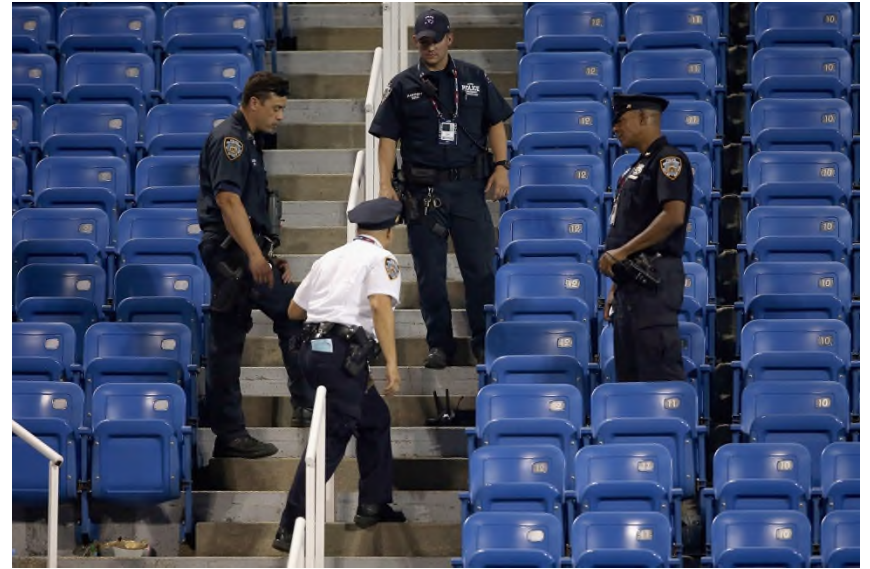
- In January 2015, off-duty intelligence officer crashed a drone into the grounds of the White House
- Drones too lightweight to be picked up on radar





# Hazards Posed to Sporting Events

- In September 2015, drone crashed into the stands at the U.S. Open
- FAA has opened investigation
- Drones also identified above Wimbledon



# Hazards Posed to Sporting Events



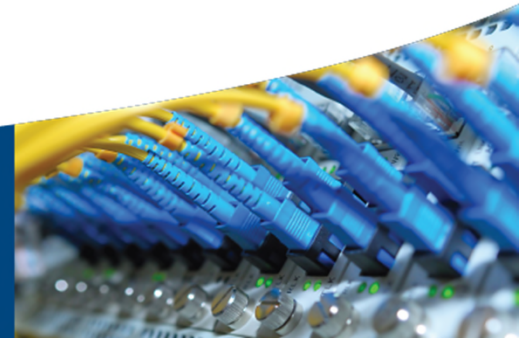
- In October 2015, a drone flew the Albanian nationalist banner over the Albania-Serbia soccer match, sparking a riot
- The pilot intended to fly it over Albanian team as support, flew it over Serbia and caused the riot



# Personal Injury Claims and Liability



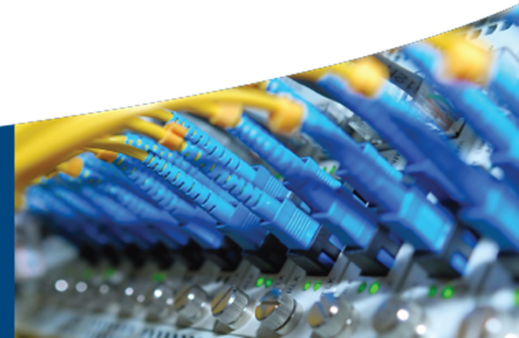
- Drones crash—who is liable?
- More people injured at Great Bull Run in Virginia by a crashing drone than by running from bulls





# Drones and Privacy

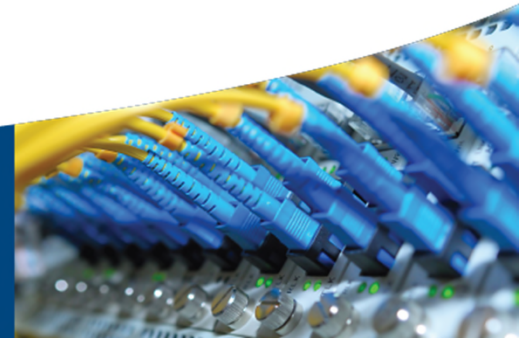
- Drones flying over private property equipped with cameras can invade privacy – paparazzi, or nosy neighbor
- The noise of a drone can also create a nuisance over a quiet backyard



# Law Enforcement Uses



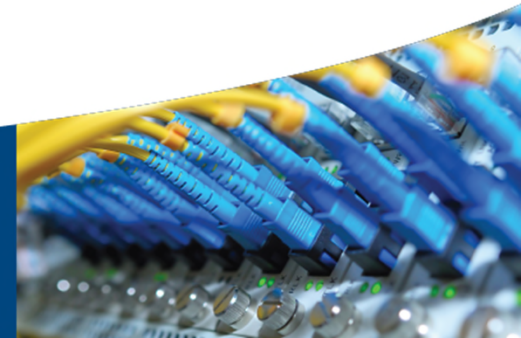
- General surveillance
- Crime scene plotting
- Incident mapping
- Crowd Control
- Criminal Intelligence
- Targeted surveillance and monitoring
- Search and rescue



# Fourth Amendment Concerns

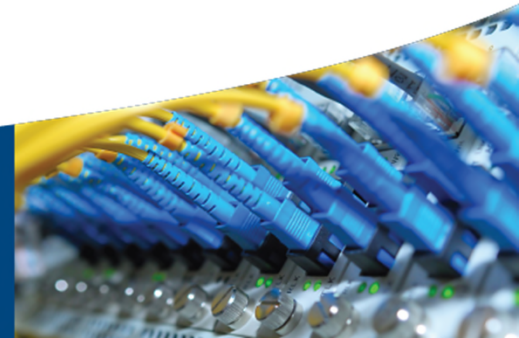


- Fourth Amendment
  - *Florida v. Riley* (USSC)—helicopter at 400 feet over backyard not a search
  - *California v. Ciraolo* (USSC)—chartered plane at 1,000 feet over backyard not a search

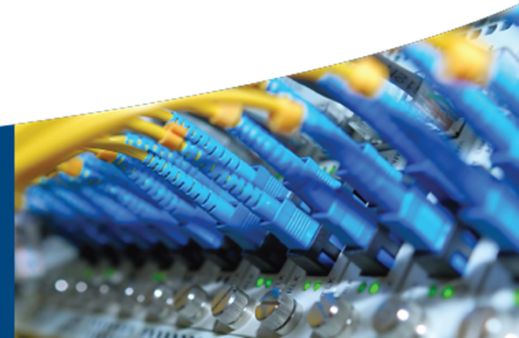


# Fourth Amendment Concerns

- Fourth Amendment
  - *United States v. Jones* (USSC)—car mounted GPS violated 4<sup>th</sup> on trespass theory
  - *U.S. v. Vargas* (E.D. Wash)—pole mounted camera continuously surveilling front yard for 6 weeks as violation of 4<sup>th</sup>
  - *U.S. v. Houston* (6<sup>th</sup> Circuit)—pole mounted camera continuously surveilling front yard for 10 weeks *not* violation of 4<sup>th</sup>



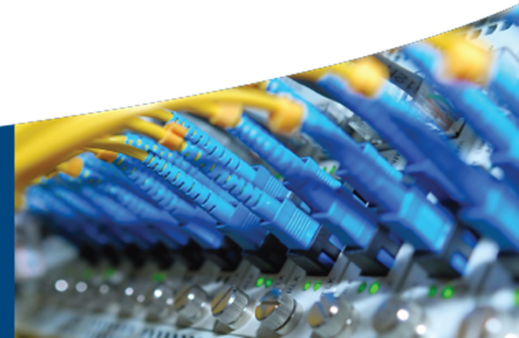
# Reasons for Regulation





# Public Safety

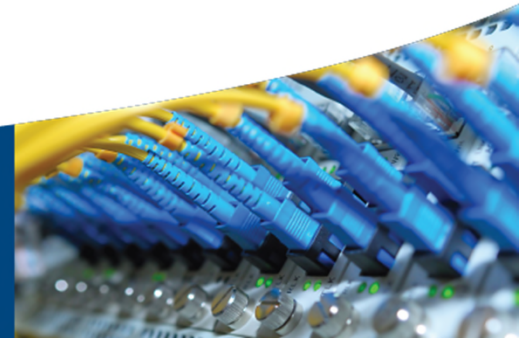
- Interference with Police, Fire, and Public Safety Response
- We want to make drones safe
- We also don't want drones to keep gov'ts from making you safe



# Privacy and Nuisance Issues

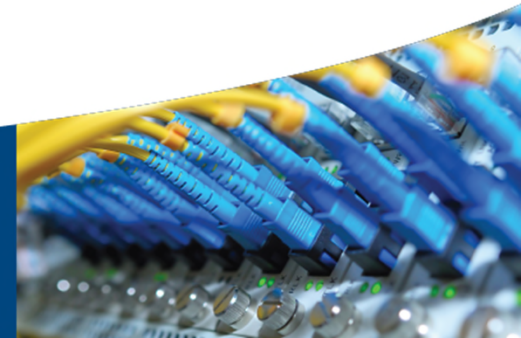


- Need to protect privacy
- Where do you have privacy? Where *should* you?
- When and where can you get a little peace and quiet?



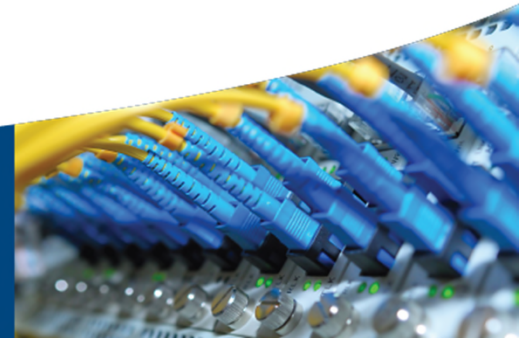
# Regulate Commercial Uses

- How can commercial users utilize the technology?
- When and where?
- How many drones do we want in the sky?





# Current and Proposed Regulatory Structure and Enforcement



# Who Regulates What?

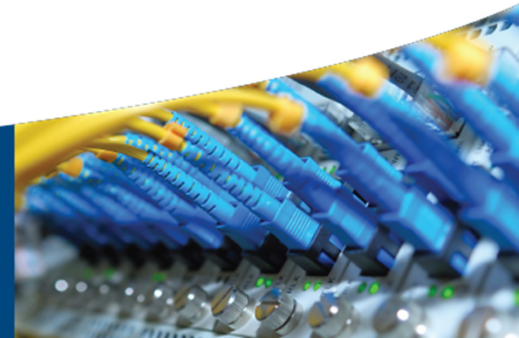
- FAA explicitly preempts regs restricting:
  - Flight altitude
  - Flight paths
  - Regulating airspace
  - No all-out bans on drones
  - Cannot require local or state registration
  - Cannot mandate equipment or training
- Areas within state and local authority:
  - Land-use
  - Zoning
  - Privacy
  - Trespass
  - Law enforcement use
- Current zoning provisions provide for a 30' zone above property (FAA disputes, claims to



# Federal

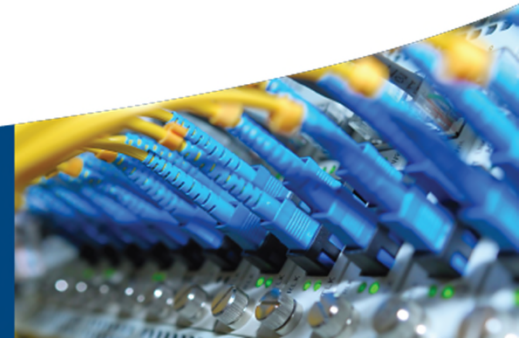


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# Public Operators of Drones

- Apply for a Certificate of Authorization
- “60 days” to process
- Additional requirements (Letter of Authorization) if operating near airport
- FAA has issued around 80 publicly released COAs for drones to date
- Mainly Universities and Armed Services, some large cities



# U.S. DOT/FAA



- As of December, 2015, requires hobbyist drones to register with the government
- Registration numbers displayed on all drones
- Egregious violations can impose civil penalties up to \$27,500 and criminal penalties up to \$250,000 and three years in prison
- As of February 2016, there are 325,000 *registered* drone operators



# Commercial Small Drones



- *Special Airworthiness Certificate* (describe system, how/where will fly) OR
- *§333 Exemption Petition* (used to perform comm'l operations in low-risk, controlled environments.)
  - "60 day" process

**i** Due to the high volume of Section 333 petitions received, we are experiencing delays in processing petitions. We will do our best to process petitions being posted to the docket as soon as possible, and in the order they were received. We appreciate your patience as we work diligently to process your request.

Petitions Granted	Petitions Closed
3,927	399
As of 03/11/2016	



# Commercial Entertainment Production

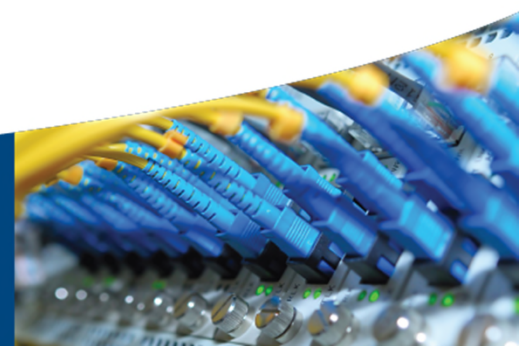


- Aerial shots common request
- Currently, commercial use heavily regulated through 30+ exemption conditions, see for example, [https://www.faa.gov/uas/legislative\\_programs/section\\_333/333\\_authorizations/media/Professional-Video-Inc-15278.pdf](https://www.faa.gov/uas/legislative_programs/section_333/333_authorizations/media/Professional-Video-Inc-15278.pdf)



# Commercial Delivery Use

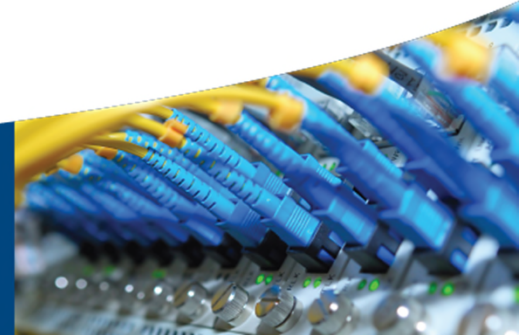
- Amazon wants a fleet of delivery drones
- FAA says no for now





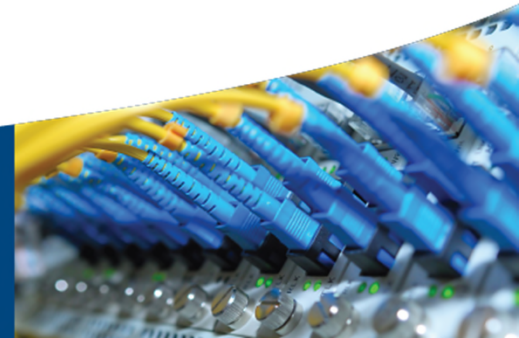
# Proposed FAA Regulations

- FAA Modernization and Reform Act of 2012
  - FAA to develop plan for integrating civil UAS into national airspace
  - Issues proposed rules February 2015
    - Commercial Use
    - Weigh less than 55 lbs
  - Not clear when rules will be finalized but should be in the next year or so



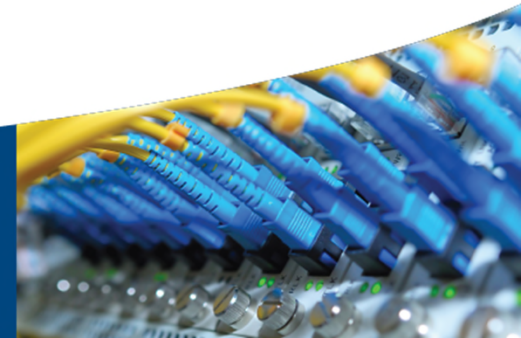
# Proposed FAA Regulations

- Proposed Civil Small Drone Rules (guidelines apply to all uses of drones)
  - Maintain visual line-of-sight
  - Cannot operate over persons
  - Operate only in daylight
  - Maximum altitude 400 feet
  - Pilots: 17 or older, pass FAA test, vetted by TSA & obtain certificate



# Proposed FAA Regulations

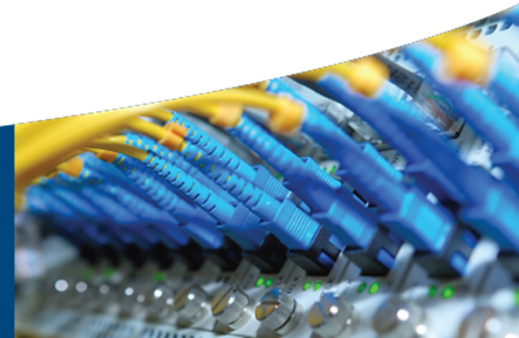
- Do not cover hobbyists (though guidelines still apply)
- Do not deal with privacy concerns
- Prohibit careless or reckless operators



# NTSB



- Full Board held “careless or reckless operation” standard applies to drones
- Can be sued
- Held that drones are aircraft for purposes of federal law



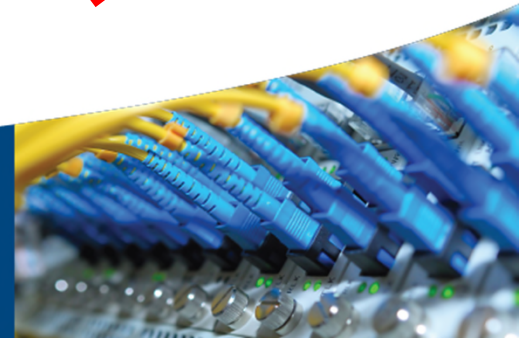
# FAA Penalties

- FAA has launched 20 investigations re “careless or reckless operation”
- Fine of up to \$25,000 and stiff criminal penalties as well
- Stiffest Civil Penalty: \$1.9 million for SkyPan International for 65 unauthorized commercial flights, some in restricted airspace



# U.S. Park Services

- Drones banned in all national parks

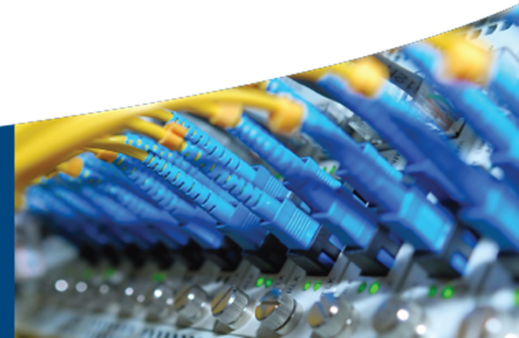




# DOJ



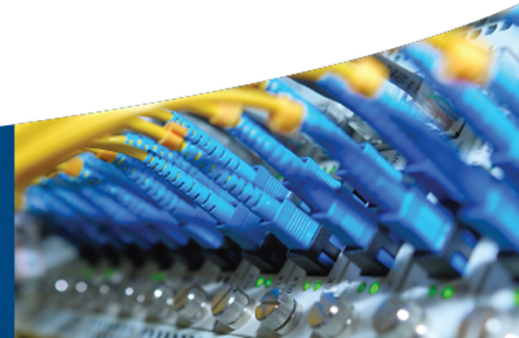
- Requires all federal agencies to report on drone use annually
- State governments may enact similar legislation



# State and Local



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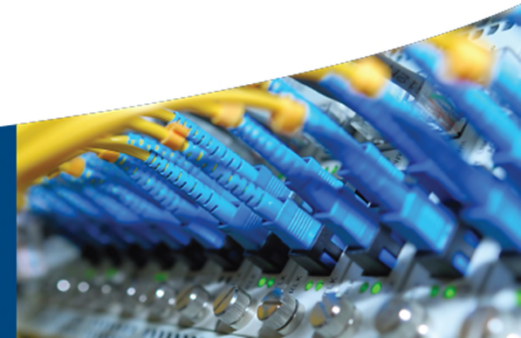
# California Regulations

- Existing general laws
  - Trespassing
  - Privacy (Civil Code § 1708.8)
- Gov. Brown vetoed bills that would
  - Prohibit drones over public schools during school hours
  - Allow firefighters to disable drones flying over emergencies
  - Make it a misdemeanor to fly a drone over a prison
  - Make it an offense to fly a drone over private property at less than 350 feet without owner's permission
  - Make drone recorded video Public Records



# Municipal Regs: Los Angeles

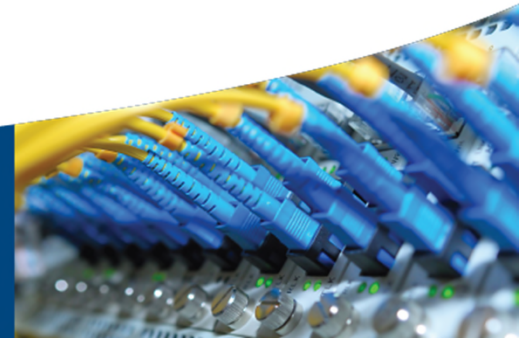
- Ordinance prohibits:
  - Flying above 500'
  - Too close to people (25')
  - At or within 5 miles of an airport.
  - Designed to mirror FAA regulations and make them enforceable at municipal level
  - Makes it a misdemeanor to violate FAA regs
  - Unclear whether preempted by FAA



# Municipal Regs: Long Beach

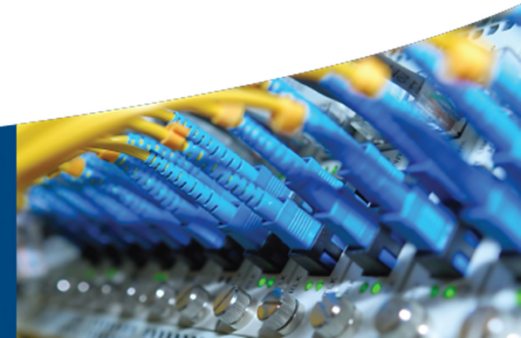


- Proposed ordinance to prescribe areas in the city for recreational use and studying regulating commercial use
- Put on hold until federal regulations are finalized



# Municipal Regs: Poway

- Emergency ordinance to ban all drone flights in 75% of the 35 sq. mile city
- To be enforced only during wildfires or other emergencies.

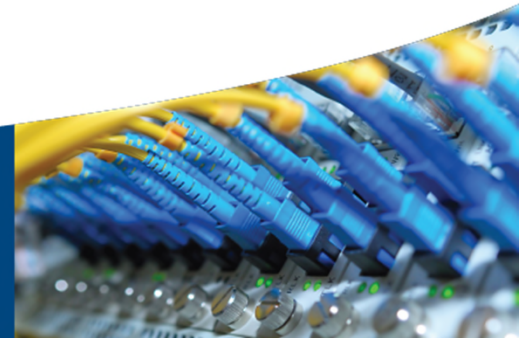


# Technical Fixes--Drone Zones



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- Manufacturers are capable of pre-programming drones to avoid zoning and “no-fly” areas, like airports, international border, stadiums, etc.





# What to Watch (Out) For

- FAA commercial drone regulations still in draft form, should be finalized in the next year or so
- Will require registration of drones and passage of written test to pilot
- Guidelines will apply to all users
- More regulation possible at all levels of government
- Get appropriate registration/authorizations (will depend on who is applying and intended use, so seek legal advice if you aren't clear on applicable category)
- Review your existing contracts, waivers, policies to make sure they adequately address risks related to use of drones



# Questions?



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