

## Could Criminal Penalties for Negligent Drone Operations Extend to Corporations?

Recent prosecutions of individual drone operators raise important policy questions about aircraft investigations. The United States, consistent with the Chicago Convention of the International Civil Aviation Organization (ICAO) Annex 13, has adopted the view that it is more important for operators and manufacturers of aircraft to feel free to share information after an accident than fear criminal prosecution based on the information they provide. Other countries, however, have responded to a public desire for accountability by imposing criminal responsibility on corporate officers and employees in the aftermath of an aircraft accident investigation, with a sometimes chilling effect on those who might otherwise provide important information. The tension between cooperation and accountability, therefore, remains a significant one among aviation regulators and the industry.

As drones become more prevalent, so too are drone accidents. In instances involving bodily injury, criminal prosecutions of operators have resulted. For example, in 2017, a professional photographer using a drone to film a parade in Seattle was prosecuted after his drone hit a bystander in the head after striking a building above. He was convicted and sentenced to 30 days in jail and a \$500 fine. More recently, another operator in Seattle was convicted of reckless endangerment and given a suspended sentence of 364 days in jail as well as a \$250 fine, for flying his drone into the Space Needle while workers were assembling a Fourth of July fireworks display. Interestingly, he was also ordered to surrender his drone and never operate drones again.

On the surface, these stories are not controversial because most would agree that a negligent operator should be held personally responsible for the harm he or she causes. Criminal responsibility is a logical corollary to that idea. However, drones are also conventionally seen as a new form of aviation and the prevailing view is that drone regulation should largely be tailored around the principles that underlie all aircraft regulation. If we are going to regulate drones the same way we regulate other forms of aviation, what does the criminalization of individual negligent drone use suggest about the scope of future drone regulation?

It seems a jump to say that because individual operators are being prosecuted that such consequences might later be visited on corporate operators or manufacturers. However, when an accident involving bodily injury is caused by a commercially operated drone (e.g., delivering goods), the question is likely to be asked by some why corporate drone negligence should be treated differently than cases involving individuals. The same public sentiments that have driven some countries to prosecute corporate employees for aircraft accidents could very well influence a similar result in cases involving accidents by commercial drone operators. Seen in this light, the jump is not so great.

Complicating the analysis is the interplay between federal and local regulation. Criminal prosecutions of drone operators have been done, to date, under local laws. Federal preemption has been successfully raised as a defense in civil cases such as *Singer v. City of Newton*, 284 F. Supp. 3d 125 (D. Mass. 2017) (finding federal preemption of a municipal drone ordinance) but the efficacy of a preemption defense in a criminal prosecution would be far less certain since the direct conflicts in the ordinance in *Singer* would not necessarily be present in a case brought on the basis of a criminal code. Nevertheless, as federal regulation of drones continues to develop (likely driven, in part, by future accident investigations), the tension between federal regulation and local criminal ordinances is likely to grow. If the goal of transparency in aircraft accident investigations fostered by ICAO and U.S. policy is to carry over to drone accident investigations, the criminalization of negligent drone operation will come under greater scrutiny.



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Cozen O'Connor continues to partner with drone operators and product manufacturers to develop risk management policies that ensure safe operations and reduce costs. To discuss any questions you may have regarding this Alert, please contact a William Walsh.

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