

Drone users, you are not clear for takeoff

Find out what experts think of the new guidance note addressing the issue of invasion of privacy.

If you think you're safe in the confines of your high-rise home and office, think again. As you're reading this now, there may be a covert, non-descript flying device recording all your activities from leagues away. It's a scary reality, one that Hong Kong's Privacy Commissioner for Personal Data is trying to curb as they update the existing guidelines for surveillance machines.

"Aspects of our private domain that we assumed sacrosanct and never thought to worry about 10-15 years ago are suddenly being thrust into the open marketplace. Data is so freely exchangeable that it is no longer a question of how, but simply when and by whom," says **Urszula McCormack**, a partner at King & Wood Mallesons.

These unmanned aerial systems – when not being used for mischievous purposes – are actually quite handy. Colloquially referred to as drones, they're small, portable, and mobile, able to provide plenty of advantages such as photography and videography of anything from urban environments to wild terrain.

These benefits have led to a surge in the drone's popularity. Last year, drones garnered a global revenue of USD84 million, with 250,000 units tak-

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ing to the air. The trend is likely to continue, with the Consumers Electronics Association predicting that the year 2018 will see 1 million flying unit sales amounting to worldwide revenue of more than USD300 million.

Gabriela Kennedy, a partner at Mayer Brown, says that Hong Kong is currently the largest drone hub, with over 90% of the world's drones being shipped out through Hong Kong. "The recreational use of drones in Hong Kong is also becoming commonplace, with an estimate of over 5,000 drone users," she adds.

What safety measures are currently in place?

McCormack comments that as with most advents in technology, regulation follows innovation. "There's a need for a critical approach to using new technologies, transparency in policy and procedure, and regular reviews." Due to their popularity, the Civil Aviation Department has required all commercial drone flights to apply for a flight permit at least 28 days before the scheduled takeoff. On the



Mark Parsons



Gabriela Kennedy



Simon Deane



Urszula McCormack

other hand, hobbyists can take to the skies as long as their drone weighs less than 7kg without fuel. Under such circumstances, it would be classified as a "flying model aircraft", exempt from CAD permits.

Regardless of classification, the CAD enforces drone guidelines that will protect the public from accidents. Drones cannot fly within five kilometres of an aerodrome, over 300 feet above ground, or in poor visibility conditions of less than five kilometres. Drones are also limited to daytime flights. Meanwhile, pilots should provide flying qualifications, though the CAD would not be issuing a separate licence in lieu of their case-to-case application review policy.

"Hong Kong's urban density and unique geographical features make safety a key concern," says **Mark Parsons**, a partner at Hogan Lovells Hong Kong. Indeed, it wouldn't be hard for a malfunctioning or misguided drone – no matter the weight class – to wreak havoc, whether on a passenger plane preparing for takeoff, or a random pedestrian crossing the street.

How does regulation protect citizens' rightful expectation of privacy?

The advantages brought about by the use of drones also open up the issue of invasion of privacy. Like crime-detering CCTV systems, drones fitted with cameras tend to capture individuals minding their own business. For this reason, the Privacy Commissioner for Personal Data has issued an updated guidance note regulating surveillance drones. Parsons says that the commissioner's guidance is the first major regulation for the use of unmanned aircraft systems, arriving just in time to properly lead the growing drone user base.

Under the updated guidelines compliant with the Personal Data (Privacy) Ordinance, those using drones for surveying must carefully assess whether using a drone is necessary; whether there are alternative means of achieving the same objectives; and whether or not data is properly protected from unauthorized access. Drone operators must also conduct privacy impact assessments of potential flight paths; determine what to do with any irrelevant data captured; and alert the public in the immediate flight area that they are being filmed.

Simon Deane, a partner at Deacons, notes the Note will be helpful in focusing drone users' attention on personal data privacy – without the Note, many users may not have been immediately aware that drone or CCTV surveillance cameras may result in an invasion of individual privacy rights. "I think the effect of the note will depend upon how well the Privacy Commissioner can publicize it and educate drone users about restrictions imposed by law on using drones for surveillance," says Deane.