



Hogan Lovells assists CNN to win important precedent-setting Federal Aviation Administration waiver

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Represents quiet evolution in FAA analysis of commercial drone operations over people

Washington, D.C. – 17 October 2017 – Today, CNN was awarded a precedent-setting waiver from Part 107 to operate drones (or unmanned aircraft systems, UAS) safely over people. CNN's waiver is unique in that it allows for drone operation over people in real-world operating conditions. The waiver allows CNN to fly the Vantage Robotics Snap drone over non-participating members of the public up to an altitude of 150 feet above ground level (AGL). There are no restrictions based on population density, which will for the first time ever enable wide-ranging flights in urban and suburban environments. This is hugely important for CNN, and even more significant for the commercial drone industry at large.

In order for the United States to properly capitalize on the full safety and efficiency benefits of drones, a workable regulatory framework to allow safe operations over people is required. Whether drones are being used to respond to natural disasters like hurricanes, deliver packages, or gather the news, companies need to be able to fly in urban and suburban environments, where people are. Under the current regulatory framework for commercial drone operations in the U.S. (Part 107), drone flights over people are prohibited without a waiver from the Federal Aviation Administration (FAA).

As of today, the FAA has issued [1,317 Part 107 Waivers](#). Only seven of them (or .005 percent) allow drone operations over people. While the odds of filing a successful waiver application for operations over people may seem daunting, CNN's new waiver will now open the door to additional approvals for other industry partners.

Here's why. When applying for a Part 107 waiver, applicants need to submit a safety case that demonstrates that the proposed operation under the waiver can be conducted safely. In the context of a waiver for operations over people, the primary concern is the risk posed to exposed people on the ground below where the drone is flying. But how should the risk be assessed, and what factors should be considered? Should the risk to people on the ground depend solely on kinetic energy at impact (i.e., how hard a drone would hit someone if it fell from the sky), or

should other factors, like vehicle reliability, the operator's safety history, and ground population density also be considered?

Until recently, the FAA took a worst-case-scenario approach to analyzing the risk posed to people on the ground. The problem with this approach is two-fold. First, a kinetic energy injury-based approach will only work if the thresholds adopted are reasonable. Second, a kinetic energy injury-based approach fails to account for the full scope of operational and technical mitigations adopted by many sophisticated commercial entities to help ensure safety.

As part of CNN's pathfinder partnership with FAA, CNN developed an alternative "Reasonableness Approach." Under this approach, the FAA would consider more than just kinetic energy; the agency would also look at pertinent factors like the operator's history of safe operations, internal company safety procedures, and design features of the UAS that enhance safety.

"The Reasonableness Approach is precedent-setting and a critical step forward for the industry," said Emily Avant, Senior Counsel for CNN. "We are grateful for the assistance of the Hogan Lovells team as we continue to push UAS policy boundaries forward."

"CNN's new waiver represents a very important development for the commercial drone industry at large," said Lisa Ellman, Chair of the Hogan Lovells Global UAS Practice and Co-Executive Director, Commercial Drone Alliance. "The FAA's willingness to approve reasonable waiver requests is a strong step in the right direction as we seek to bring the benefits of commercial drones to the American people."

"Many of today's most promising and innovative commercial drone operations require the ability to fly over people," said Matt Clark, Senior Associate in Hogan Lovells UAS Practice Group. "This waiver creates a powerful precedent that will benefit the entire commercial drone industry."

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