

Drone Journalism: Cleared for Take-off

By [Alicia Calzada](#)

Now that the FAA has cleared drone journalism for take-off, reporters and photographers throughout the country are positioning themselves to take advantage of an entirely new storytelling tool, using unmanned aerial systems (UAS or drones) for newsgathering. Prior to the FAA's enactment of rules for commercial drone use this summer, the agency had taken the position that all commercial use of drones was banned—and it considered journalism a commercial use. But while technology brings progress, it always brings questions and concerns, and drones are no exception.

There are three main considerations when engaged in drone journalism: FAA rules, state and local rules that target drone use, and other laws that may impact drone use.

First, the FAA has not given an unconditional clearance. Drone journalists must obtain a Remote Pilot Certificate. Most journalists will do this by passing an “aeronautical knowledge test”¹ at an FAA-approved testing center,² although those who already have a pilot's license can take an online training course.

Once certified, journalists still face limits on when and where they can fly drones.

- Drones can only be operated in the daytime. This includes 30 minutes before the sun rises and 30 minutes after the sun sets (a.k.a. civil twilight).
- They may not be operated “over” people who are not involved in flying the UAS. Notably, the rule does not limit how close the UAS can get to people, so long as the UAS is not “over” people.
- The aircraft must remain in the visual line of sight of the operator, called the remote pilot in command. There is an option that allows the use of a visual observer to maintain visual sight of the craft. In other words, even if you have a “first person view camera” which allows you to see the view of the drone while you fly it, you must be able to see the aircraft with your own eyes (glasses to assist your vision are allowed).
- The drone cannot be flown faster than 100 mph, and cannot fly higher than 400 feet above the ground.
- Flying is limited in certain areas and prohibited in other sensitive areas. Some locations, including within certain distances of airports, require advanced authorization. The FAA has created an app to assist operators in determining restrictions in their area.

The FAA has specifically noted that the news media can request a waiver of these sorts of limitations but “will need to provide sufficient mitigations to ensure public safety.”³

Journalists also need to keep in mind that some states have enacted laws that restrict drone use. Many states, including Texas, California, and Florida, have passed drone laws aimed at protecting privacy and other

¹ The FAA has provided [study materials](#) for the Remote Pilot Knowledge Test.

² A list of testing centers can be found [here](#).

³ See [Unmanned Aircraft Systems \(UAS\) Frequently Asked Questions](#), Federal Aviation Administration.

interests,⁴ which may apply to journalistic activities⁵. In 2015, 45 states considered bills related to drones, so with every legislative session, there is potential for new drone laws to be passed.⁶ Municipalities are also getting in the game, enacting ordinances that apply in those locations.⁷ Some of these state and local laws might ultimately be pre-empted by FAA rules, or otherwise held to be unconstitutional, but violating them with the thought or hope that they will later be found unconstitutional is a legal risk.

Drone operators also need to be mindful that existing laws such as those regulating invasion of privacy and wiretapping apply both on the ground and in the air. The concept of invasion of privacy traces back to the invention and popularization of the camera—so it is only natural that the ability to put wings on a camera has upped the ante for those who are concerned about privacy.

Journalists operate under a code of ethics, and should be careful not to deviate from that code under the lure and pizzazz of a new tool. Drone journalism has enormous potential to add depth and understanding to reporting, without the expense and high risk of helicopters. With FAA guidelines now settled, this industry should begin to take off in earnest.

⁴ There is also a federal law that makes it illegal to operate an unmanned aircraft in a manner that interferes with wildfire suppression, law enforcement and emergency response efforts. See 49 U.S.C. §46320.

⁵ The Texas law bans drone use to capture an image of “an individual or real property with the intent to conduct surveillance” and publishing that image. See Tex. Gov’t Code §423.001 et seq. Florida’s law similarly targets surveillance. See Fla. Stat. §934.50(3)(b). The definition of “surveillance” arguably encompasses many journalistic activities.

⁶ [State Unmanned Aircraft Systems \(UAS\) 2015 Legislation](#).

⁷ [Domesticating the Drone: Local Regulation](#), Institute for National Security and Counterterrorism, available [here](#).