

Managing Drones' Privacy and Civil Liberties Impacts

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<http://www.rogerclarke.com/SOS/Drones-PLCI> { .html, .pdf }

UAV Triple Zero Summit

Rendezvous Grand Hotel, Melbourne – 23-24 July 2014

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Rogers Clarke “drones” in a flight of fantasy

Posted on February 13, 2014 by jay

Agriculture ministry mulls drones to combat fish poachers

Thursday, February 13, 2014  13 Comments

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Drones – Game-Changing Factors

- Substantial increase in capabilities
 - Payloads
 - Capacity to carry cameras
- Much more useful to business and government
- Much more attractive to consumers
- Much lower entry-points
 - Costs, Expertise, Effort
- Model Aircraft Clubs are no longer the venue
- Street Mentality (cf. remote-controlled model cars)

Managing Drones' Privacy Impacts

Agenda

- **The Australian Privacy Foundation**
 - **Privacy**
 - **Behavioural Privacy**
- Drones' Privacy Impacts
- The Seriously Inadequate Protections
- Policy Measures Needed
- Practical Measures You Can Take
 - Privacy Impact Assessment (PIA)

Australian Privacy Foundation (APF)

- The primary association dedicated to protecting the privacy rights of Australians
- Formed 1987:
 - Patrons (Cowen, Kirby, Evatt)
 - Advisory Panel of 20 (Burnside, Fraser, Jones, Kostakidis, Robertson, Stott Despoja, ...)
- > 600 policy statements, submissions to Parliaments, government agencies, industry associations, corporations
- Teams with human and consumer rights orgns

Privacy

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Dimensions of Privacy

... of the Physical Person

Safety, biometrics, body organs, body tissue, body fluids, ...

... of Personal Communications

Voice, phone, email, chat, ...

... of Personal Data

Data collection, storage, retention, use, disclosure, dataveillance, ...

... of Personal Behaviour

Your activities, movements, preferences, associations, ...

... of Personal Experience

Your reading, viewing, interactions, social networks, ...

Behavioural Privacy

- Sensitive Matters
 - Sexual preferences and habits
 - Religious practices
 - Political activities
- Private places
- Public places
- Surveillance
 - Visual, electronic, travel, ...

Visual Surveillance – <http://www.privacy.org.au/Papers/PS-CCTV.html>
Surveillance by the State – <http://www.privacy.org.au/Papers/PS-SS.html>
Privacy and the Media – <http://www.privacy.org.au/Papers/PS-Media.html>

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The Prescott Case – Sydney, 2 Oct 2013

- Rhianna roadie, Edward Prescott, flies his drone from a wharf West of Circular Quay
- The drone control malfunctions
- It auto-redirects back to its point-of-origin
- It hits two Sydney Harbour Bridge girders, lurches across 6 lanes, a few metres above traffic, hits another girder, crashes on a railway line
- A train-driver stops and picks it up
- A naval event is in progress
- Prince Harry is in town
- International coverage follows (London, Milan)

The Prescott Case – Sydney, 2 Oct 2013



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<http://www.smh.com.au/technology/sci-tech/i-dont-know-whether-its-a-bomb-or-not-train-driver-flummoxed-after-drone-hits-sydney-harbour-bridge-20131126-2y76m.html>

http://www.liveleak.com/view?f=dcca42c2905&ajax=1&player_width=512&player_height=384&iframe=true&width=550&height=420

Drones' Impacts – Physical Privacy

- **More accidents**, due to lower-quality product engineering, training and operations, increased air traffic, more areas of congestion
- **Compromise of emergency services operations**, arising from:
 - contention for physical space
 - contention for spectrum (intentional and accidental jamming)
- Scope for aggressive and hostile use of drones ('**weaponisation**'), incl. delivery of explosive and inflammable payloads, carriage of weaponry, use in 'kamikaze' mode
- Risk of the application of **military capabilities in civilian contexts**:
 - by law enforcement agencies
 - by mercenary corporations that offer 'security' services, in war zones, but increasingly outside them as well



Privacy fears as drones move into mainstream

February 18, 2013

Comments 160



Asher Moses

"Kate Middleton and many other people besides can rest assured that their bare breasts are fair game, anywhere, any time," the Australian Privacy Foundation's Roger Clarke warned, in a week when snaps of the pregnant Duchess in a bikini made international headlines.

Last year a New South Wales resident filed a complaint after spotting a drone hovering outside their bedroom window, Australian Privacy Commissioner Timothy Pilgrim said.

Drones' Impacts – Behavioural Privacy

- Surveillance is **more intrusive**:
 - A viewing-point in the air overcomes obstructions
 - The point-of-view can be moved, and moved quickly
- Surveillance is **more economic**, for organisations and individuals
- That enables **more intensive** surveillance (i.e. more of the time), and **more extensive** surveillance (i.e. in more places)
- Improved endurance enables **persistent** surveillance
- A much greater degree of **automated** monitoring is feasible
- Multiple sources and live feeds can be used at the same time
- **Pursuit** of a surveillance target becomes feasible
- The enforcement of surveillance laws becomes more difficult, because so many organisations and individuals breach them

Series in CLSR 30, 3 (Jun 2014) 230-305

- **Understanding the Drone Epidemic**
<http://www.rogerclarke.com/SOS/Drones-E.html>
- **What Drones Inherit from Their Ancestors**
<http://www.rogerclarke.com/SOS/Drones-I.html>
- **The Regulation of Civilian Drones' Impacts on Public Safety (with Lyria Bennett Moses)**
<http://www.rogerclarke.com/SOS/Drones-PS.html>
- **The Regulation of of the Impact of Civilian Drones on Behavioural Privacy**
<http://www.rogerclarke.com/SOS/Drones-BP.html>
- **Drones' Challenges to Public Safety**
<http://www.rogerclarke.com/SOS/Drones-PSA.html>

Emergency Response Applications, and Privacy

- There are positive impacts on personal safety, and hence on privacy of the physical person
- Negative privacy impacts are largely incidental
- Negative privacy impacts are largely outweighed
- Negative privacy impacts are manageable ...

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- Negative privacy impacts are largely outweighed
- Negative privacy impacts are manageable, but **iff**:
 - use only where an 'emergency' demonstrably exists, cf. public events / protests / demos
 - 'response', not anticipation / preemption
 - the surveillance is no more intensive, extensive and persistent than is justified by the circumstances
 - subject to transparent pre- and post-controls
 - opportunistic use of data is precluded

Public Scepticism about Emergency Response Applications as a Wedge

"drones to protect ... marine space ...

"drones ... fitted with cameras ... will assist
in **detecting and deterring poachers**, as well
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Contemporary Regulation of Surveillance

Tort

- Interference with Real Estate (Trespass, Nuisance)
- Interference with the Person (Trespass, Obstruction, False Imprisonment, Assault, AVOs / PSIOs)
- Interference with Emotional State (Stalking, Negligence)
- Deceitful Behaviour (Misrepresentation, Deceit, Passing-Off)

Surveillance Statutes

- Telecomms (postal, TIAA, computer offences)
- Aural / Visual Surv Devices (Clth, State, Territory)
- Pornography, Anti-Voyeurism

Other Statutes (Copyright, Trademarks, Media Law, Human Rights, Privacy)

Media Codes (APC, ACMA)

Direct Action (protecting the public, and the media)

State Surveillance and Listening Devices Acts

Vic, WA, NT (1998-2000)

& NSW (2007), Qld

Surveillance Devices Acts

Prohibition of surveillance only of a 'private activity', except:

- by someone who is a party to the activity
- if the activity is happening outside the building; or
- if the circumstances indicate that the parties do not care if they are seen

SA, Tas, ACT

1971, 1972, 1990

Prohibition of aural surveillance of a private activity, except ...

Workplace (NSW, ACT)

- Must be merely declared
- Covert only with a magistrate's approval

Anti-Voyeurism laws may put toilets, bathrooms, change-rooms off-limits

The Regulation of Surveillance

General Principles

1. Justification
2. Proportionality
3. Openness
4. Access Security
5. Controlled Use
6. Controlled Disclosure
7. Controlled Publication
8. Non-Retention and Rapid Destruction
9. Review
10. Withdrawal

The Prescott Case – Sydney, 2 Oct 2013

- **The Police gave him back his damaged drone**
- He posted the video it had captured on the Web

CASA provided some quotes to the media:

- "There are regulations and fines attached ... hundreds of dollars"
- "[Drone pilots] must keep them at least 30m away from any people, buildings or structures"
- "Airspace around the Harbour Bridge is restricted"
- **"Check with local council where they can be used"**

Long after Prescott left, CASA levied an \$800 fine

<http://www.smh.com.au/nsw/mystery-drone-collides-with-sydney-harbour-bridge-20131004-2uzks.html>

<http://www.theage.com.au/technology/technology-news/river-of-blood-after-drone-hits-australian-athlete-20140407-zqruh.html>

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Privacy guardian sounds alarm over rise of flying eyes in sky

September 13, 2012



Asher Moses

Technology Editor

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THE civilian drone revolution in Australia has triggered calls from the Privacy Commissioner for a public debate about the "intrusive" technology as police investigate the potential of drones for crime fighting.

"... there needs to be public debate about the use of this technology and whether current regulations are sufficient to deal with any misuse"



P Agribusiness Environment Energy Government Labor Health Resources and Training ▾

States restrict drone use because of privacy concerns

By: ROBERT HOLLY | March 21, 2014

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Citing privacy concerns, legislators throughout the country are increasingly passing laws to restrict the use of domestic drones over private land.

At least nine states have officially enacted some form of legislation that bans nonconsensual domestic drone use over private property, found [an analysis](#) by the [American Civil Liberties Union](#), a network of more than 500,000 members who monitor First Amendment and privacy rights.

For more information on drone use, see the series: "[Sunshine Week](#)"

"We believe that we need a system of rules to ensure that we can enjoy the benefits of drones and technology without becoming a surveillance society in which everyone's movements are monitored, tracked, recorded and scrutinized by the authorities," said Allie Bohm, an advocacy and policy strategist for the American Civil Liberties Union. "We believe that drones should be prohibited from indiscriminate mass surveillance."

<http://investigatmidwest.org/2014/03/21/states-restrict-drone-use-because-of-privacy-concerns/>
<https://www.aclu.org/blog/technology-and-liberty/status-2014-domestic-drone-legislation-states>



Civil Aviation Authority
INFORMATION NOTICE
Number: IN-2014/115



Issued: 17 July 2014

**Small Unmanned Aircraft: Special Operations - Future
Requirement for a Safety Case Assessment**

"[Re] Small Unmanned Surveillance Aircraft (SUSA) within the weight category 7 - 20 kg ... there will be a future need for their aircraft to be assessed for airworthiness in relation to operating within 150 m of a congested area [competencies, tech specs, outcome mitigation; assessment fee Stg 134 p.hr.]

The Policy Response

- **Technology Assessment?**
 - Only Europe has TA Agencies
 - Only Norway has published anything
- **Law Reform Commissions?**
 - Mention in an ALRC Privacy Study
- **Risk Assessment?**
 - Little sign of corporate RA
 - No sign of society-level RA

What Policy Response??

APF's Policy Statement on What's Needed

1. **Comprehensive laws regulating surveillance activities**, by all organisations and individuals
2. Provisions that relate to **private places**, but also provisions that relate to **private space in public places**
3. Provisions relating specifically to **visual surveillance**
4. Provisions relating to **aerial surveillance**, reflecting the additional vulnerabilities that arise from it
5. To the extent necessary, provisions relating to **surveillance by means of drones**
6. Provision of **responsibilities, authority and resources** to an appropriate agency ...

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Privacy as a Strategic Factor

- Privacy is a potentially severe impediment
- 'Privacy doesn't matter until it does' means that media breakouts will be uncontrollable
- Privacy-Sensitivity in Design and Operation has the potential to be a Differentiator
- Privacy-Sensitivity doesn't just happen
- A Privacy Strategy involves a proactive stance, an express strategy, an articulated plan, resourcing, monitoring against the plan

Forms of Privacy Project

- Privacy Strategy Formulation
- **Privacy Issues Analysis**
- Deeper Privacy Impact Evaluation Methods:
 - Privacy Law Compliance Assessment
 - Data Privacy Impact Assessment (PIA)
 - Internal Cost/Benefit Analysis
 - Internal Risk Assessment
 - Privacy Impact Statement
 - **Privacy Impact Assessment (PIA)**
- Privacy Management Planning and Control
- Privacy Policy Statement (PPS) Prep, Review
- Privacy Audit

Privacy Impact Assessment Key Considerations

1. Purpose
2. Responsibility
3. Timing
4. Scope (Dimensions, Stakeholders, Reference-Pts)
5. Stakeholder Engagement
6. Orientation (Process not Product; Solutions not Problems)
7. The PIA Process
8. Outcomes

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