

To Shoot or Not to Shoot? The Legality of Downing a Drone

by Christopher Ainscough

When it comes to nuisance drones, landowners are stuck. If they shoot down a drone, they may face criminal and civil penalties. However, without the ability to identify a drone operator remotely, they can't necessarily count on getting relief from courts or government authorities.

Unmanned Aircraft Systems (UAS) or Unmanned Aerial Vehicles (UAV), commonly called drones, are becoming useful tools for producers and growers to more efficiently manage their operations. However, UAS may create a nuisance, or a privacy and business risk, when they fly where they are not wanted. Producers and growers often ask, "Can I shoot down a drone that is taking pictures of my property, facilities, or animals without my permission?" This question pits the rights of landowners — to privacy and quiet enjoyment of their land — against the property rights of UAS owners. The question also implicates where, when, and in what manner it is lawful to discharge a firearm. Federal aviation laws regarding shooting aircraft also come into play. This article addresses each of these issues.

Landowners have the fundamental legal right to privacy and to enjoy their property free from nuisance, interference, or trespass. Owners of personal property have the fundamental legal right not to have their property damaged or taken. The downing of unwanted UAS over private land sets these two fundamental rights against one another.

One of the first court cases to test this issue is *Boggs v. Meredith*. William Meredith is alleged to have shot down a UAS flown by John Boggs. The UAS was flying over Meredith's property, without his permission, when he allegedly shot it down. Boggs sued Meredith in a federal court in Kentucky seeking \$1500 for damage to his UAS. To justify jurisdiction in a federal rather than a state court, Boggs argued that the UAS was flying in federal airspace, not on Meredith's property. If the UAS were on Meredith's property, Meredith might have had a privilege under state tort law to damage the UAS if, "the act [shooting the UAS] is, or is reasonably believed to be, necessary to protect the actor's land or chattels . . . and the harm inflicted is not unreasonable as compared with the

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harm threatened.” Ultimately, the court dismissed the case on jurisdictional grounds without deciding whether the UAS was in federal airspace or on Meredith’s property.

Under federal law, it is a felony to willfully damage or destroy aircraft. 18 U.S.C. § 32. In *Boggs v. Meredith*, the judge found that the federal criminal statute did not give Boggs the right to bring a *civil* lawsuit in federal court. Nevertheless, a landowner who shoots down a drone risks prosecution under that federal criminal law.

Under state law, it may be useful to imagine a more common situation: if someone were to drive onto a landowner’s property and take pictures, could the landowner shoot the trespasser’s car or the trespasser? Laws vary by state, but generally, a landowner is permitted to damage another’s property to protect himself when he is threatened, or reasonably believes he is threatened. But, proportionality is key. Is a gun the appropriate response to a camera? Some states have adopted the so-called “Castle Doctrine” which allows landowners to protect themselves and their property when threatened. This doctrine has limits and only applies to the property areas where a landowner has a reasonable expectation of privacy, like inside the house. What if the UAS is not above a landowner’s property but is filming from an adjacent area where the UAS operator has a right to fly? Again, analogize to a person in a car. Would it be acceptable to shoot someone taking pictures of your house from across the street? No.

The question of UAS aside, firearm use is often restricted by state law. For instance, Nebraska places limits on the discharge of firearms within counties containing metropolitan areas or in the direction of people or structures.

Shooting down a UAS could subject a landowner to both civil and criminal liability. The liability under state tort law could be substantial. Some UAS cost tens of thousands of dollars and carry payloads that cost as much or more. Firing a gun in violation of state gun laws could subject the shooter to criminal, and if someone were injured, civil liability. If a downed UAS crashed, injuring someone or causing property damage, the shooter could face liability to the injured party in addition to the UAS owner. The penalty under federal 18 U.S.C. § 32 may include a fine and/or imprisonment for up to twenty years.

If reaching for the old Mossberg isn’t the best option, then what recourse do landowners have? Landowners may seek relief under a variety of state UAS laws. At least thirteen states have passed laws restricting UAS surveillance of individuals without consent, and under most states’ laws, individuals have a reasonable expectation of privacy. The Arkansas statute is representative. It is a crime to “knowingly use an unmanned vehicle or aircraft . . . to secretly or surreptitiously . . . view by electronic means a person” without his consent, or under circumstances where he has a reasonable expectation of privacy. Some states have passed agriculture-related UAS laws. In Utah, it is a misdemeanor to chase, disturb or harm livestock with a UAS. In Texas, it is a crime to fly a UAS over animal feeding operations. In February 2017, an Oklahoma state senator introduced a bill that would exempt landowners from liability for damage to a UAS under certain conditions.

However, some of these laws may not help if a landowner cannot identify the UAS

operator. Some consumer UAS can fly over four miles, so the operator could be far away at the time of an incident. In the future, technology may permit operator identification. To encourage this development, the Federal Aviation Administration convened the UAS Identification and Tracking Aviation Rulemaking Committee in May 2017 and charged it with recommending technologies and requirements to help remotely track and identify UAS. The committee membership includes UAS industry groups, police departments, airport authorities, D.C. think tanks, mobile phone companies, online retailers, and aerospace companies. Its charter currently expires on October 31, 2017.

In addition to operator identification, technology may help in other ways. Companies have introduced weapons intended to shoot down drones without destroying them. In the future, perhaps landowners will be able to technologically designate their property as a no-fly-zone where UAS signals will be jammed or disrupted.

In the meantime, privacy advocates have sued the FAA for failing to include privacy protections in its recent drone regulations. Several federal drone privacy laws are pending including the *Drone Aircraft Privacy & Transparency Act* and the *Drone Federalism Act*. However, it is unlikely that these laws, even if passed, will include a right to shoot a nuisance drone.

The law will evolve as legislatures and courts weigh in, and technology will evolve to meet society's demands. Given the ambiguity between state and federal laws and the potentially high risks of civil damages, imprisonment, and fines, if a drone is annoying you, it would be wise to reach for the phone for competent legal help, before reaching for a shotgun.

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