WHY DOES THIS MATTER?
Overview

• Federal Regulatory Scheme
• Report from California
• Port’s Regulation of Drone Use by Others
• Port’s Own Use of Drones
Federal Law

• The FAA Modernization and Reform Act charges the FAA with developing a plan to integrate drones into the national airspace.

• On August 29, 2016, the FAA’s Small Unmanned Aircraft Rule went into effect. 14 CFR Part 107
  – Pilot Requirements
  – Drone Requirements
  – Operational Requirements—many are waivable
FAA Regulations: 14 CFR Part 107

• Pilot Requirements
  – Over 16
  – Licensed

• Drone Requirements
  – Less than 55 pounds
  – Must be registered

• Operational Restrictions
  – daylight hours
  – below 400 feet
  – within the line of sight of the operator
  – Not over people
Update From California

- Mixed Bag
- Governor has vetoed all but three measures over the last two years
Unsuccessful Measures

- Report Accidents
- Digital Identification of Drones
- Restrict use by Law Enforcement
- Regulate use by Department of Fish and Wildlife and the Department of Parks and Recreation
- Limit Use by anyone subject to a stay away order—also limit use by sex offenders
- Critical infrastructure
- Include FAA Regs in box
- Require Geofencing
- No flight over Schools
- No flight over jails
- Regulate use for pest control
- Require Insurance
- Require Warrant
California Enacted Laws

- Misdemeanor to interfere with first responders or emergency personnel at the scene of an emergency
- Protects emergency first responders from liability for damage to a drone that is interfering with the responder’s ability to provide emergency service
- Paparazzi law—Constructive Invasion of Privacy
Constructive Invasion of Privacy

- New California Civil Code 1708.8.
- Expanding existing doctrine of invasion of privacy to encompass use of drones.
- Definition goes beyond physical trespass, and includes that which, but for a drone, could not be accomplished without a physical trespass.
Drones and Ports

Regulation of Use by Others
Use By Ports
Port Regulation of Drone Use by Others

• Threshold Legal Issue of Enforceability—Field Preemption
Field Preemption

- No caselaw regarding FAA Drone Regulation’s Preemptive Effect
- FAA and Congress resisted establishing preemptive effect of Part 107
- The FAA recommends that its Office of Chief Counsel should be consulted before adopting an ordinance addressing the following: operational restrictions on flight altitude, flight paths etc., operational bans, any regulation of the navigable airspace, and regulations on training and equipment.
- In contrast, the FAA considers that regulations within traditional police powers are likely not preempted (ports may not have police power).
Port regulation of drone use by others
Field Preemption

• Local Ordinance may be preempted when implicates safety
  – Cases mostly focus on safety of passengers
• Local Ordinance may be preempted if implicates management of air traffic control “crazyquilt effect”
  – Local Ordinance governing seaplane operation NOT preempted in 6th Circuit
  – Local Ordinance regulating aerial advertising NOT preempted in 9th Circuit
  – Local ordinance regulating noise impacts IS preempted in 9th Circuit
• Local Ordinance focused on Privacy likely NOT preempted
Port Regulation of Drone Use by Others
Field Preemption

• Practical Tips
  – Focus on Purpose
  – Coordinate with other agencies—Airports/Parks/USCG
  – May be able to achieve purpose through informal means
  – Establish Permit Process
Port’s Use of Drones

• Delivery to vessels
• Hull inspections
• Interior inspections—cargo or fuel tank
• Monitor vessel activities in sea lanes
• Monitor condition of container stacks
• Drones equipped with emission sensors
• Security
• Environmental Inspections
• Marketing
Port Use of Drone

• Comply with Part 107
• Insurance
• Practice Tip—adopt policy
  – Public Input
  – Employee Outreach—meet and confer
Port Use of Drone

• Contract with others—Key Contract Terms
  – Drone-specific Reps and Warranties
  – Compliance with Operational Requirements
  – IP/Privacy—similar to other filming permits
  – Drone Liability Insurance
  – Indemnities
THANK YOU!

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