



# A Future World Where Drones Engage in Wholesale Surveillance & Dominate US Airspace

By: Kevin Gosztola Tuesday January 15, 2013

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**D**rones are becoming much cheaper and easier to use, a reality that increases the possibility that the technology will become much more ubiquitous. With this kind of proliferation in mind, the Electronic Privacy Information Center (EPIC) held a panel discussion at the National Press Club on drones being a critical privacy issue in 2013.

Amie Stepanovich, an EPIC privacy attorney who has testified before Congress on this issue twice, said estimates indicate there could be up to 30,000 drones in US airspace by 2020 under legislation just passed. The current state of the law is inadequate to address the threat posed to privacy. There should be warrant standards, data use & retention limitations and transparency requirements passed into law.

Currently, the courts consider each individual type of technology and apply constitutional standards to the use of such technology. Each piece of technology carries the threshold of when a person would “reasonably expect” privacy. Laura Donohue, a Georgetown Law School professor, highlighted how the Fourth Amendment does not contemplate the use of drones for continuous surveillance. Fourth Amendment was developed under the presumption that public space would be an open field and when people are in public space they would lose an expectation of privacy. It is next to impossible under current understandings of the law to apply the Fourth Amendment to the use of drones, which is why legislation of Congress is necessary.

Orin Kerr, a George Washington Law University professor, largely concurred. If surveillance is being conducted from US airspace, he said there are typically no Fourth Amendment issues.

Both Bruce Schneier, who publishes writing on security issues and topics at “Schneier on Security,” and Julian Sanchez of the CATO Institute urged the audience to consider the future instead of only the present day. To communicate the kind of transformation that the world could potentially undergo, Sanchez used a story to describe how there could be an armada of drones flying around one day monitoring all people to catch whomever might do something wrong. The reason why he raised this notion was not necessarily because it could or will happen but because, in his opinion, the public is good at addressing surveillance in terms of individual intrusions of privacy but rarely does the public consider how the scale of surveillance could impact civilization.

In public space, a person knows when their privacy could be intruded. Drones change that by making surveillance of a person possible in all areas of society, Sanchez explained.

Schneier suggested Americans should have conversations about the laws and regulations they would want to have in a world of drones now instead of later. It is very easy to say that there are certain capabilities that drones just do not have yet or that they are not used predominantly and in ways that are authoritarian. However, that does not mean that they could not or would not ever. The drift—the reality that people could be more accepting of certain uses when the technology is normalized—should be prepared for now rather than later when there are few patents and vested interests have not fully developed.

The public should realize that the surveillance from drones may not be as threatening to privacy as suggested. However, worse violations and intrusions may be made possible by drones being used along with cell phone technology or data retention, etc.

Donohue spoke about the convergence of biometrics and facial recognition technology with drones. This could be used by the FBI and other agencies in government, like the Defense Department. Databases could be converged to enable interoperability among government agencies. A world where this happened often would be a world where drones could be gathering information on multiple people at a distance in public without notice or consent on a continual basis. Unlike how biometrics are used now, where people know they are being used on them and there is usually some level of consent, that would not be the case with drones.

There is a Drone Lobby and it will be tremendously powerful. Gretchen West of Association for Unmanned Vehicle Systems International (AUVSI) spoke at the event about the benefits of drones, how it could create tens of thousands of jobs and downplayed privacy issues. She said that only in the United States are drones perceived as such a critical privacy issue, complete nonsense that marginalizes foreign persons while at the same time suggesting privacy advocates are unreasonable. She added the FAA should not be involved in managing privacy guidelines that could be applied to drone operators (EPIC disagrees).

People like West, who engages in advocacy for corporations and businesses in the growing drone industry, will have much more power to influence Congress in the coming years. Right now, congressmen are hearing from constituents who are understandably concerned and they are offering legislation to regulate drone use. Rep. Ed Markey, a Democrat, has proposed a bill to “require privacy considerations for drone licenses” and “create public website that list all approved drone licenses.”

Rep. Ted Poe, a Republican, introduced legislation during the previous session to “provide for limitations on the domestic use of drones in investigating regulatory and criminal offenses, and for other purposes.” He addressed the audience at the event today and argued there should be definite guidelines for law enforcement on what they can and cannot do. Fourth Amendment standards should be applied to the use of drones. The right to privacy should be protected, and warrants should be required except under “exigent circumstances” that already exist in current law. (There was no Democratic Representative at the event, though Rep. Zoe Lofgren was invited and Rep. Markey sent a staffer.)

Of course, one doubts the ability of Congress to pass anything that could meaningfully protect privacy rights. There is an immense amount of secrecy around this issue right now. Groups like EPIC, the Electronic Frontier Foundation (EFF) and the American Civil Liberties Union (ACLU) have submitted FOIA requests and are waiting for a response. This may even be the case for some members of Congress that have been interested in how law enforcement plans to use the technology.

The government will not share details on how it plans to deal with the proliferation of drones. That is because it wants to give businesses and law enforcement wide latitude for their use. So, if the public is concerned about threats to privacy, there will have to be a groundswell of concern and opposition to pushing ahead without establishing privacy protections.