



KEEPING THE INTERNET  
OPEN • INNOVATIVE • FREE

CENTER FOR DEMOCRACY  
& TECHNOLOGY

# **“Drones” & Privacy**

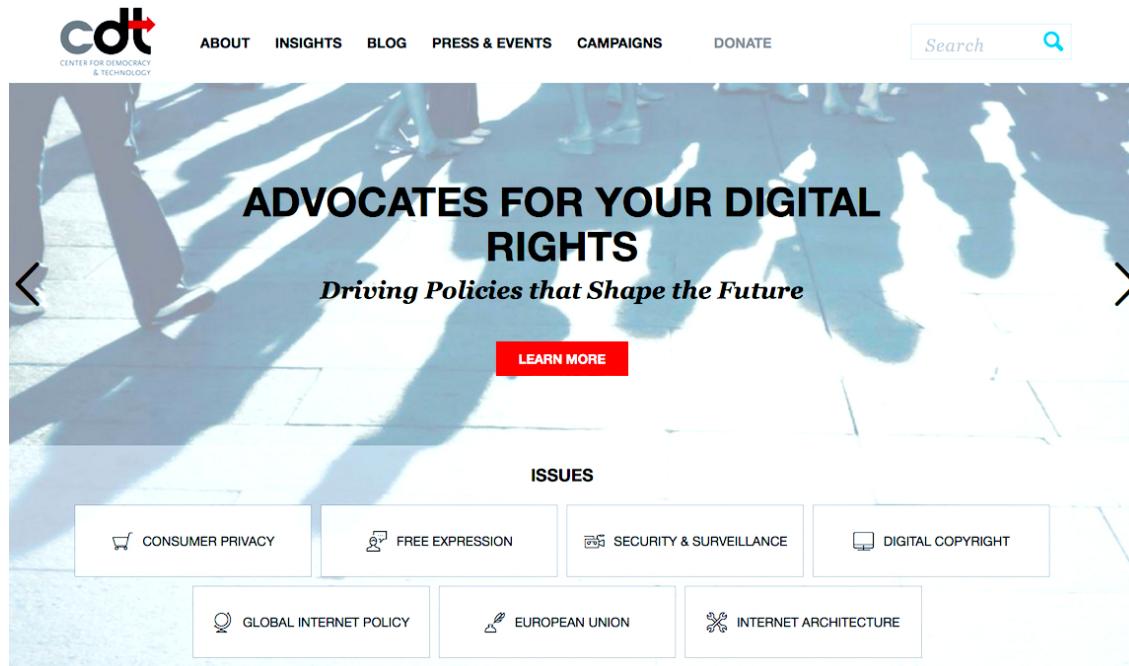
*Jun. 24, 2015*

**Harley Geiger**  
Senior Counsel  
@HarleyGeiger



# CDT.org

- Global nonprofit focused on technology and civil liberties.
- Privacy, free expression, Internet governance, innovation, and human rights.



KEEPING THE INTERNET  
OPEN • INNOVATIVE • FREE



## Main points

- Unmanned Aircraft Systems (UAS) are promising - but have potential to erode civil liberties.
- Current laws do not provide strong privacy protection from government and private UAS.
  - Lack of privacy protection undermines public trust, which holds back growth.
- To earn public acceptance of UAS, address civil liberties through legislation and an industry code of conduct.



## A valuable technology

- UAS have many positive uses with little threat to privacy.

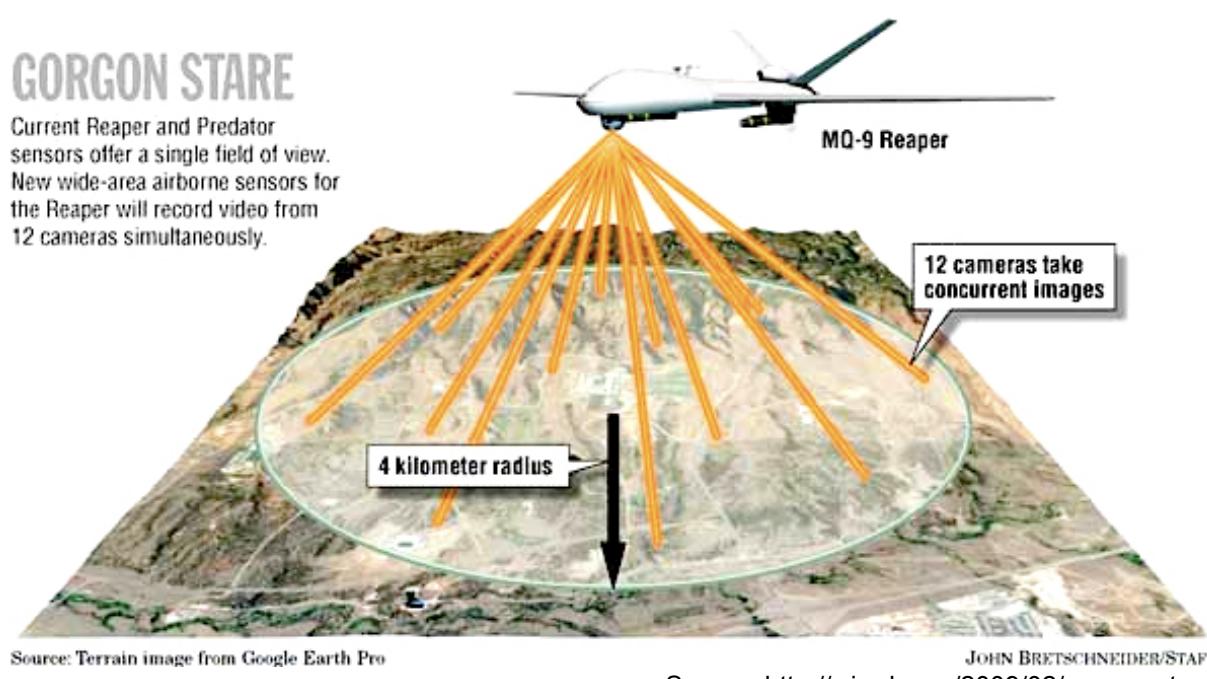


Source: <https://www.youtube.com/watch?v=on4DRTUvst0>,  
<http://smartplanet.com/blog/bulletin/will-drones-replace-the-pizza-delivery-guy>



## Privacy issues

- Can enable pervasive surveillance:
  - New vantage points,
  - Enclosed private property, more public property,
  - Platform can be combined with intrusive technologies.





## Law enforcement use of UAS

- No statutory due process protections.
- Limited Fourth Amendment protection outdoors - no “reasonable expectation of privacy” from airspace.
  - *Florida v. Riley* (1989): Warrantless police helicopter surveillance from 400ft of private building interior through a hole in the ceiling.
- Limits:
  - Penetrating the walls of the home without warrant (*Kyllo*),
  - Physical trespass to property without warrant (*Jones*).



# Which is it more like?

- No warrant needed
  - Airplane - naked eye
  - Airplane - camera
  - Helicopter

- Warrant needed
  - Thermal imager looking through walls
  - GPS tracker installed on subject's vehicle



## Private use of UAS

- Common law privacy torts
  - Intrusion on seclusion, public disclosure of private facts, voyeurism, trespass,
  - Most rely on “reasonableness” – likely to weaken over time.
- More direct regulation must align with First Amendment right to public photography.
- Industry code of conduct.
  - Only effective if strong and enforceable.



# Public trust

- Needed for UAS industry acceptance.
  - Pew 2014 poll: 63% of Americans against personal & commercial UAS.
  - Monmouth 2013 poll: 76% of Americans say government should get a warrant to use UAS.
- Extreme reactions show depth of concern:



**CBS Philly**  
KYW 1060 AM 670 AM

Home News Weather Sports Traffic Top Spots Health Audio Video Deals Directions

Latest News Local Consumer Business & Economy Politics Health Tech Entertainment

WEEK 7 Eagles Bye Week News | Power Rankings | Suicide Pool | Local Pick

Local

**New Jersey Man Accused Of Shooting Down Neighbor's Remote Control Drone**

September 30, 2014 12:05 PM

[View Comments](#)



**TheTandD.com**  
The Times and Democrat

70° Clear

70° Clear

Weekday Forecast

Hot Topics: SAFETY • EBOLA • 100 Objects in 100 Days • CLEMSON | USC FOOTBALL • PREP FOOTBALL

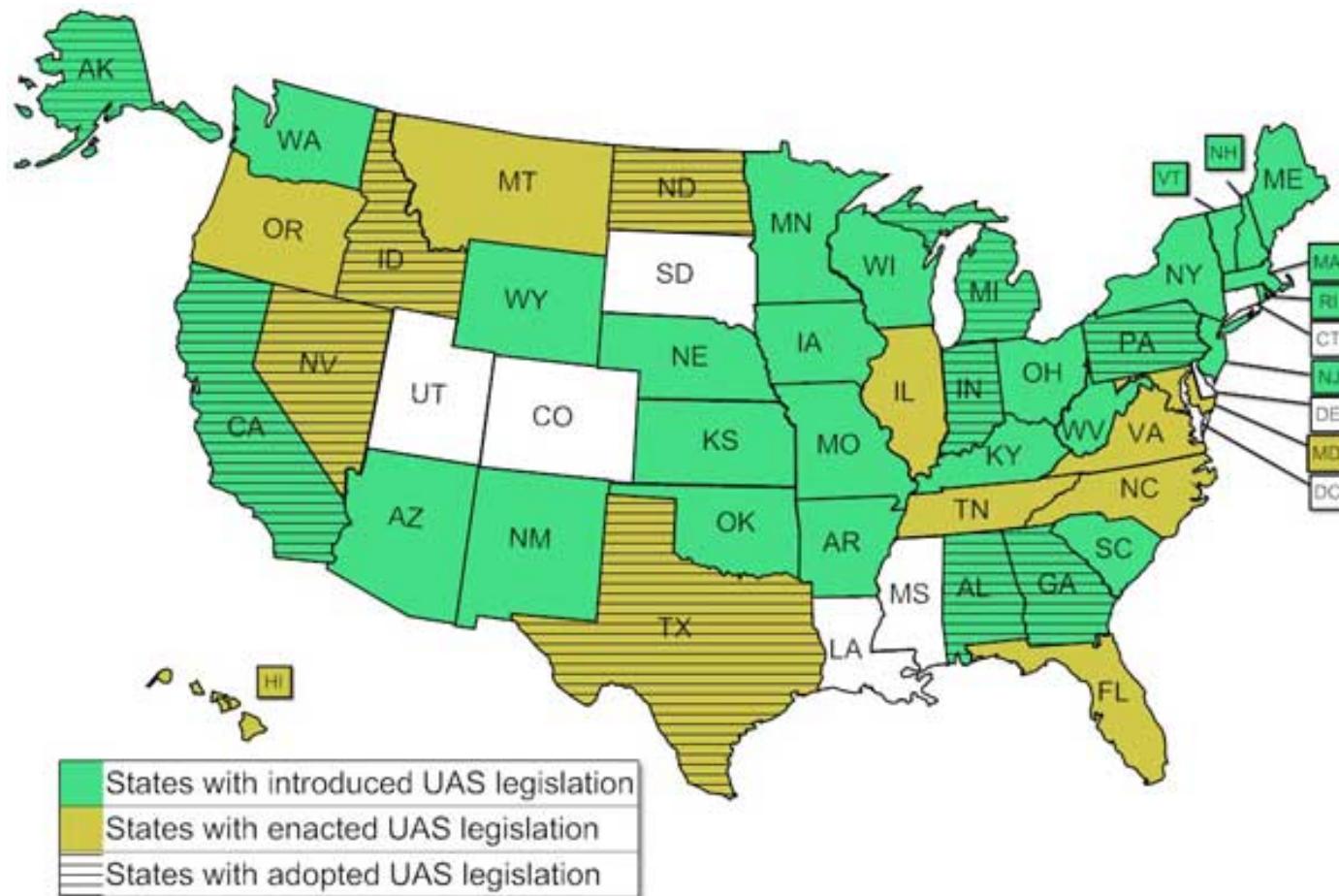
News Sports Opinion Obituaries Entertainment Features Calendar Multimed

Animal rights group says drone shot down





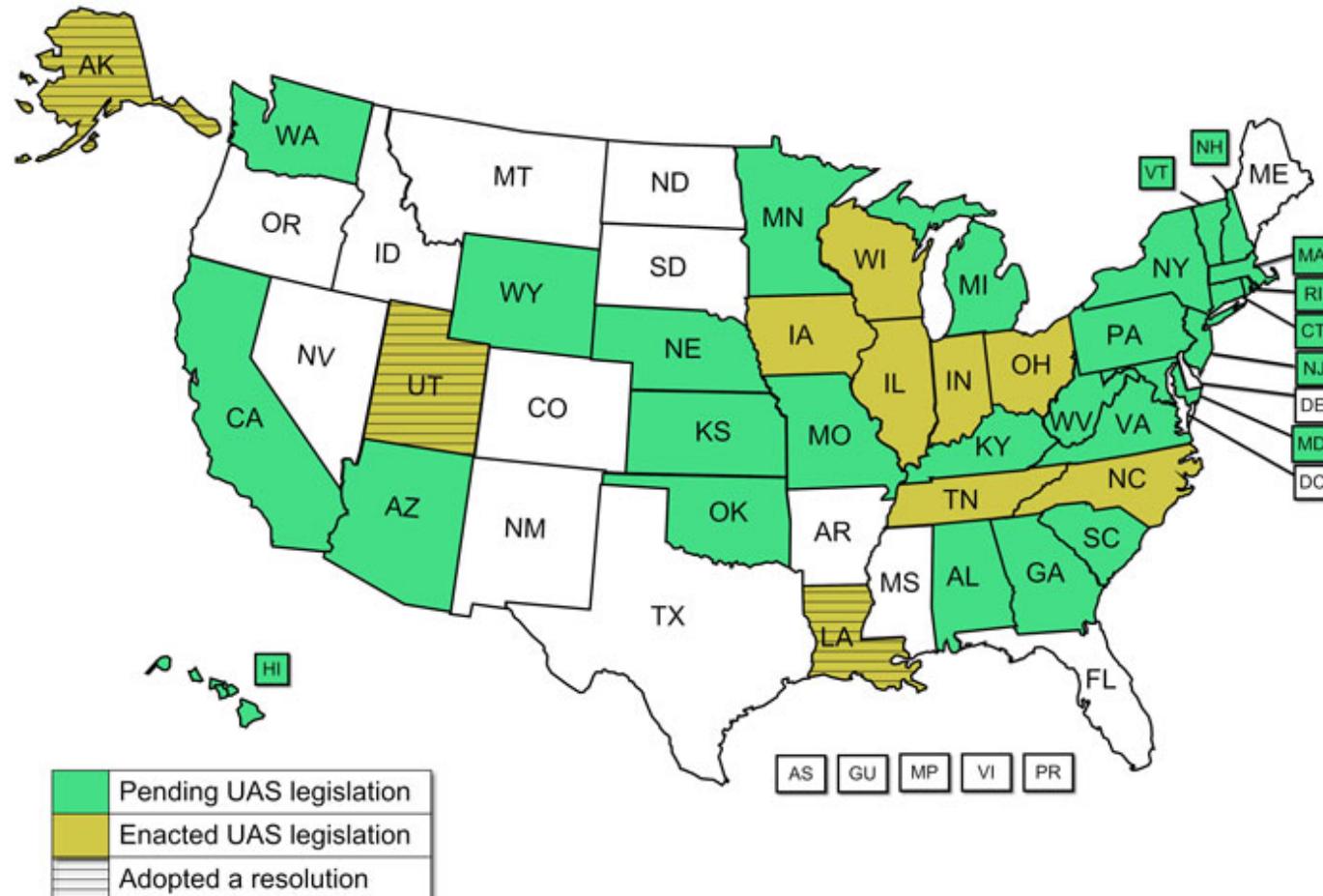
# State laws - 2013



Source: National Conference of State Legislatures



# State laws - 2014



Source: National Conference of State Legislatures



## Government UAS Recommendations

- Federal legislation
  - Data collection statements as part of licensing,
  - DOT establish publicly accessible database indexing licenses,
  - Require a warrant for law enforcement UAS surveillance of private property, with exceptions (exigent circumstances, hot pursuit),
  - Prevent prolonged surveillance on public property,
  - Ban “firearms” from government and private UAS. Exceptions for military testing, taking off & landing in US.



## Private UAS

- Regulation must not violate First Amendment right to public photography.
  - Privacy torts could be a baseline, but would be limited.
- Commercial code of conduct:
  - Reasonable limits on data collection, retention of PII.
  - Publicly accessible UAS registry, with exceptions.
  - Means of reporting nuisances and complaints.
  - Cybersecurity standards.



## Technical protections

- “License plate”
  - Transponder, lights, cell network tracking
- Geo-fencing
  - Discarding data collected in certain areas
- “Do Not Track”
  - Individuals showing color or pattern triggers data retention instructions?



# Thank you!

Harley Geiger

Senior Counsel, CDT

@HarleyGeiger

cdt.org