



CENTER FOR DEMOCRACY
& TECHNOLOGY

KEEPING THE INTERNET
OPEN • INNOVATIVE • FREE

“Drones” & Privacy

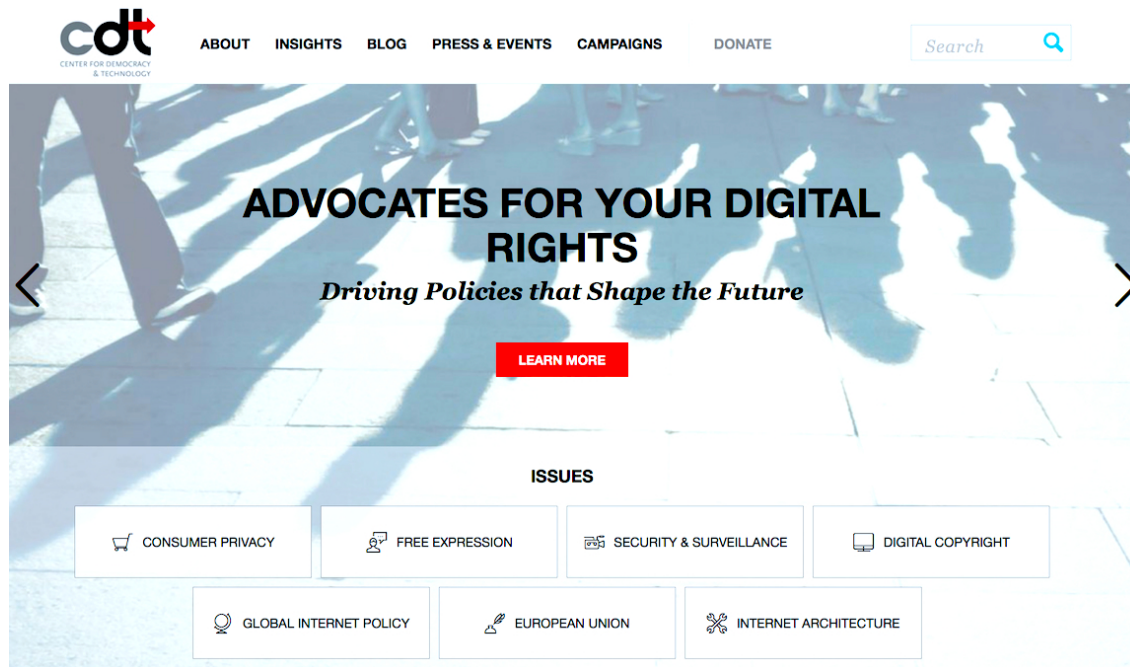
Jun. 24, 2015

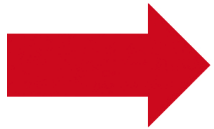
Harley Geiger
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CDT.org

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





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.



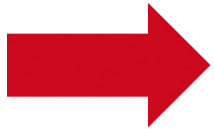


A valuable technology

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

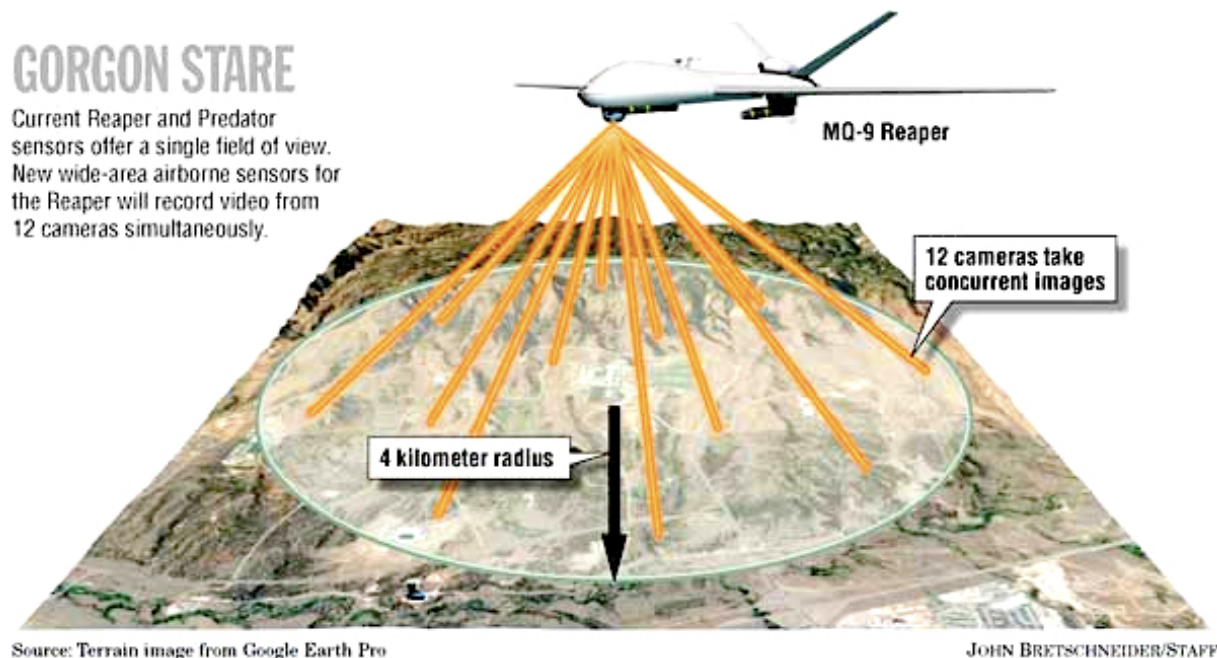


Source: <https://www.youtube.com/watch?v=on4DRTUvst0>,
<http://smartplanet.com/blog/bulletin/will-drones-replace-the-pizza-delivery-guy>

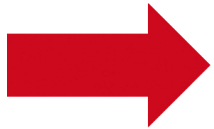


Privacy issues

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



Source: <http://wired.com/2009/02/gorgon-stare>



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

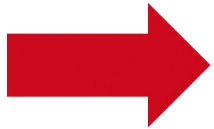
- Warrant needed
 - Thermal imager looking through walls
 - GPS tracker installed on subject's vehicle



Private use of UAS

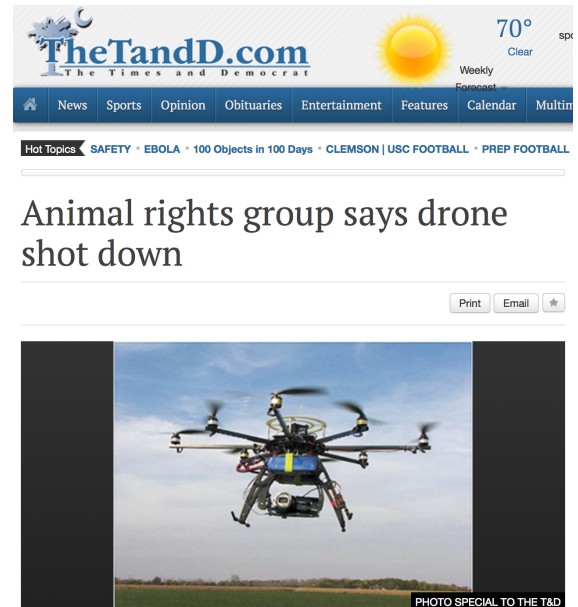
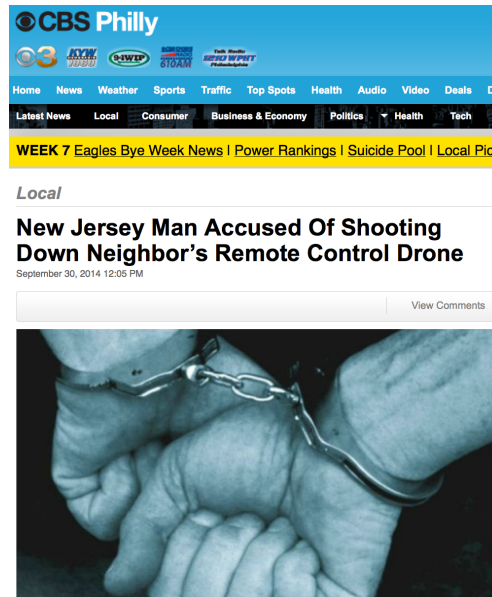
- Common law privacy torts
 - Intrusion on seclusion, public disclosure of private facts, voyeurism, trespass,
 - Most rely on “reasonableness” – likely to weaken over time.
- More direct regulation must align with First Amendment right to public photography.
- Industry code of conduct.
 - Only effective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





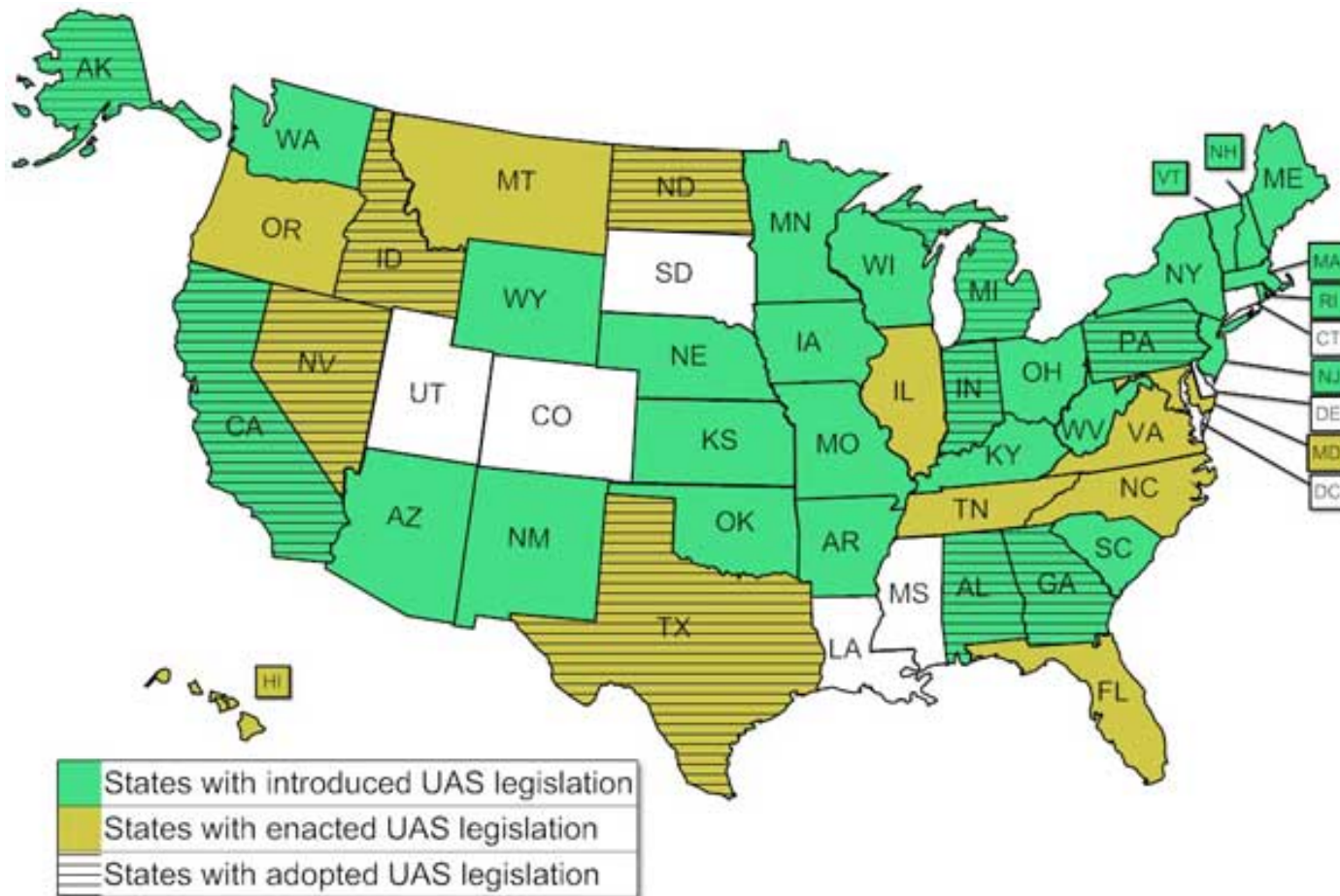
Public trust

- 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:

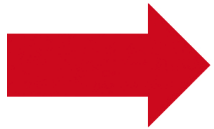




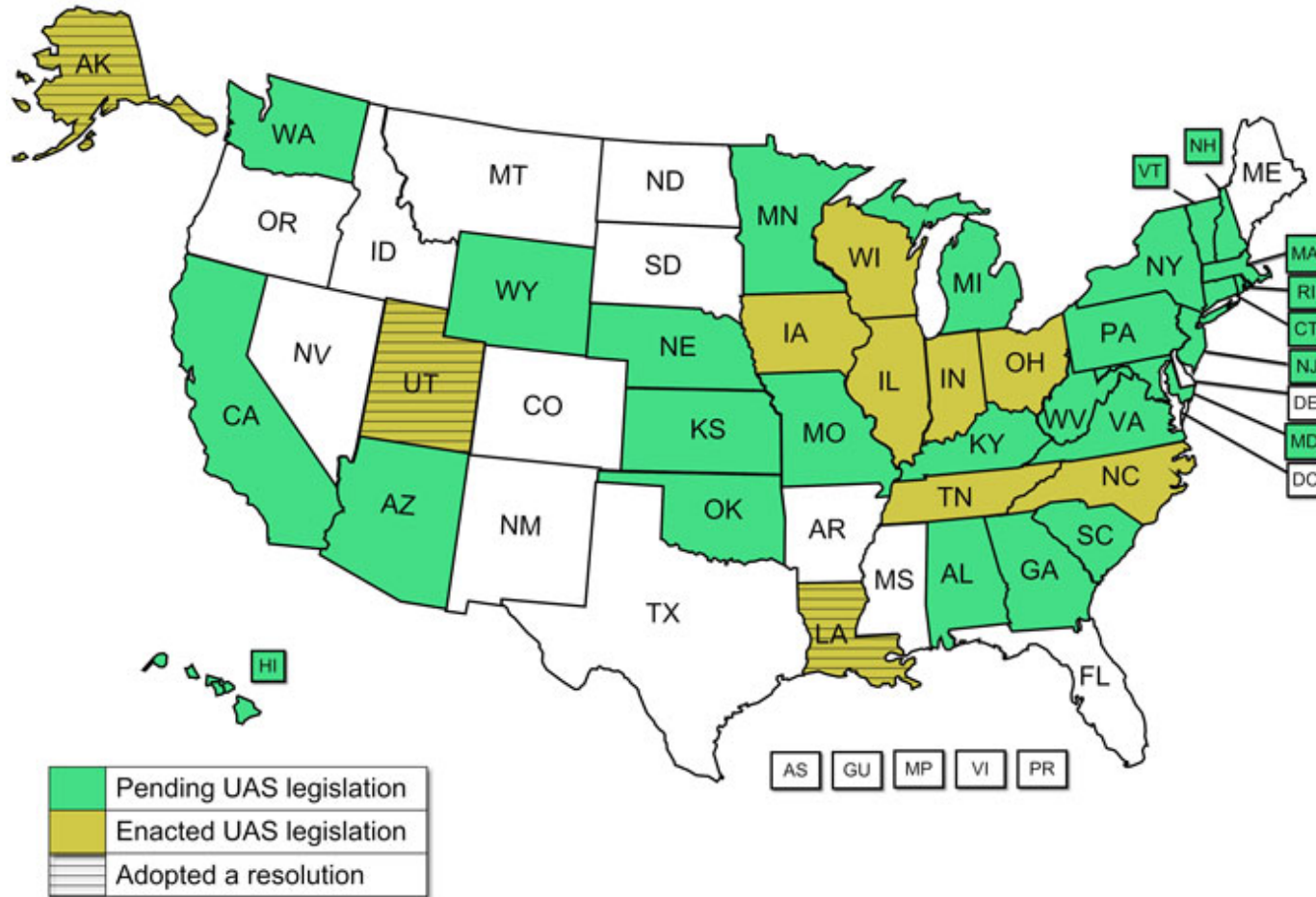
State laws - 2013



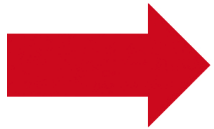
Source: National Conference of State Legislatures



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!

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