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RECENT DEVELOPMENTS

Boggs v. Merideth And The Present And Future Laws And Regulations Of Drone Usage

Brady Getlan

I. INTRODUCTION

In recent years, due to the emerging technology in the field of Unmanned Aviation Systems “Drones”, the laws of drones have come to the foreground of legal analysis.¹ Since 2012, the Federal Aviation Administration (FAA) has set out various guidelines for numerous aspects of drone usage and ownership.² The rules and guidelines for drones vary depending on whether the drone is being used for recreational use, or for commercial use.³ This article will focus on the laws and regulations associated with personal drone usage, and the legal impact of a recent federal case, *Boggs v. Merideth*.⁴

II. BACKGROUND

The laws of flying over private property have been argued in the court systems and legislature for many years. A 1946 Supreme Court case, *United States v. Causby*, settled the issue of where private airspace and property becomes pilotable airspace.⁵ Statute 49 U.S.C.S. § 40103, gives the United States government “exclusive sovereignty of airspace of the United States.”⁶ However, it also gives citizens the right to use the airspace⁷ and gives the

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1. Nancy Anderson, *Rights to Air Space Being Tested by Drones*, BEYOND (October 5, 2016), <https://www.beyond.com/articles/rights-to-air-space-being-tested-by-drones-19330-article.html>.
 2. Jason Koebler, *Is Flying a Drone Illegal? A Comprehensive Guide to America's Drone Laws*, VICE - MOTHERBOARD (June 7, 2016, 10:00 AM), https://motherboard.vice.com/en_us/article/53dykx/is-flying-a-drone-illegal-a-comprehensive-guide-to-americas-drone-laws.
 3. Andrew Meola, *The FAA rules and regulations you need to know to keep your drone use legal*, BUSINESS INSIDER (July 25, 2017), <http://www.businessinsider.com/drones-law-faa-regulations-2017-7>.
 4. Debra Cassens Weiss, *Does property owner have the right to shoot down hobbyist's hovering drone?*, AMERICAN BAR ASSOCIATION JOURNAL (January 14, 2016, 8:52 AM), http://www.abajournal.com/news/article/does_property_owner_have_the_right_to_shoot_down_hobbyists_hovering_drone.
 5. 328 U.S. 256 (1946).
 6. 49 U.S.C.S § 40103 (a) (1) (LexisNexis 2017).
 7. *Id.*

FAA the right to create policy relating to the use and regulation of airspace.⁸

Drones have been around since 2002, and at that time were primarily for military use.⁹ Today, drones can be bought at various retailers for personal and commercial use.¹⁰ In 2010, the first consumer drone that could be controlled by a smart phone was introduced at the Las Vegas Consumer Electronics Show.¹¹ Since 2012,¹² the FAA has set forth its guidelines and regulations for personal and commercial drone usage.¹³ In 2013, Amazon unveiled its controversial future plans to use drones to ship some of its products to its customers, and named the pending project Amazon Prime Air.¹⁴

In order to fully understand the FAA guidelines, it is important to understand the definitions for some of the terms used for personal drone ownership and usage. The FAA defines an aircraft as a “device that is used or intended to be used for flight in the air.”¹⁵ While, an unmanned aircraft system (UAS) is defined as an “aircraft operated without the possibility of direct human intervention from within or on the aircraft.”¹⁶ Finally, a “small” unmanned aircraft system is defined as “an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.”¹⁷

On June 21, 2016 the FAA released a newsletter entitled *Summary Of Small Unmanned Aircraft Rule (Part 107)*.¹⁸ The newsletter details some of the various operational limits, remote pilot responsibilities, aircraft requirements, and the model aircraft exception.¹⁹ The first notable guideline in the newsletter is that “at all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the UAS [must be] capable of seeing the aircraft with

8. *Id.*

9. Clay Dillow, *A brief history of drones*, FORTUNE (October 9, 2014), <http://fortune.com/2014/10/09/a-brief-history-of-drones/>.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. 14 C.F.R. § 1.1 (2017).

16. *Id.*

17. *Id.*

18. FED. AVIATION ADMIN., SUMMARY OF SMALL UNMANNED AIRCRAFT RULE (PART 107) (2016), https://www.faa.gov/uas/media/Part_107_Summary.pdf.

19. *Id.*

[unaided] vision.”²⁰ The newsletter goes on to state the maximum speed of 100 miles per hour,²¹ and a maximum altitude of “400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure.”²² Finally, the newsletter states that an “FAA airworthiness certification” is not required for flight, but the pilot must “conduct a preflight check of the UAS to ensure that it is in a condition for safe operation.”²³

The FAA guidelines state that all drones over 8 ounces must be registered with the FAA.²⁴ However, a recent federal court case found that the FAA’s mandate for registration of drones used for recreational use was unlawful based on a federal statute that did not allow the FAA to make rules or regulations on model aircrafts.²⁵ Nevertheless, the FAA has not changed its guidelines since the federal ruling and still requires aircrafts to be registered if they weigh more than 0.55 pounds or 8 ounces.²⁶

Along with the FAA guidelines, 20 states have their own regulations relating to drone usage.²⁷ Many of the regulations relate to the use of drones by the police, the use of drones and privacy rights, or the use of drones for hunting purposes.²⁸

For example, Maryland enacted § 14–301, which states that “only the State may enact a law or take any other action to prohibit, restrict, or regulate the testing or operation of unmanned aircraft systems in the State.”²⁹ Whereas Florida, enacted a statute stating that a drone equipped with a camera cannot record real property or the owner of property with the intent to use the images and video as surveillance.³⁰ The Florida statute carves out an exception for

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Jim Fisher, *Drone Regulations: What You Need to Know*, PC MAGAZINE (June 13, 2017, 1:29 PM), <https://www.pcmag.com/article2/0,2817,2491507,00.asp>.

25. See Tom Brant, *Court Strikes Down FAA’s Drone Registration Rule*, PC MAGAZINE (May 19, 2017, 6:44 PM), <https://www.pcmag.com/news/353792/court-strikes-down-faas-drone-registration-rule>.

26. Meola, *supra* note 3.

27. Meola, *supra* note 3.

28. Meola, *supra* note 3.

29. MD. CODE ANN., ECON. DEV. § 14-301(b) (West 2015).

30. Fla. Stat. Ann. § 934.50 (3)(b) (“A person, a state agency, or a political subdivision... may not use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person’s reasonable expectation of privacy without his or her written consent.”).

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law enforcement agencies to use a drone for surveillance, as long as the agency obtains a proper search warrant.³¹ Various states have a similar statute that allows for agencies to use drones as long as they have a proper search warrant.³²

In 2017, Representative Jeff Morris filed a bill relating to drone use over neighboring properties in the Washington State Legislature.³³ The proposed bill would ban private drones from flying over someone else's property, without their expressed permission.³⁴

Recently there have been various cases involving drones.³⁵ One specific case is *Boggs v. Meridith*.³⁶ In this case, John David Boggs' "Boggs" drone was shot out of the sky by William H. Merideth "Merideth" after the drone crossed over onto what Merideth believed was his property.³⁷ Boggs filed this case in the federal district court in Louisville. He sought a declaratory judgment and an award for \$1,500 in damages.³⁸

III. ANALYSIS

A. *Boggs v. Merideth*

In January of 2016, Boggs filed a case³⁹ in federal court in the Western District of Kentucky against his neighbor, Merideth.⁴⁰ Boggs was asking the court for a declaratory judgment stating that when a drone is in the air, it is an aircraft that is operating in federal navigable airspace.⁴¹ Boggs was also seeking a judgment stating both that he was not violating Merideth's privacy,

31. *See Id.* at (4)(b).

32. Meola, *supra* note 3.

33. John Stang, *Drone No-No: State Legislation Could Ban Flying Over Someone Else's Property*, GEEK WIRE (Jan. 4, 2017, 3:31 PM), <https://www.geekwire.com/2017/drone-ban-property-state-legislation/> (This is the seventh bill relating to drone useage that has been filed since 2015.).

34. *Id.*

35. Cassens, *supra* note 4.

36. Cassens, *supra* note 4.

37. Cassens, *supra* note 4.

38. Cassens, *supra* note 4.

39. Cassens, *supra* note 4.

40. Cassens, *supra* note 4.

41. Debra Cassens Weiss, *Does property owner have the right to shoot down hobbyist's hovering drone?*, AMERICAN BAR ASSOCIATION JOURNAL (January 14, 2016, 8:52 AM), http://www.abajournal.com/news/article/does_property_owner_have_the_right_to_shoot_down_hobbyists_hovering_drone.

and that Merideth was not legally justified to shoot down the aircraft/drone.⁴² Boggs sought damages amounting to \$1,500.⁴³

Judge Russell ruled that Boggs' claims should be in state court, and that Boggs' assertion that this case rose to the level of a federal question was incorrect.⁴⁴ The Judge noted that, "Boggs' state law tort claim still did not satisfy the *Grable* standard of raising 'significant federal issues.'"⁴⁵ Judge Russell discussed the notion of when federal question jurisdiction exists stating that, "This type of federal question jurisdiction exists in cases in which 'a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.'"⁴⁶ Judge Russell added that, "the Court is not persuaded that claims of privilege regarding the airspace in which Boggs' unmanned aircraft was flying necessarily raise a disputed federal issue."⁴⁷

Judge Russell continued to talk of how the complaint itself lacked any semblance of a federal question. He stated that, "a federal question must appear on the face of the complaint rather than as part of a defense, even if a federal-law defense is anticipated."⁴⁸ Judge Russell proclaimed, "federal question jurisdiction is absent when 'the right to be vindicated is State-created' and the action was 'brought into the federal courts merely because an anticipated defense derived from federal law.'"⁴⁹ He then asserted that, "...although the FAA certainly has an interest in enforcing its regulations governing federal airspace, its interest in applying those regulations in the context of a state law tort claim for trespass to chattels is limited or nonexistent."⁵⁰ According to Kentucky state law, privacy can be intruded by "(a) unreasonable intrusion upon the seclusion of another...; or (b) appropriation of the other's name or likeness. . .; or (c) unreasonable publicity given to the other's private life. . .; or (d) publicity that unreasonably places the other in a false light before the public. . ."⁵¹

42. *Id.*

43. *Id.*

44. *Boggs v. Merideth*, No. 3:16-CV-00006-TBR, 2017 U.S. Dist. LEXIS 40302, at *18 (W.D. Ky. Mar. 21, 2017).

45. *Id.*

46. *Boggs*, 2017 U.S. Dist. LEXIS 40302, at 4-5.

47. *Id.* at 7.

48. *Id.* at 4.

49. *Id.* at 7-8.

50. *Id.*

51. *Id.* at 15 (quoting *McCall v. Courier-Journal & Louisville Time Co.*, 623 S.W.2d 882, 887 (Ky. 1981)).

However, trespass under Kentucky law is defined as “an intended or negligent encroachment onto another’s property that is not privileged.”⁵² Based on Judge Russell’s opinion, it is unknown whether or not a judge would rule that Merideth’s privacy was invaded or trespassed upon.⁵³

Boggs’ case and the federal court’s determination that his claims should be litigated in state court, have a major impact for the laws of drones.⁵⁴ Although the precedent set in this case is not technically binding on any other federal jurisdictions,⁵⁵ other districts might join in on the rationale given by Judge Russell in his opinion.⁵⁶ The opinion makes it tough for a drone user to bring his or her claim of trespass to chattels into federal court.⁵⁷ This unfortunately would mean that the trespass to chattels claims and other claims similar to Boggs’ claim would have to be litigated in the state court, where judgment differs based on state statutes.⁵⁸ Boggs likely wanted to keep his claim in federal court in an attempt to have the court create a bright line rule for drone use throughout the country.

The district court repeatedly discusses how this case failed to rise to the federal court level because the FAA was not involved.⁵⁹ It is unknown how the district court would rule if the FAA was involved in the case, and whether Boggs’ case would be allowed to go forward.⁶⁰

B. Property Rights and Privacy Rights v. Free Flying of Drones

Since many drones fly in the air and have the ability to take pictures, debates arise in both the fields of privacy and property rights.⁶¹ Neither the

52. *Boggs v. Merideth*, No. 3:16-CV-00006-TBR, 2017 U.S. Dist. LEXIS 40302, at *18 (W.D. Ky. Mar. 21, 2017).

53. *Id.* at 22.

54. Andrea Peterson & Matt McFarland, *You May Be Powerless to Stop a Drone From Hovering Over Your Own Yard*, WASH. POST (Jan. 13, 2016), https://www.washingtonpost.com/news/the-switch/wp/2016/01/13/you-may-be-powerless-to-stop-a-drone-from-hovering-over-your-own-yard/?utm_term=.7db15ed33c68.

55. *See Boggs v. Merideth*, at 22 (citing *Gunn v. Minton*, 133 S. Ct. 1059, 1068 (2013)).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Eyragon Eidam, *RSA 2017: National Drone Rules Remain Unsettled*, GOVERNMENT TECHNOLOGY (February 15, 2017), <http://www.govtech.com/policy/RSA-2017-National-Drone-Rules-Remain-Unsettled.html>.

FAA, nor the courts have settled all of the laws of recreational drone usage.⁶²

The laws and regulations on commercial use and use by government agencies are more defined under state and federal law, than regulations concerning recreational usage.⁶³ The reason for this might be directly related to not wanting to grant law enforcement agencies the legal authority to conduct surveillance and searches using a drone, without having to obtain a proper warrant from a judge.⁶⁴

It is imperative that the courts and the FAA take into account the privacy and property rights of individuals. However, it is also important that when a trespass occurs, that the person being trespassed upon cannot destroy the property of another, as in the case of *Boggs v. Merideth*.⁶⁵ Giving someone justification to destroy someone else's personal property because they thought the personal property was violating either their property rights or privacy rights is dangerous.⁶⁶ If people had the right to do this, they could potentially shoot down someone else's drone simply because it was disturbing them and then claim that they thought the drone was violating their privacy rights or their property rights.⁶⁷ However, strict regulations are essential for drone use to protect the property and privacy rights of all Americans.⁶⁸

It is important that the law keeps up with the innovation in order to protect citizens' privacy and property rights with the proliferation of drone technology, innovation, and capabilities on the rise and the popularity of commercial and recreational use also increasing.⁶⁹

C. What Does Each Side Argue?

According to an April 2016 Forbes article, the FAA's position on this issue is that, "regardless of the situation, shooting at any aircraft—including unmanned aircraft—poses a significant safety hazard. An unmanned aircraft hit by gunfire could crash, causing damage to persons or property on the

62. *Id.*

63. Peterson & McFarland, *supra* note 55.

64. Peterson and McFarland, *supra* note 55.

65. Meola, *supra* note 3.

66. *Id.*

67. *See Id.*

68. *Id.*

69. David Z. Morris, *A Drone, a Shotgun, and the Future of Airspace Rights*, FORTUNE (September 25, 2017), <http://fortune.com/2016/09/25/drone-shotgun-airspace-rights/>.

ground, or it could collide with other objects in the air.”⁷⁰ Although the FAA has not firmly stated its position on property rights, it seems apparent by some of the FAA’s reported statements, that the agency leans towards the free flying of drones, as long as the flight takes place within FAA guidelines.⁷¹ The author of the Forbes’ article, who is pro-free flying of drones, goes on to demand that those who shoot at drones should be criminally prosecuted.⁷²

Jon Resnick, a high-ranking employee at one of the largest drone manufacturing companies, has stated that he believes that

any kind of legislative or regulatory remedy that excludes [drones] from taking an image ... is not any kind of enhancement or protection of privacy. That’s the strangulation of that particular technology. It still allows for [aerial pictures] to be taken. It’s just saying this one particular type of technology is not allowed to take it.⁷³

Many other figures in the industry share a similar resentment toward the restriction of drone use.⁷⁴ One prominent figure who believes in restricting drone use is United States Senator, Rand Paul.⁷⁵ In a 2015 CNN Snapchat interview,⁷⁶ Paul stated that if a drone were to fly over his property, he would shoot the drone down.⁷⁷ Some people are also of the belief that it is imperative for the FAA and the United States Government to set clear guidelines for the

70. John Goglia, *FAA Confirms Shooting a Drone is a Federal Crime. So When Will U.S. Prosecute?*, FORBES (Apr. 13, 2016, 12:55 PM), <https://www.forbes.com/sites/johngoglia/2016/04/13/faa-confirms-shooting-drone-federal-crime-so-when-will-us-prosecute/#5ad1e2062a25>.

71. *See Id.*

72. *Id.*

73. Daniel Terdiman, *No, You Can’t Shoot Down Drones over Your House*, VENTURE BEAT (Feb. 18, 2015, 7:15 AM), <https://venturebeat.com/2015/02/18/no-you-cant-shoot-down-drones-over-your-house/>.

74. *Id.*

75. Adam Edelman, *Sen. Rand Paul, Responding to Recent White House Security Scare, Threatens to Shoot Drones with Shotgun*, N.Y DAILY NEWS (Jan. 28, 2015, 6:48PM), <http://www.nydailynews.com/news/politics/sen-rand-paul-threatens-shoot-drones-shotgun-article-1.2095492>.

76. Ashley Codianni, *CNN Exclusive: Snapchat Interview with Senator Rand Paul*, CNN (Jan. 28, 2015, 11:32 AM), <http://www.cnn.com/2015/01/28/politics/rand-paul-snapchat-interview/index.html>.

77. Daniel Bean, *Rand Paul: If You Fly a Drone over My House, I Will Shoot It down with My Shotgun*, YAHOO FINANCE (Jan. 28, 2015), <https://finance.yahoo.com/news/rand-paul-if-you-fly-a-drone-over-my-house-i-109415778394.html>.

regulation of drones, so that those who use them for either commercial use or recreational use know exactly where, when, and how they can fly their drones.⁷⁸ These people are indifferent about the debate for free-flying of drones verses property and privacy rights, however they simply want the laws and regulations to be clearly set so that people know their rights as a property owner and as a drone owner.⁷⁹ Recently, the White House has come out in support of the drone industry, and has stated that they believe that there should be more flexible regulations that are put into place more quickly than in the past.⁸⁰

D. Where Do Drone Laws and Regulations Go from Here?

With the emerging technology of drones, it is unknown what drones will be capable of in the future, but what is known, is that the government must define the laws of drone usage.⁸¹ Although it has been a slow process, the government is starting to pick up the pace on regulating drone usage for both commercial use, and recreational use.⁸² Unfortunately for those interested in more defined regulations and laws on recreational drone use, it appears as though both the lobbyists and congress, are more interested in the regulation of the commercial use of drones.⁸³

IV. CONCLUSION

The laws and regulations for drones as well as the privacy and property rights associated with drone use, is far from settled. While there are some regulations and statutes, neither the courts, nor the legislature have defined the property rights and privacy rights accompanying the recreational usage of drones. With the emerging technology of drones, it is imperative that the courts and legislature define the rights for both someone using a drone, and for those potentially affected by drone use.

78. See Missy Cummings, *America, Regulate Drones Now Or Get Left Behind*, WIRED (Mar. 3, 2015, 9:00AM), <https://www.wired.com/2016/03/america-regulate-drones-now-get-left-behind/>.

79. *See Id.*

80. April Glaser, *To get more drones in U.S. skies, the industry is asking Trump for something rare: More regulation*, RECODE (June 22, 2017, 4:09PM), <https://www.recode.net/2017/6/22/15854362/drone-industry-trump-administration-regulations-white-house-tech-faa>.

81. *Id.*

82. Cecilia Kang, *Drone Lobbying Heats Up on Capitol Hill*, The New York Times, (Jan. 24, 2015, 9:00AM), <https://bits.blogs.nytimes.com/2016/01/24/drone-lobbying-turns-to-captiol-hill/>.

83. *Id.*

