

Available online at www.sciencedirect.com

ScienceDirect

www.compseconline.com/publications/prodclaw.htmComputer Law
&
Security Review

Asia-Pacific news

Gabriela Kennedy*

Mayer Brown JSM, Hong Kong

ABSTRACT

Keywords:

Asia-Pacific
IT/Information technology
Communications
Internet
Media
Law

This column provides a country by country analysis of the latest legal developments, cases and issues relevant to the IT, media and telecommunications' industries in key jurisdictions across the Asia Pacific region. The articles appearing in this column are intended to serve as 'alerts' and are not submitted as detailed analyses of cases or legal developments.

© 2015 Gabriela Kennedy. Published by Elsevier Ltd. All rights reserved.

1. Hong Kong

1.1. A brave new world: new guidance on the use of drones issued in Hong Kong

Gabriela Kennedy (Partner), Mayer Brown JSM (gabriela.kennedy@mayerbrownjmsm.com); Karen H.F. Lee (Associate), Mayer Brown JSM (karen.hf.lee@mayerbrownjmsm.com).

In 1985, Marty McFly jumped into the DeLorean time machine and travelled 30 years into the future. That year was 2015, where flying cars, hover boards, 3D advertisements and video conferencing were the new amazing "futuristic" items that seemed impossible back in the 80s. It is interesting to see just how close the writers of *Back to the Future II* came in predicting what technological advancements awaited the world in 2015. Whilst we do not have flying cars and hover boards yet, the widespread use of drones would fit well into Marty McFly's world.

Drones (unmanned aerial vehicles that are controlled by computers or remotely by individuals) have recently become more common as mainstream vehicles used for both commercial purposes and by individual hobbyists. Many

companies have started using drones for surveillance, search and rescue operations, crop monitoring, taking photos for use in real estate transactions, etc. Most recently, companies are exploring the use of drones as part of commercial operations to deliver packages to customers. For example, S.F. Express in China has a fleet of drones that are currently delivering about 500 packages a day.¹ In September 2014, Amazon filed a patent application for its own delivery drones, with the intent of eventual widespread commercial use in the U.S.

1.1.1. General concerns regarding drones

The increased use of drones has led to concerns about safety and the intrusion of privacy given that the technology may be used to photograph or film individuals without their knowledge or consent, whether intentional or incidental to drone activities (be they commercial or not). Recordings made by drones may in fact constitute the collection of personal data and be governed by local data privacy laws.

Jurisdictions in the Asia Pacific region have been turning their attention to the need to regulate the use of drones. So far, the developments have largely focused on operation and safety, rather than privacy implications. Hong Kong appears to be one of the first jurisdictions in the Asia Pacific region to

* Mayer Brown JSM, 16th–19th Floors, Prince's Building, 10 Chater Road Central, Hong Kong. Tel.: +852 2843 2211.

E-mail address: gabriela.kennedy@mayerbrownjmsm.com.

URL: <http://www.mayerbrown.com>

¹ <http://www.dailymail.co.uk/news/peoplesdaily/article-3009593/Drone-delivery-China-s-largest-mail-firm-deliver-1-000-packages-DAY-remote-areas-using-fleet-aircraft.html>.
<http://dx.doi.org/10.1016/j.clsr.2015.05.014>

specifically address data privacy concerns regarding drones. On 31 March 2015, the Hong Kong Privacy Commissioner (“PC”) issued an updated Guidance on CCTV Surveillance and Use of Drones (“Guidance Note”).²

This article discusses the latest developments in other jurisdictions, the aviation regulations in Hong Kong concerning drones and the Guidance Note.

1.1.2. Developments in the Asia Pacific region

1.1.2.1. *Aviation regulations.* Outside Hong Kong, there are very few Asia Pacific jurisdictions that currently have in place regulations governing the use of drones. The rise in accessibility and use of drones at an unprecedented pace has led to several countries making amendments to their existing regulatory frameworks to specifically take into account the use of drones.

Australia was the first country to ever regulate remotely piloted aircrafts (i.e. drones), by introducing amendments to its existing regulations in 2002. Part 101 of the Civil Aviation Safety Regulations prohibit certain activities from being carried out by “unmanned aircrafts” and non-compliance is a strict liability offence. In particular, a drone that is flown for money or economic gain is illegal unless a certificate has been obtained from the Civil Aviation Safety Authority. The current regulations concerning drones are in the process of being reviewed by the Civil Aviation Safety Authority, with plans to complete this by 2016.

China appears to be taking the biggest leap forward in the commercialisation of drones. DJI, the biggest manufacturer of drones, is a China based company founded by Frank Wang whilst he was studying at the Hong Kong University of Science and Technology. DJI accounts for between 50 and 70 percent of the global drone market.³ A few incidents involving the use of DJI drones have made headlines, increasing the public's awareness of the security threats posed by drones in general. For example, in January 2015, a DJI drone accidentally crashed onto the lawn of the U.S. White House. DJI has since updated its drones to prevent them from flying over restricted areas. Either way, concerns regarding national security and personal safety have highlighted the need to review and amend current local regulations. In China, operators of drones that are heavier than 7 kg must obtain a licence, whilst operators of drones heavier than 116 kg or flown in areas shared with manned aircrafts must have a pilot's licence and a UAV certification. The Civil Aviation Administration of China published Interim Provisions in November 2013 on the Administration of Operators in the Civilian Unmanned Aircraft System, and new regulations are in the process of being finalised on the use of commercial drones. All regulated activities of drones are currently managed by the Aircraft Owners and Pilots Association of China.

In Singapore, the Unmanned Aircraft (Public Safety and Security) Bill (“Singapore Bill”) was introduced for a first reading in Parliament on 13 April 2015. The new regulations are expected to take effect from 1 June 2015, and will require

drone operators to obtain a permit from the Civil Aviation Authority unless the drone weighs less than 7 kg and will be used only for recreational or private use. Even if the drone weighs less than 7 kg, flights within 5 km of an aerodrome, or at an altitude of 200 ft above sea level must first be authorised. Criminal sanctions are also imposed on any operators who, for example, fly drones that discharge any gas, liquids or solids, or which carry any dangerous items. The Singapore Bill also makes it an offence to use drones to take photographs, make video recordings or broadcast or stream live images of an area declared by the government to be a protected area. The “protected areas” are intended to cover security sensitive areas. Using drones to take such photographs will be a strict liability offence, the breach of which will result in a fine of up to SG\$20,000 and 12 months imprisonment being imposed on both the drone operator and the person taking the photograph or making the recording (if different to the drone operator). The Bill largely targets drones used for commercial purposes, and avid drone hobbyists who fly recreationally should not be significantly affected by the new regulations.

Similarly in New Zealand, new rules are being proposed to regulate remotely piloted aircraft systems weighing below 25 kg.

Japan, the leading innovator in robotics, is currently one of the most liberal Asian developed countries in respect of the operation of drones. Currently, in Japan, drones are only required to fly below 150 m and at least 9 km away from airports, with other requirements applying in respect of drones used for agricultural purposes. The liberal nature of Japan's drone regulations may have been intended as a way of enabling the industry to rapidly develop and grow, without being stifled by the need to comply with licensing requirements or other restrictions. However, to keep pace with other developing countries, a panel was appointed by the Prime Minister in March 2015 – the Robot Revolution Realization Committee – to review existing radio and civil aeronautics laws and to devise industry best practice guidelines for drones. The need to swiftly strengthen the regulation of drones was highlighted in April 2015, when a drone (equipped with a camera and carrying a low level of radioactive liquid) landed on the roof of the office of Japan's Prime Minister.

The developments in the Asia Pacific region seem to be largely in line with the current aviation regulations in Hong Kong (discussed below), and new rules in the industry are focused largely on regulating the commercial use of drones. Whilst the private recreational use of drones is not generally regulated, recommendations have been issued by relevant governmental aircraft authorities to provide safety guidelines for individuals.

1.1.2.2. *Data privacy.* From a privacy perspective, most countries seem to rely on existing privacy laws to cover the potential invasiveness of drone flights, whether for commercial or recreational use. For example, in Singapore, no laws specifically target the use of drones that invade personal spaces. The existing data protection laws require permission for taking photos and videos in a private place for commercial use, and similar regulations are set in place to govern the taking of obscene or indecent images. Whilst the Singapore Bill will also introduce restrictions on the use of drones to

² http://www.pcpd.org.hk/english/resources_centre/publications/files/GN_CCTV_Drones_e.pdf.

³ <http://www.scmp.com/lifestyle/article/1789450/hong-kong-wild-frontier-drones-lack-rules-prompts-fears-over-privacy-and>.

Download English Version:

<https://daneshyari.com/en/article/466474>

Download Persian Version:

<https://daneshyari.com/article/466474>

[Daneshyari.com](https://daneshyari.com)