

# Drone Law 101

Federal Statutes & Regulations,  
Idaho State Law, &  
Fourth Amendment Issues  
Relating to UAV Technology

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# Disclaimer(s)...

The material, information, and opinions are not necessarily those of the City of Boise or the Boise Office of the City Attorney.

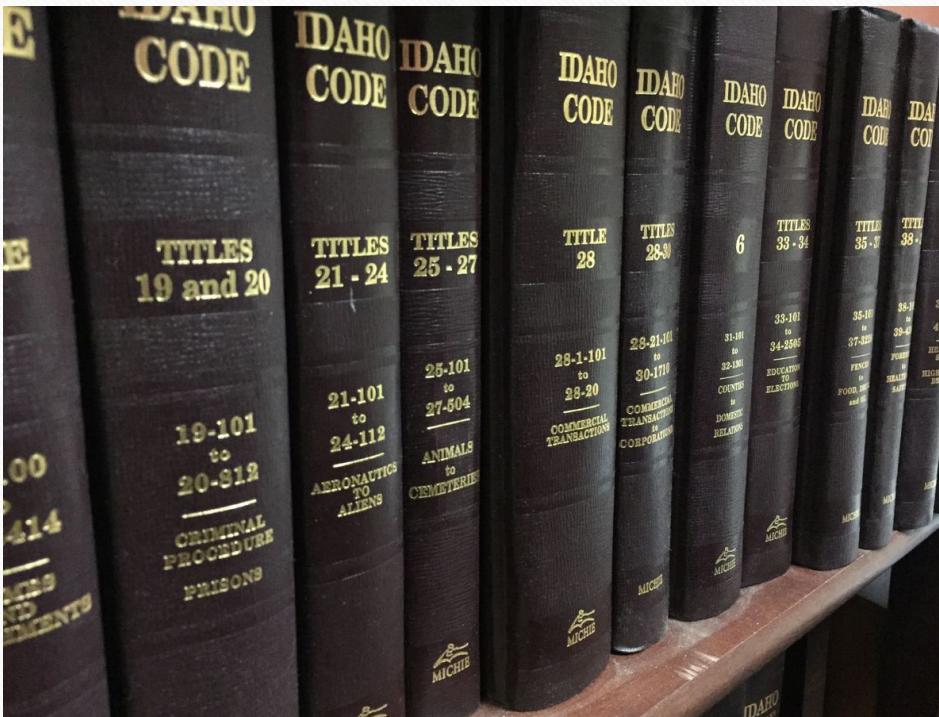
The materials contained in this presentation are general legal information and do not constitute legal advice.

This presentation is intended as a **very broad** overview of the law and is necessarily limited by time; there are multiple applicable laws, regulations, and cases I simply don't have time to cover.

UAV law is quite literally the wild west of the law; things change weekly.

# UAV Law under the Idaho Code

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# Currently Two Sections of Idaho Code

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- Idaho Code § 36-1101- Taking of Wildlife- no hunting with UAS (with possible exceptions)
- Idaho Code § 21-213- Restrictions on the use of unmanned aircraft systems
- There's some indication that there will be legislation affecting UAVs in the 2019 legislative session



# Idaho Code § 21-213

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## Definitions: § 21-213(1)

- Defines Unmanned Aerial System [UAV] as “any unmanned aircraft vehicle, drone, remotely piloted vehicle, remotely piloted aircraft or remotely operated aircraft that is a powered aerial vehicle that does not carry a human operator, can fly autonomously or remotely and can be expendable or recoverable.”
- Expressly does not include “model flying airplanes or rockets” and “unmanned aircraft system used in mapping or resource management.”



# Idaho Code § 21-213

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## Restrictions: § 21-213(2)

- Limits the operation of a UAV for any “person, entity or state agency” without a warrant.
- Prohibits: “intentionally conduct surveillance of, gather evidence or collect information about, or photographically or electronically record specifically targeted persons or specifically targeted private property” (person, dwelling, dwelling’s curtilage w/out written consent; farm dairy, ranch or other agricultural industry w/out consent).

# Idaho Code § 21-213

- Exceptions:
  - If you have a warrant
  - “emergency response for safety”
  - “search and rescue”
  - “controlled substance investigations” - ???
- Can the Idaho Legislature authorize a warrantless search via drone for “controlled substance investigations” when a warrant is otherwise required under the Fourth Amendment?

# Idaho Code § 21-213(3)

## Cause of Action

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### Cause of Action: § 21-213(3)

- “Any person who is the subject of prohibited conduct under subsection (2) of this section shall...have a civil cause of action against the person, entity or state agency for such prohibited conduct; and
- “Be entitled to recover...damages in the amount of the greater of \$1,000 or actual and general damages, plus reasonable attorney’s fees and other litigation costs reasonably incurred.”

# Answer

- Well, despite *a lot* of law (statutory, regulatory, & case law) to the contrary (*49 U.S.C. 40102 et. Seq.*; Idaho Code 21-202 - 204; *U.S. v. Causby*, 328 U.S. 256 (1946) (in part stating that “the airspace is a public highway”; *Robinson v. Huerta*, 123 F. Supp. 3d. 30 (D.C. Circ. 2015); *Roark v. City of Caldwell*, 87 Idaho 557 (1964); etc., *ad nauseam*) yes, it looks like that’s exactly what the Idaho Legislature is saying, unless it’s for “emergency response for safety,” “search and rescue,” or “controlled substance investigations.”
- We’ll see if many of the provisions of I.C. 21-213 survive constitutional challenge
- But...Idaho can certainly say that its Constitution provides protections not covered under the federal Constitution (how do you get around the *Causby* “airspace is a public highway” decision?)
- Takeaway- unless a police/fire department is responding for “search and rescue” or an “emergency response for safety,” they would require a warrant
- Next question!

# Answer

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- I hate to be the bearer of bad news, but it looks like in Idaho, you cannot record a person with a UAV and then “publish” that recording without subjecting yourself to a lawsuit under Idaho law
- But wait, isn’t it legal to photograph/video someone in a public place or from a public vantage point, then put these photographs/video on the news? If not, how does the media get away with this tomfoolery!
- We know about the torts of false light, using a person’s likeness for commercial gain, publishing embarrassing information, defamation, etc.! These don’t seem to fit.
- Theoretically, this law means that a news organization using a UAV to record a news event, then broadcasting the footage, would violate this provision and be subject to suit, but the same news crew using a camera on a pole to record the footage would not be subject to suit.
- Theoretically, this law also means that if I fly a UAV and inadvertently capture footage of a person in a public place, then “publish” this footage on my YouTube channel, I’m subject to suit.
- What does it mean to “publish” photographs/video under 21-213? It’s not defined.

If this frustrates you, here's a picture to help

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# Idaho Code § 21-213(4)

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- **Easements:** § 21-213(4)
  - If you have a valid easement, permit, license or other right of occupancy, you can use a UAS to aerially inspect the “facilities”

# Local Ordinances in Idaho

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- Ada County Ordinance No. 883
  - Every individual operating a UAS must register the same, excluding model aircraft, with the FAA and must obtain a remote pilot certificate from the FAA as required by 14 C.F.R. Part 107 Rule or the FAA Modernization and Reform Act of 2012 § 333 (the “Section 333 Rule”). The individual is required to have the pilot certificate readily available while operating the UAS.

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# Fourth Amendment Issues

Surveillance  
Stop-and-frisk  
Warrants  
Right  
Probable  
Cause  
Persons  
Government  
Search  
Seizures  
**Fourth Amendment**  
Arrests  
Protection  
Seized  
Houses  
Secure  
Papers  
Wiretaps  
Unreasonable

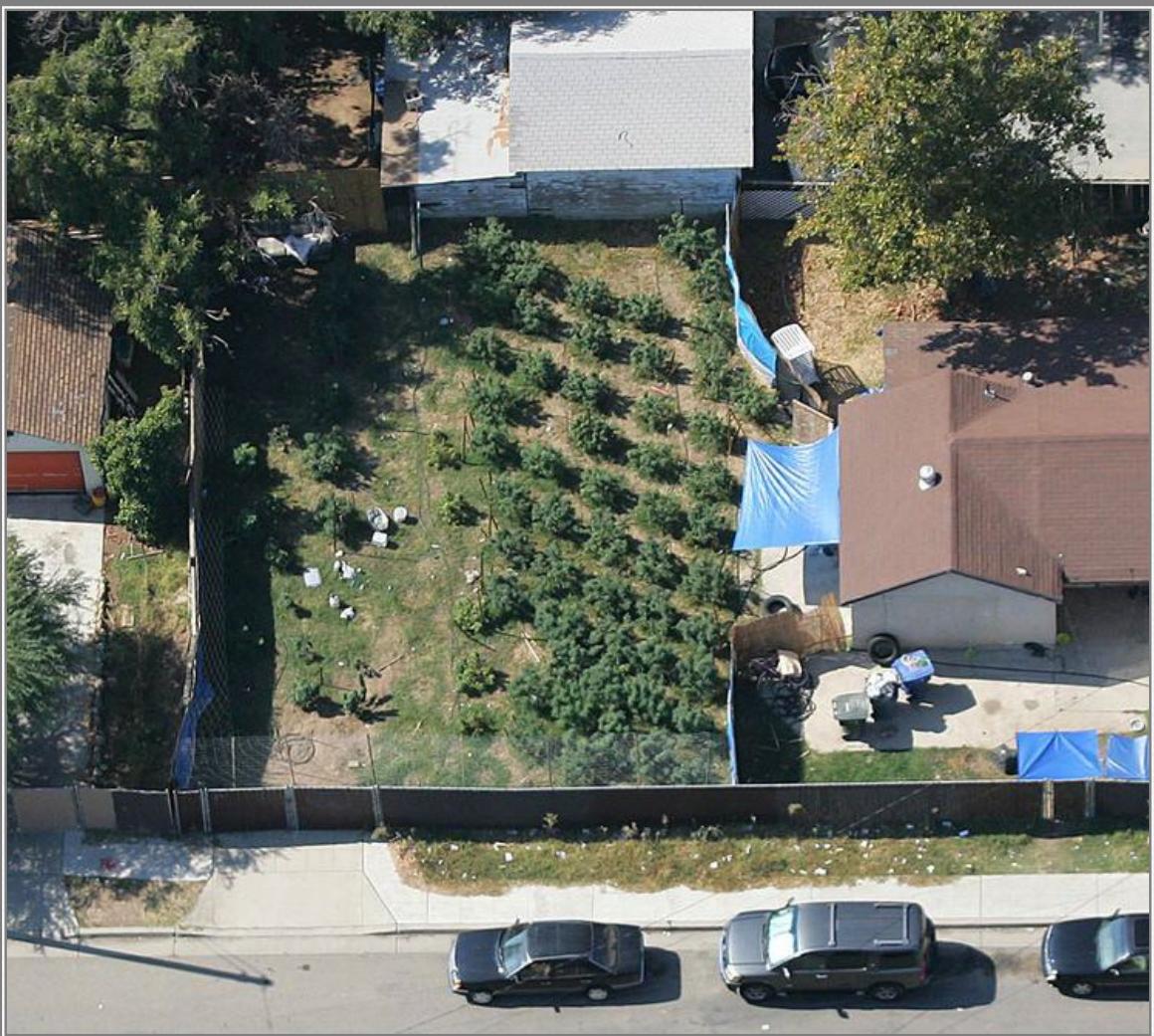
# *Dow Chemical Co. v. United States (1986)*

- Environmental Protection Agency's aerial photography of Dow Chemical Company's 2,000-acre outdoor industrial complex, while EPA was lawfully within navigable air space, was not "search" for Fourth Amendment purposes.
- Open areas of the complex were more comparable to an open field than to curtilage of dwelling for purposes of aerial surveillance.



## *California v. Ciraolo (1986)*

- Police officers warrantless aerial observation, from altitude of *1,000 feet*, of fenced-in backyard *within curtilage* of home, during which plants *readily discernible to the naked eye* as marijuana were observed, did not violate homeowners Fourth Amendment rights.
- Homeowner did have a subjective expectation of privacy, but the expectation that his backyard was protected from such observation from the air was unreasonable, and not one that society was prepared to honor.



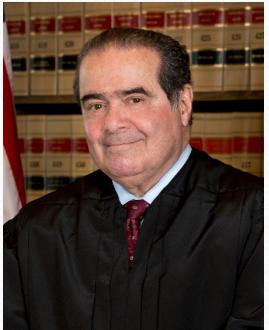


## *Florida v. Riley* (1989)

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- Officer's unaided observation of the interior of a partially covered greenhouse in a residential backyard from the vantage point of a helicopter circling 400 feet above did not constitute a search for which a warrant was required.

# *Kyllo v. United States* (2001)



- “Thus, obtaining by sense-enhancing technology any information regarding the home’s interior that could not otherwise have been obtained without physical intrusion into a constitutionally protected area, constitutes a search- at least where (as here) the technology in question is not in general public use.”

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# Questions?

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