

ARTICLE

NASCAR Drone Countermeasures May Be Illegal

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Numerous outlets are reporting that NASCAR contracted with a company called DroneShield to track and interdict unauthorized unmanned aircraft systems (UAS) at a recent race in Fort Worth, Texas. DroneShield itself announced that it deployed its solution to protect the race in partnership with a range of state and local Texas authorities, including the Texas State Department of Public Safety, the Denton County Sheriff, the Fort Worth Police Department, the Texas Rangers, and the Texas Forest Service.

NASCAR famously traces its roots back to bootleggers running from federal agents through the hills and hollows of North Carolina. On the surface, NASCAR's collaboration with local law enforcement to deploy "DroneShield" technology for its race at Texas World Speedway would seem to exemplify the racing series' move from outsider pastime to establishment stalwart.

But these drone countermeasures, which rely for interdiction on a high-powered directional radio jammer called a "DroneGun," aren't really that far from NASCAR's outlaw past. The Federal Communications Commission has warned that "it is illegal to use a cell phone jammer or any other type of device that blocks, jams or interferes with authorized communications. This prohibition extends to every entity that does not hold a federal authorization, including state and local law enforcement agencies." This flows from Section 333 of the Communications Act, which states that "[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government." The

Authors

Joshua S. Turner
Partner

202.719.4807

jturner@wiley.law

Sara M. Baxenberg
Partner

202.719.3755

sbaxenberg@wiley.law

Practice Areas

Telecom, Media & Technology

Uncrewed Aircraft Systems (UAS)

prohibition applies not just to using a jammer, but also to selling or marketing them in the United States.

The FCC takes this prohibition very seriously. It maintains a website that explains the restrictions on jamming in layman's terms, in order to educate the public. It has also routinely enforced the prohibition. Fines can be significant. For example, in 2016 the FCC imposed a \$35 million penalty against a Chinese company for marketing signal jamming devices over the Internet. Violations of the Communications Act can also carry criminal liability, though referrals to the U.S. Department of Justice under this provision are uncommon. The U.S. criminal code also independently criminalizes certain types of signal jamming.

The laws and regulations prohibiting the use of jammers are clear and straightforward, but the policy rationale for these laws is just as easy to understand. Intentionally jamming radio communications not only interferes with the lawful communications of the targeted device, but it can also cause potential spillover effects to other, unrelated communications nearby (or within the line of sight of the jamming device). At least one model of the DroneGun offers a GPS blocker as an "add on"; it is not difficult to imagine how interfering with GPS signals might have disastrous consequences if the DroneGun sweeps another aircraft into its line of fire.

It is thus not clear how these Texas public safety departments engaged in what DroneShield calls "the first known live operational use" of the DroneGun by U.S. law enforcement. One answer may be involvement by a federal agency. The National Telecommunications and Information Administration (NTIA) within the U.S. Department of Commerce, which handles the federal government's use of spectrum, has taken the position that it may authorize federal agencies to use signal jammers, and has exercised that authority in the past. But DroneShield has not identified any federal users that are involved in the NASCAR program, and it is not clear whether any agency has been authorized to use the DroneGun in this context.

Even if jamming were authorized, intercepting and disabling aircraft — including unmanned aircraft — raises additional legal concerns. Section 32(a)(1) of Title 18 provides that "[w]hoever willfully... sets fire to, damages, destroys, disables, or wrecks any aircraft" is guilty of a federal felony. Section 32(a)(2) establishes a similar penalty for disabling "any air navigation facility" if doing so would endanger the safety of an aircraft in flight. These provisions have not yet been enforced in the context of UAS (or blocking the GPS signal being used by UAS), but there are strong arguments based on the plain language of the statute that they should apply.

Congress has authorized the use of drone countermeasures — including signal jammers — in some limited circumstances, but only by the U.S. Department of Defense. The department is empowered to take down drones that threaten certain covered military installations, and while the guidance on what that means is classified, it's unlikely that the Monster Energy NASCAR Cup Series falls within the range of protected military facilities. NASCAR may be an American staple, but it does not appear related to "the nuclear deterrence mission of the Department of Defense...; the missile defense mission of the Department; or the national security space mission of the Department."

In short, local law enforcement officials and private entities should view NASCAR's endorsement of the DroneGun with great skepticism, and should carefully investigate the legality of drone countermeasures before deploying them. Otherwise, they may find themselves trying to outrun a visit from the Feds, just like those early NASCAR drivers.