

Congress gets mixed advice on regulating drones

HENRY C. JACKSON, Associated Press

WASHINGTON (AP) — The growing use of unmanned surveillance "eyes in the sky" aircraft raises a thicket of privacy concerns, but Congress is getting mixed advice on what, if anything, to do about it.

A future with domestic drones may be inevitable. While civilian drone use is currently limited to government agencies and some public universities, a law passed by Congress last year requires the Federal Aviation Administration to allow widespread drone flights in the U.S. by 2015. According to FAA estimates, as many as 7,500 civilian drones could be in use within five years.

"Technology is great — as long as it's used the right and proper way," Rep. Jason Chaffetz, R-Utah, said at a House Judiciary subcommittee hearing Friday on the issues surrounding drones — which can be as small as a bird and as large as a plane.

Congress isn't alone in seeking to address the issues: Since January, drone-related legislation has been introduced in more than 30 states, largely in response to privacy concerns.

Rep. James Sensenbrenner, R-Wis., said it was important for new standards to address the privacy issues associated with use of drones. With Rep. Zoe Lofgren, D-Calif., and Rep. Ted Poe, R-Texas, he is sponsoring legislation that would codify due process protections for Americans in cases involving drones and make flying armed drones in the U.S. sky illegal.

"Every advancement in crime fighting technology, from wiretaps to DNA, has resulted in courts carving out the Constitutional limits within which the police operate," Sensenbrenner said.

The subcommittee heard from experts who were divided on what actions Congress should take to address the new technology. But the four witnesses all agreed that drones raised new, often unprecedented questions about domestic surveillance.

"Current law has yet to catch up to this new technology," said Chris Calabrese, legislative counsel for the American Civil Liberties Union.

Calabrese said he supported immediate regulation of the drone industry and said his biggest concern was the overuse of drones by police and government officials for surveillance. But Calabrese said he doesn't want to hinder the growth of drones with the power to do good, including helping find missing persons, assisting firefighters and addressing other emergencies.

Tracey Maclin, a professor with the Boston University School of Law, said the issues

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raised by drones haven't been addressed by courts before because the technology goes beyond what humans had been capable of through aerial surveillance.

Past court rulings, "were premised on naked-eye observations — simple visual observations from a public place," he said.

Rep. Cedric Richmond, D-La., said he wanted to know when drone technology will advance to the point where Congress will have to act on the issue. He said he was concerned about the effect on privacy.

"At what point do you think it's going to get to a point where we have to say what a reasonable expectation of privacy is?" Richmond said.

Republicans expressed similar concerns.

"It seems to me that Congress needs to set the standard, rather than wait and let the courts set the standard," Poe said.

Some experts urged caution.

Gregory McNeal, an associate law professor at Pepperdine University, said writing laws to cover drones will be difficult because the technology continues to improve and Congress could think it's addressing key issues, only to have new ones emerge.

He compared drones to the privacy concerns raised by development of the Internet in the 1990s. Regulating then, he said, could have stymied the rapid growth of the Internet and wouldn't have addressed today's Internet privacy issues.

If Congress feels compelled to act, McNeal said, it should think in terms broader than a "drone policy" and set standards for surveillance or realistic expectations of privacy. "A technology-centered approach to privacy is the wrong approach," he said.

But the ACLU's Calabrese said Congress should work quickly.

"This can't be adequately addressed by existing law," he said. "Manned aircraft are expensive to purchase. Drones' low cost and flexibility erode that natural limit. They can appear in windows, all for much less than the cost of a plane or a helicopter."

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