

Revenue From Drone Videos Could Convert Hobbyists Into Commercial Operators

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Last July, we raised the question of whether advertising revenue from hobbyists' drone videos posted on **YouTube** could constitute commercial operations of a drone. At the time, we noted that some hobbyists' videos were preceded by advertisements, indicating that the videos were likely part of YouTube's Partner Program, where a portion of the advertising revenue is paid to the video creator. Because the **FAA** had already stated that selling images taken from drones was a commercial operation, we wondered if it would apply the same conclusion to YouTube ad revenue.

Yesterday, **Motherboard** revealed that at least one FAA official had indeed reached that conclusion. In a warning letter issued on March 9, 2015, an aviation safety inspector in the Tampa (Fla.) Flight Standards District Office warned *Jayson Hanes* that he appeared to be operating a drone "for commercial purposes" by posting a video on YouTube. According to the report, the FAA said that "because there are ads on YouTube, Hanes's flights constituted a commercial use." Hanes told *Motherboard* that he only flew as a hobby, and he earned "less than a dollar" from the YouTube ads.

This is yet another example of the strange results that occur when traditional regulatory interpretations designed for aircraft are applied to drones. Traditionally, the FAA has adopted a very broad view of activities that constitute commercial operations. A series of FAA legal interpretations state that "anything of value" can constitute compensation to the pilot, which makes the flight a commercial operation. The FAA has gone so far as to rule that receiving loggable flight time free of charge is compensation, and even simply receiving "goodwill" for giving someone a flight can be considered compensation.

In an update to the *Motherboard* story, the FAA said that its guidance on drones did not address the question of advertising revenue. The agency said it will now look into the issue. It will be interesting to see which way the agency rules after its review. Will the FAA permit incidental ad revenue on hobbyist videos? Or will the agency perhaps be concerned that permitting incidental revenue will encourage hobbyists to record outrageous drone videos in the hopes of a viral (and financial) success?

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