

Cooley

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The National Transportation Safety Board ("NTSB") today issued a decision affirming the jurisdiction of the FAA to regulate unmanned aerial vehicles. The NTSB found that the statutory definition of an "aircraft" included in the Federal Aviation Act applies to both manned and unmanned aerial vehicles. According to the NTSB, the "...plain language of the statute and regulatory definitions is clear: an 'aircraft' is any device used for flight in the air."

The case grew out of a flight by an unmanned aerial vehicle ("UAV") around the campus of the University of Virginia in the fall of 2011. The FAA filed an administrative enforcement action against the UAV's operator, Raphael Pirker, for careless and reckless operation of the UAV, fining him \$10,000. Mr. Pirker appealed the fine to the NTSB, and an Administrative Law Judge ("ALJ") within the NTSB found that the FAA did not have jurisdiction to pursue the sanction. In finding today for the FAA, the NTSB remanded Pirker's administrative appeal of the fine to the ALJ for a determination of whether the UAV was operated carelessly and recklessly.

The case affirms the jurisdiction of the FAA to issue rules and govern the integration of UAVs into the national airspace system. Currently, UAVs may only be flown by hobbyists for purely recreational reasons or by businesses that have obtained special FAA exemptions allowing commercial operations. To date, the FAA has issued only seven exemptions for commercial operations—all to movie production companies. Cooley represented the seven applicants who received these exemptions for commercial operations, and the firm is also representing a number of other parties that have sought exemptions for commercial operations in other economic sectors. Until the FAA acts on those waiver requests, only the seven movie companies may fly UAVs for commercial purposes in the continental United States.

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