

# *Property Law Rights and UAVs*

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*Drones: Coming to the sky near you (Conference)*

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# Introduction

- Property rights and... unmanned aircraft systems (UASs); unmanned aerial vehicles (UAVs); drones
- Serious property law implications ....
- Simple questions (finding disputes) v. difficult questions (ownership of airspace)



# Airspace

- The most challenging questions arise in relation to the extent of ownership rights....
- Controversy in the USA; not a major issue in Ireland ... yet!
- Public sentiment?
  - Examples



# William Merideth...

- ‘Sunday afternoon, the kids – my girls – were out on the back deck, and the neighbors were out in their yard.... And they come in and said, “Dad, there’s a drone out here, flying over everybody’s yard” ... Well, I came out and it was down by the neighbor’s house, about 10 feet off the ground, looking under their canopy that they’ve got in their back yard... I went and got my shotgun and I said, “I’m not going to do anything *unless it’s directly over my property.*” ...



# William Merideth...

- ‘Within a minute or so, here it came... It was hovering over top of my property, and I shot it out of the sky.... I didn't shoot across the road, I didn't shoot across my neighbor's fences, *I shot directly into the air.*’
- Merideth was arrested and charged with first degree criminal mischief and first degree wanton endangerment.



# William Merideth...

- ‘He [the drone] didn’t just fly over... If he had been moving and just kept moving, that would have been one thing -- but when he come directly over our heads, and just hovered there, *I felt like I had the right...* You know, when you’re in your own property, within a six-foot privacy fence, you have the expectation of privacy... *To me, it was the same as trespassing.*’

([www.wdrb.com](http://www.wdrb.com))



# Public sentiment

- Not an isolated example...
- Rand Paul warned anyone who was considering flying a drone over his house that they should ‘beware’ because ‘I’ve got a shotgun’!



# Context of Presentation

- Property rights & drones: Provoke strong emotions from different perspective
- Little academic commentary on *property rights* and drones/UAVs
  - Ireland; USA
- Schedule of session mimics life!
- Other implications
  - Admissibility of evidence
  - Constitutional takings





# Limits of Ownership (Ire)

- Ireland/England& Wales:
- Starting Point:....
  - Latin Maxim: *'cujus est solum, ejus est usque ad coelum et usque ad inferos'*.
  - Own up to the heavens and down to hell.....
- Modern Aviation?!



# Limits of Ownership (Ire)

- *Commissioner for Railways v Valuer-General* [1974]:
  - ‘In none of the cases [in which the maxim was discussed] is there an authoritative pronouncement that “land” means the whole of the space from the centre of the earth to the heavens: *so sweeping, unscientific and unpractical a doctrine is unlikely to appeal to the common law mind.*’



# Limits of Ownership (Ire)

- *Bernstein of Leigh (Baron) v Skyviews & General Ltd* [1978] per Griffiths J
  - Facts?
  - “The problem is to balance the rights of an owner to enjoy the use of his land against the rights of the general public to take advantage of all that science now offers in the use of air space...”



# Limits of Ownership (Ire)

– ... This balance is best struck in our present society by restricting the rights of an owner in the air space above his land *to such height as is necessary for the ordinary use and enjoyment of his land and the structures on it*”

- Limits established..



# Limits of Ownership (Ire)

- Section 55 of the Air Navigation and Transport Act 1936 (Ireland)
  - A landowner may not sue for trespass or nuisance where aircraft fly over property at a height which is *reasonable* having regard to wind, weather and all the circumstances.
  - ‘Aircraft’ includes ‘flying machines’



# Limits of Ownership (Ire)

- *Woollerton and Wilson Ltd v Richard Costain Ltd* [1970]
  - Ps did secure an injunction against the D builder's whose crane's jib traversed the airspace over the P's property
- *Keating v Jervis Shopping Centre* [1997]
  - Recognised trespass here also



# Limits of Ownership (Ire)

- Result: You have rights in the airspace but limits/extent are very vague...
- Interesting recent development:
  - Section 3 of the Land and Conveyancing Law Reform Act 2009
  - Definition of ‘land’ includes ‘the airspace above the surface of land...’
  - Wylie: possibility of separate conveyance of airspace....



# Limits of Ownership (USA)

- Historically, *ad coelum* doctrine applied
- Air Commerce Act 1926 & Civil Aeronautics Act 1938
  - Authorized interstate flights within ‘navigable airspace’
  - Majority of airspace over 500 feet above ground level





# Limits of Ownership (USA)

- *United States v. Causby* [1946] per Douglas J for the US Supreme Court
  - Leading decision in the area
  - *Ad coelum* doctrine had ‘no place in the modern world’
  - ‘Navigable airspace’ was now in the ‘public domain’



# Limits of Ownership (USA)

- ‘...it is obvious that, if the landowner is to have full enjoyment of the land, he must have exclusive control of the *immediate reaches* of the enveloping atmosphere.... The landowner owns at least as much of the space above the ground as [he] can *occupy or use* in connection with the land... The fact that he does not occupy it in a physical sense—by the erection of building and the like—is not material.’



# Limits of Ownership (USA)

- Court were reluctant to go any further in defining the extent of the ownership
- Standards since described as ‘fuzzy’ (Rule)
- Solved the problem at the time – little case law in the aftermath (Banner)
- Manned aircraft usually fly above the ‘immediate reaches’ ....
- Drones?! Issue re-emerging.....



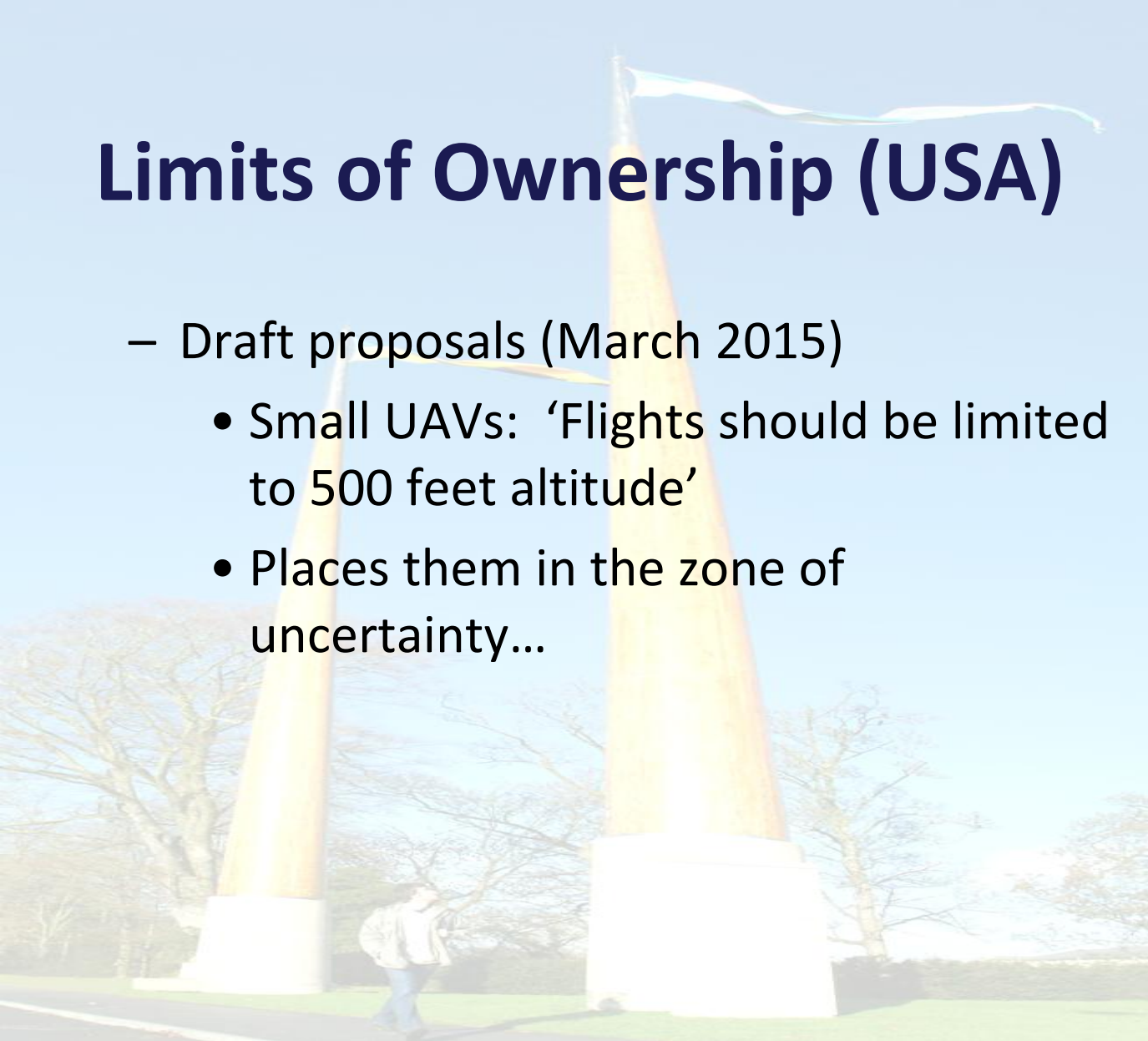
# Limits of Ownership (USA)

- Federal Aviation Administration (FAA)
  - Role in regulating low altitude?
  - FAA Modernization and Reform Act of 2012, P.L. 112-95
  - Tasked with safely integrating drones into the national airspace system by September 2015



# Limits of Ownership (USA)

- Draft proposals (March 2015)
  - Small UAVs: ‘Flights should be limited to 500 feet altitude’
  - Places them in the zone of uncertainty...



# Look to the future...

- Solutions?
  - UAV legislation in several States
  - Proposals for restrictions on use of drones in NYC
- Little focus on dealing with the issues from a *property* rights perspective except....



# Look to the future...

- California Senate Bill 142
  - Aimed to: ‘enacted trespass liability for anyone flying a drone less than 350 feet above real property without the express permission of the property owner, whether or not anyone’s privacy was violated by the flight’
  - Bill easily passed the state legislature but...
  - Crashed on the Governor’s desk



# Look to the future...

- Governor Brown explained
- ‘Drone technology certainly raises novel issues that merit careful examination. This bill, however, while well-intentioned, could expose the occasional hobbyist and the FAA-approved commercial user alike to burdensome litigation and new causes of action.’
- Issue be looked at ‘more carefully’
- Bill opposed by tech industry companies etc





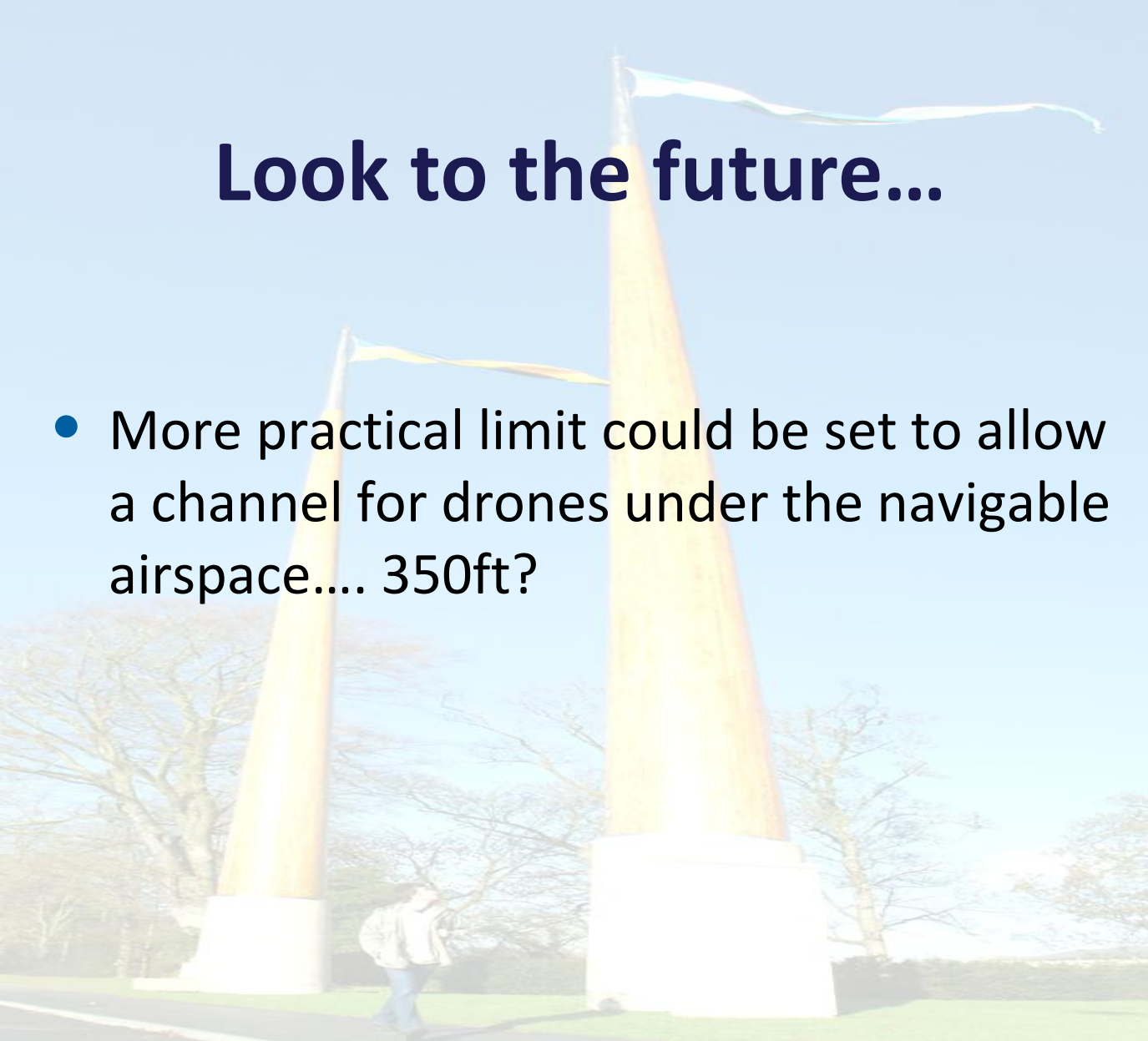
# Look to the future...

- Similar academic proposals:
  - Troy Rule advocated for: ‘new laws expressly entitling landowners to exclude drones from the airspace above the surface of their land to a height of *500 feet in most locations*’.
- 500ft limit?
  - Unrealistic; FAA proposals (500ft) & model aircraft circular (400ft)



# Look to the future...

- More practical limit could be set to allow a channel for drones under the navigable airspace.... 350ft?



# Look to the future...

- What is the best way forward.... Rules or discretion?
  - Sir Henry Maine: rigidity is the mark of a primitive legal order... but...
  - ‘Such laws would at last provide a definite ceiling to the three-dimensional column of space...establishing clearer entitlements in low-altitude airspace and creating a solid legal backdrop from which to layer supplemental rules’ (Rule)



# Look to the future...

- No silver bullet
  - Enforcement? Problematic
    - Utilise programming to control altitude?
  - Naked eye not reliable...
  - Not appreciated by tech industry...



# Conclusion

- Huge competing interests from property perspective...
  - Consumer Electronics Association estimated revenue ...
- Compromise needed (in Ireland & USA)
- Proximity is the major issue.... Bright line approach more attractive?

