



Keep your eyes on eyes in the sky

By HILLARY B. FARBER

January 10, 2014 2:00 AM

Your Jan. 1 piece "Drones spur privacy concerns on Cape Cod" is yet another reminder — the first of 2014, at least — that while citizens of Cape Cod and beyond have concerns about drones, the Federal Aviation Administration is moving forward with its plan for unmanned aircraft test sites across the country, which will include Joint Air Base Cape Cod partnering with Griffiss International Airport in New York.

Meanwhile, e-commerce giant Amazon isn't waiting 60 minutes to float the idea of drone delivery to its customers. With recent complaints of Christmas presents not being delivered on time, can you blame this global company for looking skyward for solutions?

Lesser known is a sheriff from Conroe, Texas, who has purchased a drone and begun testing its usefulness to help protect and serve a city of just over 60,000 people.

Conroe and Amazon are not alone. It is clear that drone technology — relatively cheap and effective — is way ahead of the law, raising urgent questions about the balance among privacy, safety, security and, now, in the case of Amazon, even customer service.

It is estimated that 30,000 drones will occupy U.S. airspace by the end of the decade. In November, the FAA released its preliminary plan to regulate drones in U.S. airspace. President Obama has established a deadline of September 2015 for the FAA to implement new regulations for safely integrating drones into national airspace.

Even as the FAA was preparing to roll out its plan, U.S. Sen. Edward Markey of Massachusetts was introducing legislation to ensure standards for transparency about the location, timing and ownership of unmanned aerial vehicles, or UAVs.

Although there is bipartisan concern in Congress over protecting privacy, consensus has yet been reached on the regulatory approach to unmanned aerial surveillance. One key question is the extent to which law enforcement may utilize drones for aerial surveillance without a warrant under the Fourth Amendment. The Supreme Court has yet to offer a framework to evaluate technology that collects information from a public vantage point and without physical intrusion into a constitutionally protected area.

Drones present unique privacy risks for society. Some are small, silent and practically invisible to the naked eye. They can fly at altitudes well above 5,000 feet. They can be easily equipped with sensory-enhancing technologies such as infrared cameras, GPS, license plate readers and high-resolution cameras. Simply put, they bring a whole new meaning to "Big Brother is watching you."

There is inherent concern about government use of unmanned aerial surveillance and the limits that can be placed on the technology by the Fourth Amendment, which prohibits unreasonable searches and seizures. Existing case law is limited to manned aircraft flying at low altitudes, and courts are slow to respond to implications of new technology.

As your report notes, states have been somewhat quicker to react, with more than 80 bills and resolutions introduced in 43 states. And it is worth noting legislation has been filed in Massachusetts to regulate the use of unmanned aerial vehicles, but it has not risen to the top of the legislative agenda nor caught the attention of the media — until Amazon's pre-Cyber Monday newsflash.

To date, eight states have passed bills regulating domestic drone use by government and private individuals. This leaves us with a question: If a city of more than 60,000 residents and a global company with a customer base in the hundreds of millions are racing to the sky, how are we as a commonwealth of 6.6 million to truly launch ourselves into the debate and protect what little privacy we have left?

Hillary B. Farber, associate professor of law at the University of Massachusetts School of Law Dartmouth, has conducted extensive research on the evolving law related to drones.