



No fly zone: FCC proposes US\$2.8 million penalty for marketing non-compliant drone AV accessories

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The Federal Communications Commission (FCC) is proposing to bring a US\$2.8 million penalty against HobbyKing for marketing drone-attachable audio/video (AV) transmitters that operate on unauthorized frequencies.

For marketers and retailers of unmanned aircraft systems (UAS) and attachable devices, this penalty signals that the FCC is cracking down on the makers and marketers of noncompliant UAS and UAS-attachable devices. This penalty also serves as a reminder to operators, who are required to have an FCC license to operate a drone, even if it only operates on amateur frequencies.

According to the FCC's [Notice of Apparent Liability](#), HobbyKing purported to offer UAS-attachable AV devices that operate on amateur radio frequencies (which do not require FCC certification). On closer inspection, those devices also operated on additional frequencies, including some that require certification. As the notice states, some of the devices also apparently operated at power levels in excess of what is permitted for amateur equipment.

HobbyKing argued that it did not market its devices to customers based in the U.S. The FCC was not persuaded, however, finding that HobbyKing had a record of sales in the U.S. and did not place limitations on shipping to the U.S. The commission was also not persuaded by HobbyKing's argument that the burden was on the customers to comply with local laws, stating that the burden of device compliance falls on the makers and marketers of the devices.

The commission also took issue with

- repeated violations after the FCC informed HobbyKing of the compliance issues;
- intentional marketing of the devices; and
- untimely and incomplete responses to the FCC's letter of inquiry.

The FCC found particularly problematic that twelve of the devices operated on restricted frequencies used by the Federal Aviation Administration (FAA), creating a risk to public safety, and that another three devices operated at impermissibly high power levels.

The base forfeiture for violating these FCC rules is US\$7,000 for each violation or each day of continuing violation. The commission adjusted this base upward to US\$12,500 for each of the 50

of the AV transmitters, due to the repeated violations, intentional marketing of unauthorized devices, and untimely/incomplete responses. For the remaining 15 transmitters that operated on restricted frequencies or at impermissible power levels, the FCC raised the penalty to the statutory maximum of US\$147,290. Adding another US\$39,278 for HobbyKing's failure to fully respond to the letter of inquiry or to respond at all to the letter of inquiry citation, the commission proposed total forfeiture of US\$2,861,128.

Typically when a Notice of Apparent Liability is filed, the recipient has the option of paying the fine, petitioning for reconsideration of the facts or legal bases of the notice, or entering into a consent decree with the commission.

To assist consumers, marketers, and manufacturers of drone AV transmitter accessories, the FCC's Enforcement Bureau also issued an [enforcement advisory](#). For marketers and operators of AV transmitters, here are a few important takeaways:

- only manufacture or market devices that operate on amateur frequencies, unless you receive FCC certification for operating on other bands;
- keep transmitter power within the levels of the commission's rules;
- if the FCC contacts you regarding devices you're marketing, seek legal counsel;
- if you receive a letter of inquiry, respond in a timely, complete, and accurate manner; and
- both commercial and amateur drone operators have a responsibility to ensure that the equipment they are using complies with applicable FCC regulations, because they could also be subject to FCC civil penalties for operating drones with noncomplying radio frequency devices.

For clients who operate at the intersection of communications, transportation, and data collection and use, we provide a deep bench of experienced global regulatory practitioners. For more information on the laws and regulations concerning UAS and UAS-attachable devices or other connected device and communications issues, please contact Lisa Ellman, Mark Brennan, or Trey Hanbury.

The authors wish to thank Ryan Thompson in our Washington D.C. office for his assistance in preparing this article.

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