

---

DAVIS  
GRAHAM &  
STUBBS

POLICY ISSUES IN EMERGING TECHNOLOGIES  
AFFECTING COLORADO BUSINESSES

OCTOBER 29, 2020

---

**A LexMundi Member**

# HOT TIME FOR TECH POLICY

---

DAVIS  
GRAHAM &  
STUBBS

**Justice Department sues Google, alleging multiple violations of federal antitrust law**

**CNN BUSINESS**

Markets **Tech** Media Success Perspectives Videos

LIVE TV Edition ▾

**CEOs of Google, Twitter and Facebook grilled in Senate hearing**

**President Trump Calls For Section 230 Repeal As Facebook Yanks, Twitter Tags His COVID Posts**

# AGENDA: SOME KEY TOPICS AFFECTING COLORADO

---

DAVIS  
GRAHAM &  
STUBBS

- Regulation of Tech-Related Supply Chains
- Data Privacy – Federal and State Legislation
- Regulation of Artificial Intelligence & Facial Recognition

---

DAVIS  
GRAHAM &  
STUBBS

# REGULATION OF TECH-RELATED SUPPLY CHAINS

---

# SUPPLY CHAIN THREATS

DAVIS  
GRAHAM &  
STUBBS

- Targets for terrorists and rogue nations
- Targets for economic espionage & coercion

## Made in China 2025



- Review of transactions and investments
- Executive orders directed at industries or specific transactions
- Express limitations and prohibitions

**Bottom line:** Due to national security implications, federal government has broad authority to regulate

# PRIORITY MARKETS FOR PROTECTION

---

- U.S. Military and Defense Industrial Base
- Federal, State, and Local Governments
- Critical Infrastructure (including Energy)
- Advanced Manufacturing
- Cloud Networks and IoT Infrastructure
- Healthcare and Pharmaceuticals
- Data-Rich and Internet-Connected Consumer Markets
- Educational Institutions

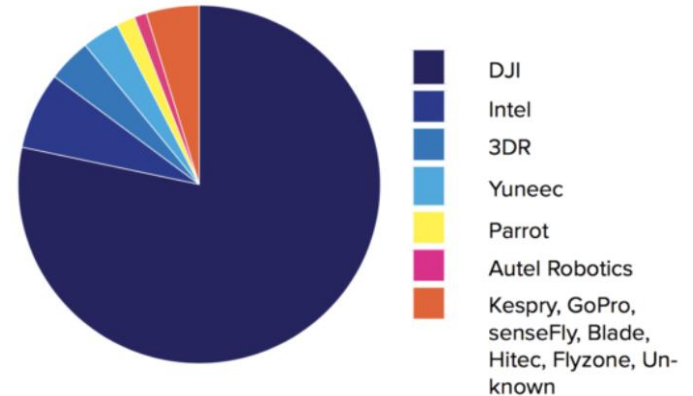
# CASE STUDY: DRONE INDUSTRY

---

DAVIS  
GRAHAM &  
STUBBS



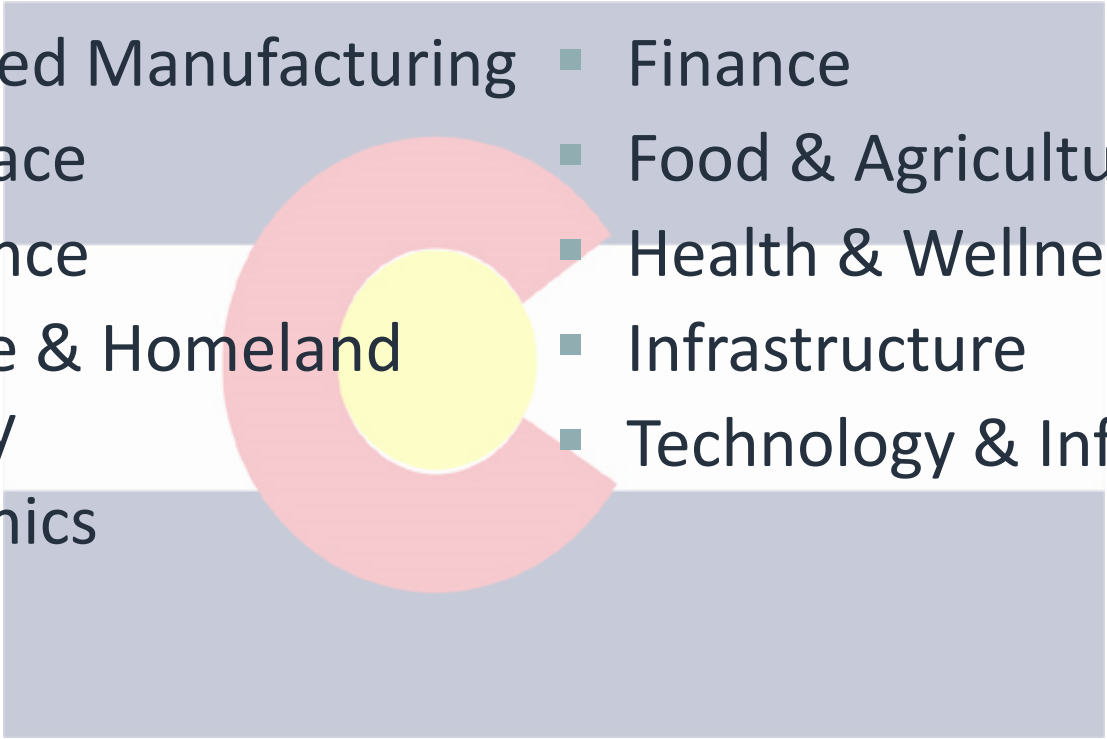
Top 30 Non-Hobbyist Drone Manufacturers





# IMPACTS ON COLORADO – AFFECTED INDUSTRIES

---

- 
- Advanced Manufacturing
  - Aerospace
  - Bioscience
  - Defense & Homeland Security
  - Electronics
  - Energy
  - Finance
  - Food & Agriculture
  - Health & Wellness
  - Infrastructure
  - Technology & Information

---

DAVIS  
GRAHAM &  
STUBBS

# FEDERAL & STATE PRIVACY LEGISLATION

---

# PRIVACY LEGISLATION – FEDERAL LEVEL

---

- So far, the U.S. has taken a sectoral approach to regulating privacy
  - E.g., HIPAA, GLBA, COPPA, FCRA, TCPA, CAN-SPAM
  
- Increased push for U.S. federal comprehensive privacy legislation
  - Over 30 privacy-related bills introduced in this Congress session so far
  - Most recent bill introduced: the SAFE DATA Act
    - Combines three previously introduced bills and would provide new data rights, require consent for processing and sharing personal information, and require companies to appoint a data protection officer
  - Congressional hearings on privacy
    - U.S. Senate Committee on Commerce, Science and Transportation hearing 9/23/2020 on the Need for Federal Data Privacy Legislation
  
- Main sticking points:
  - Preemption of state law
  - Private right of action



# COLORADO PRIVACY ACT (DRAFT)

---

DAVIS  
GRAHAM &  
STUBBS

- Consumer rights
  - Opt-in, opt-out, access, correction, deletion, data portability
  - 30 days to respond (with a 30-day extension allowed)
  - Appeals process where covered entity refuses to take action
  
- Duties of covered entities (“controllers”):
  - Transparency (Privacy Notice)
  - Purpose specification
  - Data minimization
  - Avoid secondary uses
  - Duty of care (data security)
  - Avoid unlawful discrimination
  
- Data Protection (Risk) Assessments required for processing activities posing a heightened risk of harm
  - Includes targeted advertising, sale of personal data, profiling, and processing sensitive data
  - Assessments must be made available to the AG upon request
  
- No private right of action

---

DAVIS  
GRAHAM &  
STUBBS

REGULATION OF ARTIFICIAL INTELLIGENCE &  
FACIAL RECOGNITION

---

- Regulation at federal, state, and local levels
  - Lots of talk, but not much action so far from feds
  - States and local governments taking the lead
- Determination of liability under state laws

# ARTIFICIAL INTELLIGENCE – LIABILITY

---

DAVIS  
GRAHAM &  
STUBBS

- Who is at fault when AI causes harm?





# ARTIFICIAL INTELLIGENCE – LIABILITY

---

- Examples
  - Car crashes
  - Discriminatory personnel decision-making
  - Products liability
- Issues
  - Who is responsible (operator, designer, the AI itself?)
  - What level of care
  - How to establish causation
  - Other open questions
- Approaches
  - State common law
  - State or federal statutory or regulatory regimes

# REGULATION OF FACIAL RECOGNITION IN THE U.S.

---

DAVIS  
GRAHAM &  
STUBBS

- Several cities, including Boston, Oakland, and San Francisco have banned the use of facial recognition by law enforcement. Portland's ban extends not only to law enforcement but to corporate use in public spaces.
- Washington State passed a facial recognition law in March 2020. The new law, which takes effect July 1, 2021, regulates the use of facial recognition technology by state and local government agencies, without banning the technology outright.
- Several companies have weighed in, too.
  - Microsoft will not sell facial recognition software to police departments until the federal government passes legislation regulating the technology.
  - Amazon instituted a one-year moratorium on policy use of its technology.
  - IBM announced it would no longer sell facial recognition products.

- Colorado has no laws regarding the use of facial recognition software
- Law enforcement and other state agencies use facial recognition for investigative purposes
  - Typically rely on agency and private databases
- Key issues: accuracy, corroboration, transparency, privacy

# CONTACTS

---

DAVIS  
GRAHAM &  
STUBBS



**Mark Champoux**  
Davis Graham & Stubbs LLP  
mark.champoux@dgsllaw.com



**Camila Tobón**  
Davis Graham & Stubbs LLP  
camila.tobon@dgsllaw.com