

## Satellite Update September 2019

### The first crime in space? A test of space law

*A NASA astronaut is alleged to have committed a crime by accessing her estranged spouse's bank account from the International Space Station, raising questions surrounding jurisdiction in space and putting international space law to the test.*

Anna McClain, a NASA astronaut, has been accused of illegally accessing her estranged wife's bank account without permission whilst on the International Space Station (ISS). Although whether this constitutes a crime or not has yet to be decided, it brings the issue of jurisdiction in space to the fore, particularly as we look towards commercial space tourism.

In general, the law of each state applies to its nationals in outer space, under the terms of the Outer Space Treaty, which has been ratified by all space-faring nations. Other more specific international agreements govern the conduct of astronauts on board the ISS as follows.

- The Intergovernmental Agreement concerning cooperation on the ISS between the governments of Canada, Japan, Russia, the USA and the member states of the European Space Agency (ISS Agreement).
- Four memoranda of Understanding between NASA and the Canadian Space Agency, the ESA, the government of Japan and the Russian Space Agency respectively (ISS MOUs).
- The Code of Conduct for the International Space Station Crew (CCOC).
- The crew disciplinary policy developed by the Multilateral Crew Operations Panel (MCOP), which also has the power to address violations of the CCOC and impose disciplinary measures.

In this case, the legal issues are not overly complex. The ISS Agreement, in much the same manner as the Outer Space Treaty, states that each country providing crew for the ISS has criminal jurisdiction over its own personnel. As McClain is a US national, the US has criminal jurisdiction.

However, future issues may not necessarily be so clear-cut. Jurisdiction in the case of an event such as a mutiny, a dispute between astronauts of different nationalities or a dispute related to employment law, is less clear.

In the case of a mutiny, each state retains criminal jurisdiction over its own personnel under the ISS Agreement. In the case of misconduct between crew members of different nationalities or damages to the flight element of another party, the state party of the perpetrator must consult with other state parties with regard to a prosecution. The partner state of the victim can exercise criminal jurisdiction 90 days after this consultation if the state of the perpetrator fails to prosecute. However, this is limited by the CCOC and the ISS MOUs. Furthermore, the ISS Agreement sets out provisions for extradition back on Earth if one state wishes to prosecute a citizen of another nation for misconduct whilst in space.

As space tourism becomes a reality and the commercial space industry grows, so might the need to prosecute space crime. Anticipatory planning and regulation would seem prescient; private companies that intend to carry people into space will require contracts with specific provisions for negligence and criminal behaviour. However, for now the legal framework remains untested.



**Joanne Wheeler MBE**  
Managing Partner  
Tel: +44 (0) 7866 527759  
joanne.wheeler@wearealden.com



**Vicky Jeong**  
Associate (Admitted in New York)  
Tel: +44 (0) 7823 353469  
vicky.jeong@wearealden.com