



LEGAL EASE

Aviation Law Made Simple

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International Debate Rages Concerning Availability of Maintenance Manuals

The world's aviation regulatory authorities tackled some important data issues during the recent 2010 International Safety Meeting between the Federal Aviation Administration and the European Aviation Safety Agency in New Orleans. Manufacturers and repair stations debated the scope and availability of instructions for continued airworthiness, and the FAA and EASA weighed in with their own opinions.

Each year, this meeting provides an opportunity for aviation authorities from North America, Europe and Asia Pacific to gather together to discuss the important safety issues facing the global aviation community. Industry members use it as an opportunity to try to get the regulatory authorities to adopt safety agenda items favored by the proponents (that is, they lobby for their own preferred safety issues).

While much of the "business" of the conference takes place in the hallways, the formal panels generally represent the authorities discussing serious issues. One of the panels at this year's meeting focused on data availability issues facing the maintenance community.

Maintenance Manual and Repair Text Availability

Tom Howard of Chromalloy introduced the issue by explaining he believes it has become increasingly difficult for maintenance organizations to obtain certain instructions for continued airworthiness from the original equipment manufacturers publishing them.

Howard said he believes the position of government authorities has been that as long as the data has been provided to some parties in the aftermarket, it is "available" to the marketplace and any commercial limits on the ICAs are up to the parties. Howard said this approach to safety data runs the risk of permitting property claims to take precedence over important safety issues related to continued airworthiness.

Howard suggests OEM efforts to limit availability of maintenance manuals through recourse to intellectual property claims could undermine the safety purposes intended by such manuals. He also complained some OEM manuals are removing repairs and serviceability limits, which is making it impossible for repair stations to accomplish some repairs necessary to airworthiness.

Alan Eccleston of Rolls Royce joined Howard on the panel. Eccleston said this is a complex issue with no easy solutions. He said there are safety issues, data protection/integrity issues and intellectual property issues that all interact to impact the analysis of data availability. His position is that an OEM does not need to publish complete repair limits; instead, he believes it is sufficient for the OEM to merely publish serviceability limits, stating when articles must be removed from service.

Eccleston said the new business model for the industry is power-by-the-hour. He feels this model is a "win-win" for the engine OEM and for the operator because, if the engine is unreliable, the engine OEM bears the additional maintenance costs because he has pledged to provide certain service standards to the operator.

Eccleston said this model rewards efficiency because, if the engine is more reliable than expected (and thus inherently safer), the OEM has fewer unscheduled maintenance costs. In such a scenario, the engine manufacturer is a winner because of lower maintenance costs; the operator also is a winner because of more efficient operations.

..There still are serious claims on both sides of the debate — pitting intellectual property interests against safety issues when operators and maintenance facilities are unable to obtain copies of data necessary to permit maintenance of aircraft.

Eccleston rejected Howard's premise that protecting intellectual property is taking precedence over safety. While some repairs no longer are in the manuals, he said the service limits (which are necessary to safety) are available. Eccleston said these service limits tell operators when they need to take an aircraft, engine or component out of service and seek maintenance activities for the aircraft, engine or component.

While Howard suggested important safety data is being left out of some of today's manuals, Eccleston countered by saying, "All of the safety data is made available, and if the authorities don't think it is, then it is up to them to instruct us to make the data available."

During the Q&A period following the formal remarks, Walter Desrosier of GAMA said there is a lot of maintenance information not made part of the ICA; therefore, it is not made available to the operations and maintenance community.

Rebecca McPherson of the FAA Office of the Chief Counsel said information that is not part of the ICA does not have to be made available. Others suggested the core of the debate is, "What is required to be in the ICA?"

Joe White of the Air Transport Association said this issue has been around for a while, but the current trend — toward less information in the manuals — is causing concern. The problems in obtaining data are not limited to complex technology, White said. He said he is aware of repair data that is not related to high or complex technology, but that the manufacturer still has restricted.

White said this is a safety issue because, when operators cannot track what specific work was accomplished on an aircraft part, the operator potentially is unable to meet its own airworthiness obligations. Howard said the operator needs to be able to see the applicable technical standards so the operator can know what the acceptable criteria are for the repair.

McPherson said the FAA has approached these claims on a case-by-case response basis, for now, and has left intellectual property issues to the parties and the courts to resolve.

The Elephant in the Room

Eccleston also lashed out at aftermarket modifications. "The elephant in the room is PMA," he said. He sug-

gested only an OEM can understand the impact of changes to a design.

While these comments clearly were meant to strike at PMA parts, his logic also applies to modifications made under third-party STCs or field approvals because these modifications also would be made outside of the control of the type-certificate holder.

In a separate panel, Eurocopter suggested EASA and FAA need to provide better controls on STCs to ensure multiple STCs do not cause compatibility issues, and suggested control of all STCs by the type-certificate holder might be a way to ensure STCs remain mutually compatible. (I offered the counterpoint to this argument, and discussed strategies by which the aftermarket could ensure safety itself).

Howard said some OEMs in the past have notified their operators they will not provide them with any technical support for parts in the vicinity of PMA parts and/or aftermarket repairs. He said Chromalloy is providing technical support to the operators for OEM products where the OEMs have refused to support the operators.

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One of the questions from the floor was, “When there are accident investigations, there is a need to cooperate. How is this being handled?”

Howard said Chromalloy is fully willing to share data to support accident investigation. Eccleston said his company policy is, they do not have the data on PMA parts, so when they identify the PMA part is the probable cause, they must discontinue their support. He did not address whether or not his company would be willing to cooperate with competitors on safety investigations.

McPherson said if the OEM is jeopardizing safety, the FAA is willing to address this and it is willing to withstand a challenge in the courts to promote safe-

ty. However, she added, the FAA has not seen a general safety problem that would give rise to a need to interfere with OEM intellectual property rights. McPherson said the FAA has refused in the past to intervene in intellectual property cases, and the agency has taken the position that the courts should decide some of the tough intellectual property issues arising from the industry.

What are the Regulators Doing?

Following the private sector presentations on these data issues, the regulatory authorities offered their observations.

EASA’s representative joked that he is pleased to hear PMAs, and not the regulators, are the elephant in the room.

Frederik Kämpfe of EASA believes this is a timely discussion for EASA because EASA is developing an important rulemaking activity to address ICAs. EASA’s MDM.056 rulemaking working group was tasked with answering several ICA questions — the answers are expected to improve and clarify European ICA requirements. The MDM.056 group expects to produce a final rule clarifying ICA requirements by the first quarter of 2012.

Kämpfe said existing rule EASA 21.A.61 requires ICAs be made available to the operator and to any person required to comply with the terms of the ICAs. “The intent of the regulation is to promote the availability and distribution of the information required for owners to ensure the airworthiness of their products,” he said.

McPherson said EASA and the FAA are “pretty much in synch.” Both regulatory models require the ICAs be produced and made available. McPherson recognized the business model for design approval holders has changed since the ICA regulations were created, which has put a strain on the rules. Changes include the development of more sophisticated products, which are more complicated to maintain.

The FAA/EASA panels are designed to permit debate and discussion of topics; they do not usually lead to any conclusions. This panel illustrated there still are serious claims on both sides of the debate — pitting intellectual property interests against safety issues when operators and maintenance facilities are unable to obtain copies of data necessary to permit maintenance of aircraft.

It is likely this will continue to be an issue, but it is important for everyone to recognize there are some clear lines drawn on the outer edges of the debate.

Theft of intellectual property is both a tort and a crime; however, there are limits to what is protected by intellectual property, and those limits often are narrower than the rhetoric might suggest. For example, a maintenance manual is not intrinsically a trade secret — information is only a trade secret when it contains actual secrets with economic value. Therefore, many manuals might not represent trade secrets that can be protected under current law.

On the other hand, while EASA and FAA regulations require some manuals be made available to operators and to those who might otherwise be required to comply with those manuals, this does not mean the manuals must be provided to everyone. The regulatory requirements are limited only to ICAs; they do not extend to maintenance procedures found outside the ICAs.

The existing FAA guidance also makes it clear this does not give a repair station the right to enter a market as a new entry without any customers and automatically demand the ICAs from the OEM publisher.

As Eccleston explained, the ICA debates represent serious, complicated issues that often are not susceptible to easy answers. But it appears both the FAA and EASA are committed to studying these issues and ultimately ensuring aircraft airworthiness is supported. □

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