

April 20, 2015

VIA E-MAIL

National Telecommunications and Information Administration
U.S. Department of Commerce
Attn: UAS RFC 2015
1401 Constitution Ave, NW Room 4725
Washington, D.C. 20230

Re: Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems, Docket No. 150224183-5183-01

Comments of the National Association of Broadcasters and the Radio Television Digital News Association

The National Association of Broadcasters (NAB)¹ and the Radio Television Digital News Association (RTDNA)² (together, the Commenters) welcome the opportunity to provide input to the National Telecommunications and Information Administration (NTIA) on issues raised in its request for public comment (the Request) on a new multistakeholder process aimed at developing privacy best practices for the commercial and private use of unmanned aircraft systems (UAS).³ As described in the Request, the goal of this process is to develop voluntary, consensus-driven best practices for privacy, accountability, and transparency issues regarding commercial and private UAS use in the national airspace (NAS). Commenters intend to participate in this process, focusing on the use of UAS for newsgathering by professional journalists. We submit these comments to help establish an efficient and effective structure for the multistakeholder engagement.

I. INTRODUCTION

The Commenters are fully committed to participating in the NTIA-convened multistakeholder process. Our paramount concern is that the goals and outcomes of this process do not unnecessarily restrict or penalize the important and protected newsgathering activities of news organizations. These organizations serve as surrogate eyewitnesses for citizens, and UAS have the potential to enhance the public's access to information through compelling and previously inaccessible photos and video. UAS particularly should improve news coverage of emergency situations to the benefit of the general public and government first responders, who both routinely turn to breaking news accounts for information during

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² RTDNA is the world's largest professional organization devoted exclusively to electronic journalism and represents local and network news directors and executives, news associates, educators, and students in broadcasting, cable, and other electronic media in over 30 countries.

³ 80 Fed. Reg. 11978 (Mar. 5, 2015).

emergencies. UAS also will generate a number of other benefits for the media industry, including smaller news organizations previously unable to utilize aerial newsgathering, by reducing the costs of aerial photography and by eliminating certain safety concerns.

Like any technology, however, UAS have the potential to be misused. A significant concern regarding domestic UAS relates to their possible impact on privacy. While this is a legitimate concern, it is not a novel one. UAS simply represent one more manifestation of the always complex intersection between technology and privacy.

As discussed in greater detail below, journalists have a long history of working cooperatively with lawmakers and regulators to appropriately balance the legitimate privacy concerns raised by new technologies with the benefits of new technology for important newsgathering activities. In fact, journalists previously have developed voluntary privacy guidelines to address, for example, the use of helicopters, high resolution satellites, telephoto lenses, hidden cameras, and directional microphones for newsgathering purposes. Journalistic uses of UAS would adhere to these existing codes and best practices, thereby mitigating privacy concerns. Moreover, there is no reason that existing state laws cannot adequately deal with any excesses in which the so-called paparazzi might seek to engage. Over time, these laws and their application have developed so as to appropriately balance legitimate privacy concerns with the constitutional protections afforded to the press.

Below, NAB and RTDNA offer suggestions to inform the NTIA-convened process. The Commenters also propose procedures most conducive to enabling productive multistakeholder discussions. The responses set forth herein provide the best path for a multistakeholder process leading to consensus-driven, voluntary best practices that will mitigate the most pressing privacy challenges while supporting innovation and furthering the dissemination of important information to the public.

II. UNMANNED AIRCRAFT CAN GREATLY ENHANCE NEWSGATHERING TO THE BENEFIT OF CONSUMERS

The public stands to benefit enormously from journalists' use of UAS. UAS have the currently-unrealized potential to facilitate better and more cost-efficient access to significant news events. Specifically, UAS have the ability to capture striking images and video, offering vantage points that previously only could be obtained by manned aircraft at far greater cost. Integrating UAS into the national airspace also would allow the media to deliver enhanced reporting to the public in a manner considerably safer than today's aerial newsgathering. For these reasons, news organizations and journalists eagerly anticipate incorporating UAS among the tools they use for newsgathering.

The significance of photos and video in newsgathering is self-evident. Journalists use both mediums to tell stories that inform, educate and sometimes even bring about social change. Photographs and video add context to a story, providing rich illustrations of details such as the scale of crowds at a political protest or the impact of natural disasters, among others.

Indeed, the information provided through visual images may be particularly important during emergencies. Audiences are naturally attracted to – and today expect – news stories to be accompanied by compelling visual content.

News organizations now generally rely on manned aircraft—namely, helicopters—to incorporate the unique and informative aerial perspective into their stories. On top of substantial procurement costs, operating a helicopter for news coverage costs approximately \$1,000 per hour, including the expense of personnel required to fly it.⁴ It is not surprising, then, that helicopters have been an early casualty of shrinking news budgets around the country.⁵ Comparatively, the UAS that most journalists would prefer to use are inexpensive. Highly reliable UAS systems can be acquired for far less than manned aircraft, enabling more extensive coverage and allowing for an expansion of aerial newsgathering and video production where it previously has been uneconomical. A small Parrot AR UAS, for example, which can fly a few hundred feet in the air for about fifteen minutes, costs only \$300.⁶ Cost-efficient UAS, therefore, would allow more news organizations, including smaller ones in small media markets, to offer aerial vantages under more conditions, to the ultimate benefit of consumers.

UAS hold additional advantages over manned aircraft. For example, UAS may be able to provide some perspectives that would be impossible to offer using news choppers. They can access hard-to-reach or dangerous areas, allowing increased versatility in newsgathering. In addition, UAS are much less noisy than manned aircraft, mitigating or eliminating helicopter noise.

UAS also would allow newsrooms across the country to bring more accurate and useful information to the public more safely than today's aerial newsgathering permits. Because UAS are unmanned, they raise no pilot and passenger safety considerations. Reporters and camera operators could cover stories with less risk, thereby improving their ability to report on a wide range of events such as fires, accidents, weather conditions, natural disasters, and conflicts, among others. UAS easily can fly over such events without risking lives. Moreover, UAS can be equipped with a wide array of sensors to gather additional useful data, such as data about weather, temperature, and other environmental information, that

⁴ See Andrew Dodson, TVNewsCheck, TV News Choppers Flying High Once Again, Aug. 8, 2013) available at <http://www.tvnewscheck.com/article/69563/tv-news-choppers-flying-high-once-again>. At the highest end, stations could pay about \$1.8 million annually. On the lower end, stations could shoot anywhere from 35 to 40 hours per month, which would cost nearly \$500,000 annually.

⁵ See *id.* (“But when the economy tanked in 2008, one of the first casualties was the helicopter.”).

⁶ See Best Buy, Parrot AR.Drone 2.0, available at http://www.bestbuy.com/site/searchpage.jsp?st=parrot+AR+drone+2.0&_dyncharset=UTF-8&id=pcat17071&type=page&sc=Global&cp=1&nrp=15&sp=&qp=&list=n&iht=y&usc=All+Categories&ks=960&keys=keys.

can be used to supplement the video recording and to bring more useful information to the public.

Together, these capabilities would permit news organizations to better disseminate dramatic footage and information that would serve the public and public safety. Images shot from UAS are the natural progression of aerial newsgathering. Internationally, UAS have been used to capture important footage of protests in Ukraine, typhoon damage in the Philippines, and Olympic events in Sochi, to name a few.⁷ Reporters in other countries also have utilized UAS to challenge significant limitations on access. In Venezuela, for example, UAS footage online bypassed the government's control of traditional media and contradicted official estimates of low numbers at anti-government rallies.⁸ The public benefit from such stories and footage cannot be understated.

III. PROFESSIONAL NEWSGATHERERS HAVE A LONG TRACK RECORD OF SERVING THE PUBLIC WHILE PROTECTING CONSUMER PRIVACY

Like other powerful tools, the Commenters acknowledge that UAS could be employed by some in a manner that causes apprehension about invasion of privacy. This is a legitimate concern and one which NTIA should explore through the multistakeholder process. Journalists, however, already are equipped to recognize and address privacy issues raised by new technologies, including UAS. In fact, journalists have extensive experience working cooperatively with lawmakers to achieve the appropriate balance between legitimate privacy concerns and facilitating the dissemination of critical news and information to the public, particularly as technologies evolve and become a routine and important part of newsgathering.

Indeed, misgivings by the public over new technologies are nothing new. Camera-equipped UAS follow a long line of technological advancements in newsgathering, each of which spawned its own form of public apprehension. In 1890, for example, Warren and Brandeis pointed to the invention of "instantaneous photography" as a new challenge to privacy.⁹ Although photography had been around for many years before Warren and Brandeis penned their article, the equipment was expensive, cumbersome, and complicated to use until the Eastman Kodak Company introduced the "snap camera," a handheld camera small and cheap enough for use by the general public.¹⁰ The sudden and widespread use of the camera caused the public to react with fear. Many places posted signs banning the use of

⁷ The Economist, "Eyes in the Skies" (Mar. 29, 2014) *available at* <http://www.economist.com/news/international/21599800-drones-often-make-news-they-have-started-gathering-it-too-eyes-skies>.

⁸ *Id.*

⁹ See Samuel Warren and Louis D. Brandeis, "The Right to Privacy," 4 Harv. L. Rev. 193 (1890).

¹⁰ David Lindsay, PBS, "The Kodak Camera Starts a Craze," *available at* <http://www.pbs.org/wgbh/amex/eastman/peopleevents/pande13.html>.

cameras, and many newspapers ran stories about the dangers of public photography.¹¹ More recently, the use of helicopters, high resolution satellites, telephoto lenses, and directional microphones as newsgathering tools all have sparked their own form of public alarm. Despite initial apprehension, journalism and the public ultimately have benefited from these innovations.

The news industry has responded to rapidly evolving technology by developing and voluntarily adopting industry best practices and guidelines to protect privacy. Journalists are justifiably proud of their record of adhering to these voluntary guidelines, and the use of UAS would be no exception. Successful examples of industry self-regulatory codes of conduct and best practices that might extend to UAS use include the following:

RTDNA Code of Ethics. The current version of the RTDNA Code of Ethics was adopted in 2000.¹² Its preamble states that “[p]rofessional electronic journalists should operate as trustees of the public, seek the truth, report it fairly and with integrity and independence, and stand accountable for their actions.”¹³ It covers six broad topics, including public trust, truth, fairness, integrity, independence, and accountability. Under these headings, the Code of Ethics includes provisions, among others, that require professional electronic journalists to: (i) recognize that their first obligation is to the public; (ii) treat all subjects of news coverage with respect and dignity, showing particular compassion to victims of crime or tragedy; (iii) exercise special care when children are involved in a story and give children greater privacy protection than adults; (iv) use technological tools with skill and thoughtfulness, avoiding techniques that skew facts, distort reality, or sensationalize events; and (v) use surreptitious newsgathering techniques, including hidden cameras or microphones, only if there is no other way to obtain stories of significant public importance and only if the technique is explained to the audience. The Code of Ethics also requires professional electronic journalists to recognize that they are accountable for their actions to the public, the profession, and themselves. Accordingly, professional electronic journalists should: (i) respond to public concerns; (ii) explain journalistic processes to the public, especially when practices spark questions or controversy; and (iii) recognize that professional electronic journalists are duty-bound to conduct themselves ethically.

Notably, for the first time since the current Code was approved in 2000, RTDNA is proposing a revision of the Code.¹⁴ The proposed revision would include provisions stating that “deception in newsgathering, including surreptitious recording, conflicts with journalism’s commitment to truth” and that preserving privacy “deserve[s] consideration” and should be

¹¹ *Id.*

¹² Radio Television Digital News Association, Code of Ethics, *available at* http://www.rtdna.org/content/rtdna_code_of_ethics#.VS7KZSHBzRZ (RTDNA Code of Ethics).

¹³ *Id.*

¹⁴ Radio Television Digital News Association, “RTDNA Proposes Revised Code of Ethics” (Sep. 4, 2014) *available at* http://rtdna.org/article/rtdna_proposes_revised_code_of_ethics#.VS7dHiHBzRY.

“balanced against the importance or urgency of reporting.”¹⁵ The Revised Code was proposed at Excellence in Journalism 2014 in Nashville, Tennessee.

National Press Photographers Association (NPPA) Code of Ethics. The NPPA Code of Ethics covers visual journalists and those who manage visual news productions.¹⁶ Like the RTDNA Code, the NPPA Code of Ethics recognizes in its preamble that visual journalists operate as trustees of the public. The preamble further recognizes that “photographs can also cause great harm if they are callously intrusive or are manipulated.”¹⁷ The Code is intended to promote quality in all forms of visual journalism and to strengthen public confidence in the profession. It calls on visual journalists to “treat all subjects with respect and dignity” and to “intrude on private moments of grief only when the public has an overriding and justifiable need to see.”¹⁸ The Code also urges visual journalists to “strive to be unobtrusive and humble in dealing with subjects.”¹⁹

American Society of News Editors (ASNE) Statement of Principles. The ASNE Statement of Principles originally was adopted in 1922 as the “Canons of Journalism,” and was revised to its current form in 1975.²⁰ It includes six articles that cover responsibility, freedom of the press, independence, truth and accuracy, impartiality, and fair play. The Principles recognize that the primary purpose of gathering and distributing news and opinion is to serve the general welfare. Accordingly, the Principles require journalists to “respect the rights of people involved in the news, observe the common standards of decency and stand accountable to the public for the fairness and accuracy of their news reports.”²¹

Associated Press Media Editors (APME) Statement of Ethical Principles. The APME Statement of Ethical Principles was adopted in 1994 as a revision to the APME Code of Ethics.²² It serves as a model against which news and editorial staff members can measure their performance. Recognizing that newspapers should be fair, accurate, honest, responsible, independent, and decent, the Statement includes a provision that “[t]he

¹⁵ *Id.*

¹⁶ National Press Photographers Association, Code of Ethics, available at https://nppa.org/code_of_ethics (NPPA Code of Ethics).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ American Society of News Editors, Statement of Principles, available at <http://asne.org/content.asp?pl=24&sl=171&contentid=171> (ASNE Statement of Principles).

²¹ *Id.*

²² Associated Press Media Editors, Statement of Ethical Principles, available at <http://www.apme.com/?page=EthicsStatement> (APME Statement of Ethical Principles).

newspaper should uphold the right of free speech and freedom of the press and should respect the individual's right to privacy."²³

Society of Professional Journalists (SPJ) Code of Ethics. The Code declares four principles as the foundation of ethical journalism and encourages their use by all people in media.²⁴ The four principles are to "seek truth and report it," "minimize harm," "act independently," and "be accountable and transparent." Under these principles, journalists should: (i) avoid undercover or other surreptitious methods of gathering information unless traditional, open methods will not yield information vital to the public; (ii) balance the public's need for information against potential harm or discomfort; (iii) show compassion for those who may be affected by news coverage and use heightened sensitivity when dealing with juveniles, victims of sex crimes, and sources or subjects who are inexperienced or unable to give consent; (iv) recognize that legal access to information differs from an ethical justification to publish or broadcast; (v) realize that private people have a greater right to control information about themselves than public figures; (vi) avoid pandering to lurid curiosity; and (vii) encourage a civil dialogue with the public about journalistic practices, coverage, and news content.

IV. THE GOALS AND OUTCOMES OF THE MULTISTAKEHOLDER PROCESS MUST NOT IMPINGE ON THE FIRST AMENDMENT RIGHT TO GATHER NEWS

Commercial and private operation of UAS will enjoy strong First Amendment protections for gathering information in public spaces. As such, attempts to regulate those who use UAS for newsgathering purposes raise serious First Amendment concerns. As the Supreme Court recognized in its 1972 *Branzburg v. Hayes* decision, "[w]ithout some protection for seeking out the news, freedom of the press could be eviscerated."²⁵ Moreover, the freedom to gather information is not limited to the press. In a 2011 ruling upholding the right of a citizen to record the actions of police in a public space, the First Circuit wrote that "[i]t is firmly established that the First Amendment's aegis extends further than the text's proscription on laws 'abridging the freedom of speech, or of the press,' and encompasses a range of conduct related to the gathering and dissemination of information."²⁶

Accordingly, in convening a multistakeholder process to develop privacy best practices, NTIA should work to ensure that multistakeholder outcomes do not unduly restrict or penalize the important and protected newsgathering activities of media organizations. NTIA's process should be guided by the overarching principle that the government must refrain from actions

²³ *Id.*

²⁴ Society of Professional Journalists, Code of Ethics, available at <http://www.spj.org/ethicscode.asp> (SPJ Code of Ethics).

²⁵ 408 U.S. 665, 681 (1972).

²⁶ *Glik v. Cunniffe*, 655 F.3d 78, 82 (2011).

adversely impacting the ability of journalists to bring important news stories to the American public. If not carefully considered and drafted, new and additional privacy guidelines could potentially chill free speech activities, particularly breaking news reporting, which, by definition, depends on the rapid dissemination of captured sights and sounds.

Here, there is no compelling interest sufficient to warrant government intervention beyond the adoption of appropriate, voluntary best practices. State laws adequately deal with the privacy concerns this multistakeholder process would address. State legislatures and courts have adopted and interpreted a range of laws flexible enough to respond to issues raised by emerging technologies, including UAS use by commercially motivated individuals who are unlikely to adhere to the codes of conduct described above. More specifically, dozens of existing state laws ban trespassing, invasion of privacy, nuisance, electronic eavesdropping, wiretapping, stalking, assault and reckless endangerment, without special favor to the public or special sanction against the press. A long line of cases evidences the willingness of the judicial system to prosecute and punish violators. Certainly, these laws would apply to UAS in the same way they have applied to other technologies were UAS used, for example, to invade homes whose occupants had taken reasonable steps to shield themselves from prying eyes. NTIA's process should not seek to supplant, or otherwise provide a means for superseding, with respect to UAS, the carefully crafted legal paradigm that balances the rights of individuals who have a reasonable expectation of privacy against the fundamental First Amendment rights of the press.

V. COMMENTS ON THE NTIA MULTISTAKEHOLDER PROCESS

A. Stakeholders Should Draw from Existing Industry Codes of Conduct and Best Practices as a Starting Point for any New Privacy Best Practices

In its Request, NTIA rightfully recognizes the wide range of potential applications of UAS for commercial purposes. UAS will be able to provide a variety of commercial services less expensively than manned aircraft and increasingly will be employed for tasks such as tower and pipeline inspections, surveying, crop spraying, and wildlife tracking, to name a few. They also can be used to assist rescue efforts in the aftermath of a natural disaster or to provide Internet service to remote areas. UAS may well dominate the future of aviation as thoroughly as manned aircraft have dominated its past.

For many commercial uses, UAS do not raise unique or heightened privacy concerns beyond those raised by non-UAS platforms that provide the same or similar service. This is true of UAS use for newsgathering purposes. UAS-based aerial photography does not raise unique privacy issues compared to manned aerial photography. Rather, UAS will make such photography less expensive to procure and operate. As stated above, journalists have a long history of balancing their use of new technologies for newsgathering purposes—including helicopters, high resolution satellites, telephoto lenses, and directional microphones—with legitimate privacy concerns by adhering to the existing codes of conduct and best practices detailed in Section III and by complying with existing state laws.

To begin building consensus, stakeholders should consider the existing industry guidelines—including the RTDNA Code of Ethics, NPPA Code of Ethics, the ASNE Statement of Principles, the APME Statement of Ethical Principles, and the SPJ Code of Ethics—as a starting point. These voluntary guidelines have promoted sound privacy practices within the news industry while also ensuring that important news events are brought to the public in a timely and complete manner. As such, the voluntary newsgathering self-regulatory codes of conduct and best practices detailed above will serve as an excellent baseline starting point for multistakeholder outcomes for UAS. Given Commenters’ familiarity with these existing guidelines and their extensive knowledge of the electronic news industry generally, we intend to play a leading role in this process.

In developing privacy best practices, it also will be critical to “future proof” multistakeholder outcomes. What may be appropriate self-regulatory practices for a particular industry today may be less relevant to other industries now or in the future depending on the industry segment, technology employed, and business plans of the entities using UAS. Participating stakeholders should balance reasonable privacy expectations with commercial demand for ease of use and ready access to UAS. Otherwise, inflexible or overly prescriptive guidelines could frustrate the commercial deployment of UAS services, particularly as UAS technologies continue to develop.

B. Transparent and Accountable Use of UAS Will Enhance Privacy

As described in the Request, the NTIA-convened process is intended to promote transparent and accountable UAS operation by companies and individuals. Transparency and accountability are bedrock principles of sound journalism. In fact, they are universally recognized in existing voluntary codes of conduct and best practices, as shown in Section III.

Again, these voluntary self-regulatory guidelines should serve as an excellent baseline starting point. Guidelines adopted by RTDNA, SPJ, ASNE, APME, and NPPA all recognize that journalists should operate as trustees of the public and, as such, should be accountable and transparent. The SPJ Code of Ethics, for example, calls on journalists to be transparent about journalistic practices, coverage, and news content.²⁷ The RTDNA Code of Ethics provides that journalists “should use technological tools with skill and thoughtfulness” and should avoid surreptitious newsgathering techniques unless “there is no other way to obtain stories of significant public importance and only if the technique is explained to the audience.”²⁸ As stated in the RTDNA Code of Ethics, journalists “should recognize that they are accountable for their actions to the public, the profession, and themselves.”²⁹

²⁷ See SPJ Code of Ethics.

²⁸ See RTDNA Code of Ethics.

²⁹ *Id.*

Journalists would continue to adhere to these transparency and accountability standards in using UAS for newsgathering. As the Request recognizes, UAS also may present distinct issues for transparency and accountability. Identifying the entities that operate particular UAS, the purposes of UAS flights, and the data practices associated with UAS operations will further transparent operation. Routine reports, as suggested in the Request, however, would be unduly burdensome and would provide little—if any—benefit.

C. Multistakeholder Discussions Should be Inclusive, Transparent, and Efficient

In its Request, NTIA seeks comment on the structure of its multistakeholder engagement process. Specifically, NTIA asks how it should structure the group's work and whether working groups should address portions of the task. NTIA also asks whether stakeholders should distinguish between micro, small, and large UAS platforms.

Careful consideration and articulation of the structure of the multistakeholder process is critical to ensuring its success. Whether or not NTIA establishes working groups to address portions of the task, the NTIA-convened process should be inclusive, transparent, and efficient. As with NTIA's past processes, essential information regarding activities should be accessible to all parties. If NTIA does choose to establish separate working groups to discuss privacy, transparency, and accountability, it should hold the multistakeholder meetings sequentially to permit as broad participation as possible in the process. Stakeholders should be given the opportunity to volunteer for a working group or groups.

It also could be helpful for stakeholders to distinguish between micro, small, and large UAS platforms. As technology improves, micro UAS could be sufficient for many uses, including newsgathering and video production. Because smaller or larger platforms potentially could raise different issues for privacy, transparency, and accountability, it may be appropriate to distinguish between UAS platforms in developing privacy best practices.

VI. CONCLUSION

The NTIA-convened multistakeholder process will serve as an important opportunity to reassure the public of the news industry's longstanding commitment to consumer privacy. The Commenters look forward to participating in the multistakeholder collaboration. The Commenters also remain committed to working with NTIA, as well as other stakeholders, to continue promoting a reasonable and effective privacy framework that encourages innovation and consumer confidence

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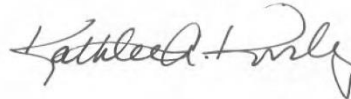
Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

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