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Submitted on Behalf of:
Cox Media Group, LLC

*In support of the Comment
of the News Media Coalition*

April 20, 2015

Via e-mail and Courier

UASrfc2015@ntia.doc.gov
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue
NW., Room 4725
Attn: UAS RFC 2015
Washington, DC 20230

Re: Docket No. 150224183–5183–01

Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems

In response to the National Telecommunications and Information Administration's request for public comment regarding Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems, 80 Fed. Reg. 43, 11978 (Mar. 5, 2015), Cox Media Group, LLC joins in support of the attached Comment filed today by the News Media Coalition.

Cox Media Group, LLC is an integrated broadcasting, publishing, direct marketing and digital media company. Its operations include 14 broadcast television stations and one local cable channel, 59 radio stations, 24 regional and local U.S. newspapers, and more than 100 digital services.

The News Media Coalition is comprised of: Advance Publications, Inc. A.H. Belo Corp., American Broadcasting Companies, Inc., American Society of Media Photographers, The Associated Press, Cable News Network, Inc., Capitol Broadcasting

April 20, 2015

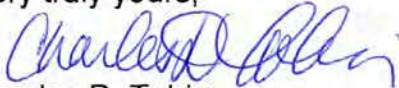
Page 2

Co., Cox Media Group, LLC, Fusion Media Network, LLC, Gannett Co., Inc., Getty Images (US), Inc., Gray Television Group, Inc., Media Law Resource Center, MPA – the Association of Magazine Media, National Press Photographers Association, NBCUniversal Media, LLC, The New York Times Company, Reporters Committee for Freedom of the Press, The E.W. Scripps Company, Sinclair Broadcast Group, Inc., Society of Professional Journalists, Thomson Reuters (Markets) LLC, and WP Company LLC.

In all, the News Media Coalition represents:

- The nation's leading television and cable networks;
- The leading national newspapers;
- 336 television stations serving local U.S. markets;
- 118 regional and local U.S. newspapers;
- 97 U.S. radio stations;
- Content providers for hundreds of online and mobile platforms and devices;
- The leading wire services in the U.S. and abroad;
- The largest stock film and photo agencies worldwide;
- The leading professional association of visual journalists;
- The country's premier trade association representing independent photographers;
- The leading membership association for content providers in all media, supported by over 115 media members and 200 law firms worldwide;
- The premier trade association of the magazine media industry;
- The nation's largest and most broad-based journalism organization dedicated to encouraging the free practice of journalism;
- A Washington D.C.-based nonprofit that, for more than 40 years, has provided free legal resources, support and advocacy to protect the First Amendment and freedom of information rights of journalists.

Very truly yours,



Charles D. Tobin
HOLLAND & KNIGHT LLP

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Cox Media Group, LLC

*In support of the Comment
of the News Media Coalition
(encl)*

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News Media Coalition Comprised Of:**

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American Society of Media Photographers
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Cable News Network, Inc.
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**Re: Docket No. 150224183–5183–01
Privacy, Transparency, and Accountability Regarding Commercial and
Private Use of Unmanned Aircraft Systems**

Introduction

The News Media Coalition, comprised of 22 news media organizations, submits this Comment on behalf of the news executives, journalists, viewers, readers and web and social media users in the United States. The News Media Coalition includes:

- The nation's leading television and cable networks;
- The leading national newspapers;
- 322 television stations serving local U.S. markets;
- 94 regional and local U.S. newspapers;
- 38 U.S. radio stations;
- Content providers for hundreds of online and mobile platforms and devices;
- The leading wire services in the U.S. and abroad;
- The largest stock film and photo agencies worldwide;
- The leading professional association of visual journalists;
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- A Washington D.C.-based nonprofit that, for more than 40 years, has provided free legal resources, support and advocacy to protect the First Amendment and freedom of information rights of journalists.

Representing a wide cross-section of the news professionals who provide Americans each day with the news they need, the companies in the News Media Coalition compete in many different markets. But they have come together for this Comment, as with other recent efforts regarding small unmanned aircraft systems ("UAS"), in the unified belief that privacy is not a competitive issue.

For the past year, the News Media Coalition has worked cooperatively with the federal government toward development of statutes, regulations, industry training, and professional best practices for the safe gathering of news by UAS, while at the same time maintaining the existing legal framework for privacy protection. The News Media Coalition welcomes the opportunity to work with the National Telecommunications and Information Administration ("NTIA") and other stakeholders with respect to privacy issues related to UAS.

The News Media Coalition firmly believes that a legal environment for safe UAS newsgathering can be developed that will further the public's First Amendment interest

in the timely receipt of information of public concern and the First Amendment rights of journalists to gather news, while at the same time protecting privacy interests.

With these compelling public interests in mind, the News Media Coalition respectfully offers this Comment to the NTIA's request for public comment regarding Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems, 80 Fed. Reg. 43, 11978 (Mar. 5, 2015) to address privacy issues raised by the operation of UAS for news gathering.

Comment

The current privacy discussion in many ways echoes the concerns expressed more than 125 years ago, when Kodak introduced its Brownie camera, the first affordable portable camera.¹ Just as those concerns have become quaint history over the passage of time, the News Media Coalition is confident that — as the public becomes acclimated to the newer forms of visual journalism and the public benefit of the new technologies — UAS photography will become familiar and benign to most people.

Moreover, state tort laws, which govern civil privacy issues, and state criminal statutes, which criminally punish invasive physical and electronic intrusions, have evolved over time to encompass and address each new form of technology. Robust, extensive and well-established state privacy laws already protect privacy. These laws will apply to UAS photography as they do to other forms of conduct, while, at the same time, they will safeguard the public's right to receive information and journalists' First Amendment rights to report the news.

The News Media Coalition therefore believes no new technology-specific federal legal framework to address UAS privacy issues is warranted or wise.

Historical Development of Privacy Laws and Photography

When Kodak introduced the Brownie, many places posted signs banning the use of cameras.² One newspaper warned "Beware the Kodak. . . . The sedate citizen can't indulge in any hilarity without incurring the risk of being caught in the act and having his photography passed among his Sunday School children."³ "In Britain, young men reportedly formed a 'Vigilance Association'—'for the purpose of thrashing the cads with cameras who go about at seaside places taking snapshots of ladies emerging from the deep.'"⁴

¹ See David Lindsay, *The Kodak Camera Starts a Craze*, *The Wizard of Photography*, <http://www.pbs.org/wgbh/amex/eastman/peoplevents/pande13.html>

² *Id.*

³ Clive Thompson, *The Invention of the "Snapshot" Changed the Way We Viewed the World*, *Smithsonian Magazine*, September 2014, available at <http://www.smithsonianmag.com/innovation/invention-snapshot-changed-way-we-viewed-world-180952435/?no-ist=&page=2>.

⁴ *Id.*

The early development of the privacy law began to address the public fear that the "sensationalistic press" would use cameras to eviscerate privacy. At the same time, the law continued to preserve the quintessentially open nature of society in the United States. Most famously, in 1890 Louis D. Brandeis (later a U.S. Supreme Court Justice), along with Samuel D. Warren, wrote the watershed Harvard Law Review article titled "The Right to Privacy."⁵ This article formed the basis for modern tort law related to privacy, and even from this early time, recognized that certain public conduct was not "private," and capturing it on film therefore should not be protected by privacy law.⁶

Robust State Laws Will Sufficiently Remedy UAS Privacy Concerns While Protecting the First Amendment Right to Gather News

Civil and criminal law, in the century and a quarter since Warren and Brandeis wrote, has carefully developed to balance the openness our First Amendment reflects with the right of the people to their reasonable expectations of privacy.

In the context of civil actions, common law privacy remedies, chiefly, the torts of "intrusion upon seclusion"⁷ and the "public disclosure of private facts,"⁸ adequately address any concerns for either the manner of the newsgathering or the content of any publication of photography, whether by traditional cameras, camera phones, telephoto lenses or UAS photography:

- The tort of **intrusion upon seclusion** provides for civil damages when a person "intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns," in a manner in which "the intrusion would be highly offensive to a reasonable person."⁹
- The tort of **public disclosure of private facts** remedies the publication of a private fact, without consent, that would be highly offensive to the reasonable person and that is not a matter of legitimate public concern.¹⁰

⁵ Samuel Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890), available at <http://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/the-right-to-privacy>; see also Leah Burrows, *To be let alone: Brandeis foresaw privacy problems*, BrandeisNOW, July 24, 2013, <http://www.brandeis.edu/now/2013/july/privacy.html>.

⁶ See *Right to Privacy* at 214-18.

⁷ Restatement (Second) of Torts § 652B, cmt. B (1977) ("The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or tapping his telephone wires.")

⁸ Restatement (Second) of Torts § 652D (1977); see also *Shulman v. Group W Productions, Inc.*, 955 P.2d 469 (Cal. 1998).

⁹ *Supra* note 7.

¹⁰ *Shulman*, 955 P.2d at 478.

- These torts have been applied to technological intrusions such as use of cameras in a private location,¹¹ photographing and videotaping from a distance,¹² search of computer files on a work computer and use of spyware to intercept electronic communication¹³ search of personal email,¹⁴ tapping telephones,¹⁵ and making harassing phone calls,¹⁶ as well as content gathered from a distance by a vehicle to obtain an otherwise unavailable perspective, such as by helicopter¹⁷ and by boat.¹⁸
- State criminal laws, prohibiting unlawful wiretaps, trespassing, stalking, harassment, and Peeping Toms¹⁹ are vigorously applied by prosecutors and

¹¹ *Benitez v. KFC Nat'l Mgmt. Co.*, 714 N.E.2d 1002 (Ill. App. Ct. 1999) (camera placed in restroom).

¹² *Souder v. Pendleton Detectives*, 88 So. 2d 716 (La. App. 1956) (using camera with telescopic lens to photograph bedroom from neighboring house).

¹³ *Muick v. Glenayre Electronics*, 280 F.3d 741, 743 (7th Cir. 2002) ("Not that there can't be a right of privacy . . . in employer-owned equipment furnished to an employee for use in his place of employment. . . . But Glenayre had announced that it could inspect the laptops that it furnished for the use of its employees, and this destroyed any reasonable expectation of privacy that Muick might have had and so scotches his claim."); see also *Shefts v. Petrakis*, 758 F. Supp. 2d 620, 633 (C.D. Ill. 2010) ("whether Plaintiff had a reasonable expectation of privacy in the communications he sent and received on the Access2Go network depends upon whether Access2Go had a policy in place regarding the monitoring of such communications, as well as whether Plaintiff was aware that Petrakis or others at Access2Go may be monitoring his activities.")

¹⁴ *Mintz v. Mark Bartelstein & Assocs. Inc.*, 906 F. Supp. 2d 1017, 1034 (C.D. Cal. 2012) ("Ames deliberately accessed Plaintiff's Gmail account without permission, opened several emails, and even read their contents, including the CAA agreement. Indeed, this conduct is so serious and offensive that the California legislature subjects the perpetrator to criminal liability under California Penal Code § 502. Faced with the foregoing, no reasonable jury could find that the invasion was not an egregious breach of social norms.")

¹⁵ *Rhodes v. Graham*, 238 Ky. 225, 37 S.W.2d 46 (1931) ("The evil incident to the invasion of the privacy of the telephone is as great as that occasioned by unwarranted publicity in newspapers and by other means of a man's private affairs for which courts have granted the injured person redress. . . . Wire tapping is akin to eavesdropping, which was an indictable offense at common law, and while it has not been made a punishable offense by statute in this state")

¹⁶ *Housh v. Peth*, 165 Ohio St. 35, 41 133 N.E.2d 340, 344 (1956) ("[T]he conduct of the defendant falls outside the bounds of reasonable methods which may be pursued in an effort to collect a debt, and is actionable as an invasion of plaintiff's right of privacy.")

¹⁷ See e.g. *Nat'l Org. For Reform of Marijuana Laws (NORML) v. Mullen*, 608 F. Supp. 945 (N.D. Cal. 1985) (enjoining warrantless surveillance by helicopter); see also *State v. Davis*, 2014-NMCA-042, 321 P.3d 955, 962 cert. granted, 324 P.3d 376 (N.M. 2014) (in criminal context, holding that aerial survey by helicopter was a search which required a warrant under New Mexico law); but see *California v. Ciraolo*, 476 U.S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986) and *Dow Chemical Co. v. U.S.*, 476 U.S. 227, 106 S. Ct. 1819, 90 L. Ed. 2d 226 (1986) (both interpreting limits of a permissible search under the Fourth Amendment).

¹⁸ *Wolfson v. Lewis*, 924 F. Supp. 1413, 1428 (E.D. Pa. 1996) (Defendants anchored motor boat 50-60 yards from home with a "'shotgun mike', a television camera equipped with zoom lenses and a mounted microphone, a sound mixer, headsets, and binoculars.")

¹⁹ See e.g. *Ariz. Rev. Stat. Ann. §§ 13-3005, 13-3012(9), 13-2923* (2014); 18 Pa. Cons. Stat. Ann. § 5703 (2014); *Ga. Code Ann. § 16-11-61* (2014); *N.Y. Penal Law § 240.25*.

courts to punish people abusing technologies to invade people's reasonable expectations of privacy.²⁰ Punishment for egregious violations can be severe.²¹

State laws also safeguard the First Amendment rights of journalists to gather the news, and the public's right to receive the news, by firmly protecting visual journalism in public places.²² Federal and state courts applying these state laws have thus developed a robust body of case law balancing the right to privacy against the constitutional protections for the free press.

Conclusion

For more than a century, state privacy laws have evolved across all technologies and platforms to protect reasonable expectations of privacy while safeguarding First Amendment freedoms. The existing framework of state laws will apply equally well to UAS. In light of this, no new federal privacy bureaucracy with a new set of technology-specific federal privacy regulations is necessary.

The News Media Coalition looks forward to working with the NTIA and other stakeholders with respect to newsgathering and privacy.

Very truly yours,



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HOLLAND & KNIGHT LLP

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²⁰ See e.g. Deb Belt, *\$20M Illegal Taping Lawsuit Filed Against Rams Head Group, Owner*, Apr. 1, 2015, available at <http://patch.com/maryland/elkridge/20m-illegal-taping-lawsuit-filed-against-rams-head-illegal-group-owner-0> (recent "peeping tom" criminal prosecution and a \$20,000,000 claim in civil class action).

²¹ Brooks Barnes, *Pellicano Sentenced to 15 Years in Prison*, N.Y. TIMES, Dec. 15, 2008, available at http://www.nytimes.com/2008/12/16/business/media/16pellicano.html?_r=0.

²² State constitutional protections are similar to the First Amendment to U.S. Constitution; see e.g. Cal. Const. art. I, § 2 ("A law may not restrain or abridge liberty of speech or press.") (California); N.Y. Const. art. I, § 8 ("[N]o law shall be passed to restrain or abridge the liberty of speech or of the press.") (New York); Tex. Const. art. I, § 8 ("[N]o law shall ever be passed curtailing the liberty of speech or of the press.") (Texas); see also *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939) (addressing political demonstrations, but broad public right to public access provides reporters with equal access to gather news in public).

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