April 20, 2015

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 4725
Washington, D.C. 20230

Re: Privacy, Transparency, and Accountability Issues Associated with Commercial
        and Private Use of Unmanned Aircraft Systems

The Association of American Universities ("AAU") and the Association of Public Land-Grant Universities ("APLU") appreciate the opportunity to share our perspectives with the Department of Commerce National Telecommunications and Information Administration ("NTIA") regarding privacy, transparency, and accountability issues associated with the commercial and private use of unmanned aircraft systems ("UAS").

The AAU is a non-profit organization that represents 62 leading public and private research universities in the United States and Canada. Founded in 1900 to advance the international standing of U.S. research universities, AAU focuses on issues that are important to research-intensive universities, including funding for research, research policy issues, and graduate and undergraduate education. AAU's member universities are on the leading edge of innovation, scholarship, and solutions that contribute to the nation's economy, security and well-being.

The APLU is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities in the United States, Canada, and Mexico. The APLU's membership consists of 238 public research universities, land-grant institutions, state university systems, and affiliated organizations. APLU's work is focused on three pillars: (1) degree completion; (2) scientific research; and (3) expanding engagement.

Together, the APLU and AAU represent over 200 higher education institutions in the United States, which provide education to a substantial number of undergraduate and graduate students and conduct most of the nation's basic research.

Our institutions have strong interest to take advantage of the significant benefits of UAS, as well as to research their potential to increase America's competitiveness and enhance the social good. Across the country, our universities are seeking to utilize UAS to improve research and development efforts, inspect infrastructure, and teach students. The use of UAS can aid in our universities' research in the fields of animal health, plant toxicology, entomology, engineering, architecture, aviation, sustainable nutrient management, soil science, biochemistry, and aerospace engineering. Our universities' research on these issues support the work of federal agencies, including NASA, the U.S. Department of Agriculture, the Department of Defense, the Department of Energy, and the National Science Foundation, along with state agencies and localities. In addition to utilizing UAS themselves, our universities' faculty experts are studying issues ranging from aviation to safety to privacy—issues particularly relevant to the emerging public debate on the use of UAS.

For these reasons, we have urged the expeditious fulfillment by the Federal Aviation Administration ("FAA") of its Congressional mandate, established in the FAA Modernization and Reform Act of 2012, to develop a plan to safely integrate UAS into the National Airspace System ("NAS"). We look forward to commenting separately on the FAA's recent publication of its Notice of Proposed Rulemaking ("NPRM") that would allow small UAS to operate in the NAS. And we have supported the desire of several of our member universities who have sought public Certificate of Authorizations ("COAs") or Section 333 exemptions to operate UAS in the NAS before the FAA's proposed rule becomes final.

While we are excited about the potential benefits of UAS, we also worry that companies or individuals could use UAS to violate the privacy of faculty, staff or students on campus. The American public has been vocal about its own privacy fears associated with UAS use, and we believe a national conversation on these issues is an essential step forward. We therefore applaud the White House for directing in its recent Presidential Memorandum that NTIA establish a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private UAS use in the NAS. This multi-stakeholder process will be an important opportunity to foster public trust associated with the use of UAS, and it is critical to the success of this industry.

Given our strong equities in the UAS arena, thank you for the opportunity to provide these comments. In particular, we have thoughts on the proper scope for the NTIA best practices, the structure of the working groups, and privacy, transparency, and accountability issues.

SCOPE OF NTIA BEST PRACTICES

We believe that universities and commercial entities are differently situated with varying motives for data collection, and should therefore be treated separately as part of any UAS policymaking regime, including the NTIA multi-stakeholder process. Universities are inherently different from commercial users in a few significant ways.

First, universities focus on research and instructional use of UAS for the benefit of society, whereas commercial entities are motivated by profit margins. This is relevant because financial motivations for invasions of individual privacy are not present in the university context.

Second, universities and commercial entities operate under different legal and policy frameworks. Universities operate under a comprehensive web of laws, rules, regulations, policies and guidance that already regulate the behavior of faculty, staff and students on campus. These rules protect against privacy harms and other violations on campus—including any violations associated with the use of UAS. As an example of this, universities utilize an Institutional Review Board ("IRB") process to review and approve research by faculty involving human subjects. The IRB process includes established protections to ensure the confidentiality and anonymity of data collected by researchers, including that collected by UAS. In addition, universities have technology-neutral and platform-neutral data retention and electronic privacy policies that apply to the collection of data by UAS. Universities have procedures in place for reporting suspected cases of misuse or abuse of university equipment, including UAS. Moreover, universities maintain policies and procedures that provide oversight of individuals who have access to sensitive information collected using UAS.

To inquire whether UAS-specific rules may be necessary on campus, AAU and APLU are in the process of evaluating whether gaps exist between existing privacy policies and protocols, and specific issues posed by university use of UAS. To the extent there are gaps, universities will work to address any issues that may be unique to UAS use on campus.

While rules to govern university activity and behavior already exist, we are very supportive of NTIA's effort to craft privacy, transparency and accountability best practices to prevent against harms related to commercial use of UAS. Indeed, universities share the American public's concern about potential privacy issues associated with UAS operation by others. Universities take the privacy and security of our students, faculty, and employees very seriously. In particular, the commercial use of UAS poses risks regarding the collection of commercially-valuable information on consumers' habits, preferences, choices, behaviors, or patterns, as well as student activity images and intercollegiate athletics, by others on university campuses. Therefore, we look forward to monitoring the NTIA multi-stakeholder process and applaud efforts to develop protections against the abuse of this new technology in the commercial setting.

STRUCTURE OF WORKING GROUPS

We believe that the NTIA Working Groups should include all relevant stakeholders, including most particularly academic researchers with particular interest in the subject matter. Academic researchers and faculty can offer unique and objective perspectives that will be very useful for all stakeholders to consider. Moreover, university faculty include subject matter experts on the First Amendment, privacy and aviation—all of whom have knowledge and experience that could substantially bolster the NTIA multi-stakeholder process.

While any Working Group structure should reflect the complexity of the dialogue and debate about privacy and acceptable UAS use, we also believe the Working Groups should be structured to operate efficiently so that the process can move along expeditiously, in a way that keeps up with technological advances.

PRIVACY

The NTIA multi-stakeholder process should keep in mind that UAS are just a platform for a camera, or other technology. Some of the privacy concerns they present are unique to UAS, but others are not. Often, broadly applicable laws or rules already cover the harm in question. Universities believe it is important to focus the policymaking process on privacy harms the multi-stakeholder participants determine are unique to UAS.

As policymakers consider best practices for UAS, it is worth noting that micro, small and large UAS platforms offer different capabilities, and consequently, the multi-stakeholder process should discuss whether they should be treated differently. Larger UAS can carry larger payloads that are often more sophisticated, with higher resolutions. Smaller UAS are more likely to be broadly available, since they are more affordable. Consequently, smaller UAS arguably pose a greater risk of invasions of individual privacy. In distinguishing between various sizes of UAS platforms, policymakers should strive to develop precise definitions of different UAS in order to avoid ambiguity.

TRANSPARENCY

The university community recognizes that transparency is essential to educating the public and building trust associated with UAS. As such, our universities support transparency best practices that would require commercial entities to publicly disclose data retention and other privacy policies.

ACCOUNTABILITY

The university community agrees with the NTIA that accountability is important to prevent abuse and encourage responsible use of UAS. As mentioned above, universities have extensive accountability protocols already in place, including rules of conduct, training, audits and assessments. Perhaps these accountability protocols could provide a model for best practices in the commercial context.

CONCLUSION

The AAU and APLU commend the Federal Government and the NTIA for pursuing a multi-stakeholder process to establish privacy, transparency, and accountability best practices for the commercial use of UAS. There are significant economic benefits associated with the commercial and private use of UAS, but universities understand that this emerging technology raises privacy concerns. Therefore, this multi-stakeholder process will play an important role to

foster public confidence, and to establish privacy, transparency and accountability protocols for commercial users of UAS.