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AUVSI'S Response to Department Of Commerce

National Telecommunications and Information Administration Request for Comments on Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems
[Docket No. 150224183–5183–01]

General

1. The Presidential Memorandum asks stakeholders to develop best practices concerning privacy, transparency, and accountability for a broad range of UAS platforms and commercial practices. How should the group's work be structured? Should working groups address portions of the task?

Any work should include the voices of all UAS stakeholders, including industry representatives, government agencies and end users of the technology, both commercial users and public entities. Although working groups are generally an effective way to tackle big issues, it may be challenging to move this process forward through working groups because the issues of privacy, transparency, and accountability are all inextricably linked.

2. Would it be helpful to establish three working groups with one focusing on privacy, one on transparency, and one on accountability? Should such groups work in serial or parallel?

As mentioned in the previous answer, working groups are generally an effective way to tackle big issues, but it may be challenging to move this process forward through working groups because the issues of privacy, transparency, and accountability are all inextricably linked.

3. Would it be helpful for stakeholders to distinguish between micro, small, and large UAS platforms (e.g., UAS under 4.4 lbs., UAS between 4.4 lbs. and 55 lbs., and UAS over 55 lbs.)? Do smaller or larger platforms raise different issues for privacy, transparency, and accountability?

It is AUVSI's that position any rules, laws or best practices relating to privacy should be platform neutral, treating manned and unmanned aircraft the same, and different weight classes of aircraft the same. That's because the real issue at hand is the collection, retention and sharing of data. There is no difference between an image taken from a two-pound sUAS, a manned helicopter or a large UAS flying in class A airspace. It's the activity of collecting data that should be regulated as opposed to the platform doing the collecting.

4. What existing best practices or codes of conduct could serve as bases for stakeholders' work?

The International Association of Chiefs of Police (IACP)[1] in August 2012 released its own detailed guidelines for UAS operations, which were quickly adopted by several other law enforcement organizations. The guidelines, which address privacy, the use of warrants and data retention, were not only praised by industry, but the ACLU as well.

5. UAS can be used for a wide variety of commercial and private purposes, including aerial photography, package delivery, farm management, and the provision of Internet service. Do some UAS-enabled commercial services raise unique or heightened privacy issues as compared to non-UAS platforms that provide the same services? For example, does UAS-based aerial photography raise unique or heightened privacy issues compared to manned aerial photography? Does UAS-based Internet service raise unique or heightened privacy issues compared to wire-line or ground-based wireless Internet service?

We don't believe that UAS raise unique or heightened concerns because UAS are just one of many platforms equipped with cameras and sensors that have the potential to collect data and information. That's why AUVSI advocates for a platform-neutral approach to privacy rules and regulations. At the end of the day, the focus of the discussion should be on the collection, sharing and retention of data, rather than the platform doing the collecting.

Meanwhile, it is important to underscore that there is already a robust legal framework in place to protect Americans' right to privacy, and these laws apply to UAS just like any other technology. For more than 220 years, the Fourth Amendment has been applied to new technologies used in warrantless observations – including several Supreme Court decisions on aerial observations[2] and, more recently, thermal imaging[3] and GPS technologies[4] – and it will continue to be applied to UAS and other future technologies that have not yet been invented.

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[1] IACP, *Recommended Guidelines for the Use of Unmanned Aircraft* (Aug. 2012) ("IACP Guidelines"), http://www.theiacp.org/portals/0/pdfs/IACP_UAGuidelines.pdf

[2] See *Florida v. Riley*, 488 U.S. 445 (1989) (naked-eye observations through greenhouse roof from helicopter at 400 feet not an unreasonable search); *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (precision aerial photographs of industrial complex from 1, 200-12,000 feet not a prohibited search); *California v. Ciraolo*, 476 U.S. 207 (1986) (no reasonable expectation of privacy from naked-eye observations of yard from fixed-wing aircraft flying at 1,000 feet).

[3] See *Kyllo v. United States*, 533 U.S. 27 (2001) (warrantless use of thermal imaging device to see heat emanating from inside home deemed an unreasonable search).

[4] See *United States v. Jones*, 132 S. Ct. 945 (2012) (month-long tracking with GPS required a warrant)

6. Which commercial and private uses of UAS raise the most pressing privacy challenges?

It's hard to say what, if any, specific uses of UAS raise pressing privacy challenges. That because much of the discussion around UAS privacy has been driven by hypotheticals and hyperbole that distort the privacy discussion. As just one example, a February 2013 *Time Magazine* cover story – "Rise of the Drones" – featured a Predator hovering directly over a house. That's a gross mischaracterization of the UAS integration that undermines a thoughtful and fact-based discussion about these issues.

The privacy discussion needs to be grounded in facts and research. This discussion also needs to take into account the existing legal protections that would apply to UAS just as they would to any emerging technology.

Finally, it's important to note that there are many commercial uses of small UAS that will not raise privacy concerns. Eighty percent of the commercial market is expected to be agriculture, an application that has no privacy implications because farmers will fly over their own fields. Similarly, the surveying of some critical infrastructure such as pipelines and oil rigs will occur away from people.

7. What specific best practices would mitigate the most pressing privacy challenges while supporting innovation?

First and foremost, users should operate UAS in accordance with existing laws. As stated above, AUVSI believes that new privacy best practices and policies should focus on how data is collected and used rather than focusing on the specific platform that is doing the collecting.

<u>Transparency</u>

8. Transparent UAS operation can include identifying the entities that operate particular UAS, the purposes of UAS flights, and the data practices associated with UAS operations. Is there other information that UAS operators should make public?

With respect to commercial UAS operations, AUVSI supports the registration of unmanned aircraft platforms and UAS operators with the Federal Aviation Administration (FAA).

9. What values can be supported by transparency of commercial and private UAS operation? Can transparency enhance privacy, encourage reporting of nuisances caused by UAS flights, or help combat unsafe UAS flying? Can transparency support other values?

With respect to public entity UAS operations, AUVSI supports transparency as a means to protect privacy and ensure accountability. Transparency helps support a number of values, in particular safety, professionalism and respect in all uses of UAS.

10. How can companies and individuals best provide notice to the public regarding where a particular entity or individual operates UAS in the NAS?

With respect to law enforcement operations, the International Association of Chiefs of Police (IACP) recommends notifying citizens of UAS flights via "Reverse 911," except in cases where officer safety could be jeopardized. With respect to commercial operations, AUVSI supports the registration of UAS platforms, which would enable a UAS to be tracked back to its operator/owner.

11. What mechanisms can facilitate identification of commercial and private UAS by the public? Would standardized physical markings aid in identifying UAS when the aircraft are mobile or stationary? Can UAS be equipped with electronic identifiers or other technology to facilitate identification of UAS by the public?

AUVSI supports registering UAS platforms with based on some serialized number, which would help identify commercial UAS. The FAA's proposed small UAS rule calls for a form of registration for commercial platforms.

12. How can companies and individuals best keep the public informed about UAS operations that significantly impact privacy, anti-nuisance, or safety interests? Would routine reporting by large-scale UAS operators provide value to the public? What might such reporting include? How might it be made publicly available?

Companies and individuals should operate UAS in accordance with existing laws, including the Fourth Amendment and applicable local ordinances, so as to avoid privacy implications. Safety falls under the purview of the Federal Aviation Administration (FAA) and will be appropriately addressed as part of the small UAS rulemaking. AUVSI does not believe that public reporting should be required for each commercial operation, as this would create an unnecessary burden on commercial operators.

13. What specific best practices would promote transparent UAS operation while supporting innovation?

The FAA's proposed requirement for registering and marking commercial UAS platforms is a good starting point for promoting transparent operations, while not inhibiting innovation.

Accountability

14. UAS operators can employ accountability mechanisms to help ensure that privacy protections and transparency policies are enforced within an organization. How can companies, model aircraft clubs, and UAS training programs ensure that oversight procedures for commercial and private UAS operation comply with relevant policies and best practices? Can audits, assessments, or reporting help promote accountability?

Under the proposed small UAS rule, commercial UAS operators will need to register with the FAA and pass an aeronautical knowledge test in order to fly. As with their counterparts in manned aviation, the desire to remain in good standing with the agency and continue to exercise FAA privileges will serve as the most important mechanisms to ensure the safe and responsible operation of commercial UAS.

15. What rules regarding conduct, training, operation, data handling, and oversight would promote accountability regarding commercial and private UAS operation?

With respect to commercial operators, the FAA's proposed small UAS rule outlines policies regarding conduct, training and operations of commercial UAS. The draft rule is a good first step in an evolutionary process that brings us closer to realizing the many societal and economic benefits of UAS technology. AUVSI is in the process of drafting its formal comments and we expect to have more to say soon about the rule's specific provisions.

16. What specific best practices would promote accountable commercial and private UAS operation while supporting innovation?

Companies and individuals should operate UAS in accordance with existing laws, including the Fourth Amendment and applicable local ordinances. All commercial operators should follow the FAA's rules for commercial operations, once those rules are finalized.

Additionally, commercial and recreational users alike can refer to Know Before You Fly (www.knowbeforeyoufly.org), an industry safety campaign that has the FAA as a partner, and which helps educate unmanned aircraft users about existing rules and best practices.