Ballard Spahr LLP

1909 K Street, NW
12th Floor
Washington, DC 20006-1157
TEL 202.661.2200
FAX 202.661.2299
www.ballardspahr.com

Charles D. Tobin
Tel: 202.661.2218
Fax: 202.661.2299
tobinc@ballardspahr.com

**Submitted on Behalf of the**
**News Media Coalition Consisting Of**:

Advance Publications, Inc.
American Broadcasting Companies, Inc.
American Society of Media Photographers
The Associated Press
Capitol Broadcasting Co.
Fusion Media Network, LLC
Gannett Co., Inc.
Getty Images (US), Inc.
Gray Television, Inc.
Media Law Resource Center
National Press Photographers Association
NBCUniversal Media, LLC
News Media Alliance
Nexstar Media Group, Inc.
The New York Times Company
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
The E.W. Scripps Company
Sinclair Broadcast Group, Inc.
Society of Professional Journalists
TEGNA, Inc.
WP Company LLC

March 2, 2020

*By Electronic Filing and Courier*

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE, Room W12-140
West Building, Ground Floor
Washington, DC 20590-0001

Re: Docket No. FAA-2019-1100, Notice No. 20-01, Remote Identification of Unmanned Aircraft Systems

## Introduction

The News Media Coalition ("Coalition"), consisting of news media organizations with significant interest in the development of drone law and policy in the United States, submits these comments on behalf of the news executives, journalists, viewers, readers, and social media users regarding the Federal Aviation Administration's ("FAA") Notice of Proposed Rulemaking on Remote Identification of Unmanned Aircraft Systems.[1]

The News Media Coalition consists of:

- The nation's leading television and cable networks;
- The leading national newspapers;
- More than 479 television stations serving local U.S. markets;
- More than 545 regional and local U.S. newspapers;
- More than 35 U.S. radio stations;
- More than 570 local market websites;
- 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 world's largest professional organization devoted exclusively to broadcast and digital journalism;
- A nonprofit organization representing the interests of online, mobile and print news publishers in the United States and Canada and focusing on the major issues that affect today's news publishing industry, including protecting the ability of a free and independent media to provide the public with news and information on matters of public concern;
- The country's premier trade association representing independent photographers;
- The leading membership association for content providers in all media, supported by more than 115 media members and 200 law firms worldwide;
- 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.

The companies that make up the Coalition represent a wide cross-section of the news professionals who provide Americans each day with the news they need. They also

[1] *See Remote Identification of Unmanned Aircraft Systems*, Notice of Proposed Rulemaking, 84 Fed. Reg. 72438 (Dec. 31, 2019) ("Remote ID NPRM").

represent one of the sectors of the economy that is most engaged with the development of sound drone regulations and best practices. While the member companies compete in markets across the country, they have come together in the unified belief that preserving the right to gather news, including by drones, is not a competitive issue but one of universal, and great, importance.

For the past several years, the Coalition has worked cooperatively with the federal government toward the development of statutes, regulations, industry training, and professional best practices for the safe gathering of news by Unmanned Aircraft Systems ("UAS" or "drones"). At the same time, the Coalition has strongly encouraged the maintenance of the existing legal framework for privacy protection, especially as it concerns the ability to gather news and information for the public benefit. As part of those efforts, the Coalition actively participated in the rulemaking process that led to the June 2016 implementation of 14 C.F.R. Part 107. In addition, the Coalition has engaged in efforts to integrate the use of drones by journalists into the national airspace system (NAS), including:

- Partnering with Virginia Tech through the Mid-Atlantic Aviation Partnership, one of six FAA-designated test sites, to collect data and evaluate the safe use of UAS by journalists for newsgathering (2015);
- Submitting public comments in response to the FAA's NPRM on the "Operation and Certification of Small Unmanned Aircraft Systems" (April 2015);
- Serving as an appointed member on the FAA Micro Unmanned Aircraft Systems Aviation Rulemaking Committee (April 2016);
- Participating in the National Telecommunications and Information Administration multi-stakeholder process on drone privacy, which culminated in a set of sensible, voluntary "best practices" that exempted First Amendment protected newsgathering (May 2016);
- Submitting public comments to the Federal Trade Commission Fall Seminar Series on Emerging Consumer Technology Issues: Drones (October 2016);
- Participating in the FAA Unmanned Aircraft Safety Team;
- Submitting public comments in response to the FAA's NPRM on the "Operation of Small Unmanned Aircraft Systems Over People" (April 2019); and
- Submitting public comments in response to the FAA's NPRM on the "Safe and Secure Operations of Small Unmanned Aircraft Systems" (April 2019).

In addition, the Coalition served as an appointed member of the FAA's UAS Identification and Tracking Aviation Rulemaking Committee (UAS-ID ARC). The UAS-ID ARC included members from federal, state and local governments, law enforcement, drone manufacturers, drone software developers, and drone operators, including journalists. The

Coalition provided input on the development of the FAA rulemaking to establish a drone remote identification standard that ensures safety and security of the NAS, while protecting journalists' First Amendment right to newsgathering. In September 2017, at the conclusion of the UAS-ID ARC, the Coalition filed a dissent to the ARC's final report insisting on greater First Amendment protections and less burdensome notification and recordkeeping requirements.[2] The Coalition's participation in the UAS-ID ARC and our dissent to the ARC's report inform these public comments.

## Overview of the Coalition's Comments

The opportunities that drones afford are many. As predicted by both the government and the private sector, in just the past four years, the FAA's Part 107 regulation has fostered rapid, significant innovation and growth in commercial and private unmanned aircraft systems. Drones today are powerful tools for safe and effective newsgathering, and they provide enormous public benefits. The Coalition appreciates the efforts of the FAA to create a regulatory framework that balances the First Amendment rights of journalists and the public with the need for safety and security.

The Coalition, however, is concerned that the proposed rules constitute impermissible government surveillance of a journalist's drone operations in violation of the First Amendment. Therefore, the Coalition urges the FAA to exempt newsgatherers operating drones in Class G airspace from compliance with any remote ID requirements by establishing an "accredited news representative" designation that ensures there will not be impermissible government surveillance of journalists. In the event the FAA does not exempt journalists from these requirements, the Coalition urges the FAA to reconsider key elements of its Remote ID NPRM.

As written, the proposed rules would burden and impede the expanding use of drones for newsgathering and other public benefits. The Coalition is particularly concerned with the proposed rules regarding the transmission of location information using wireless internet, and with those that would allow the near-simultaneous tracking of journalists by law enforcement and the public. Without more robust assurances that standard remote ID UAS will be allowed to launch in areas with unreliable wireless internet access, the rules could preclude journalists from being able to operate in vast swaths of the country, including rural areas and those impacted by natural disasters. Requiring standard remote ID UAS to connect to the internet where available could also dramatically increase the financial strain on the media, particularly for small, local news outlets, and independent reporters and photojournalists. And, allowing real-time tracking of drones by law enforcement and others

[2] *See* Dissent of the News Media Coalition to ARC Recommendations and Final Report to FAA Administrator Michael Huerta (Sept. 30, 2017).

could compromise journalistic independence and access, and increase the risk of harassment of news outlets and journalists on the ground.

Society is only just beginning to realize the full potential of UAS, and the use of drones for newsgathering is no different. We are seeing, time and again, how drones can be utilized to shed light on newsworthy events in a way, and on a scale, not previously thought possible. News organizations and individual journalists now use drones to cover natural disasters – from hurricanes, to volcanic eruptions, to wildfires – providing the world with access and perspectives that previously seemed prohibitively expensive or simply unavailable. These news stories not only serve journalists' audiences, but also fill a critical role in the emergency response system, allowing local law enforcement entities to enlist the help of journalists to provide vital, timely information to ensure public safety during crises.[3]

News organizations and journalists are dedicated to the safe and secure operation of drones, and they are demonstrating the many ways that drones can serve the public interest. In the years to come, they will no doubt devise innovative uses for drones that will result in even more impactful news reporting by informing the public, saving lives, and sharing important news. In this vein, Coalition members are especially eager for the opportunities drone operations at night and over people will afford to journalists. They also recognize that the remote identification of UAS is a necessary step in expanding the parameters of the Part 107 regulations.

An increasingly flexible regulatory framework can both enhance the safety and security of drones while encouraging innovative and important journalism. The FAA must ensure that its rules do not impede innovation and that the rules continue to respect the protections of the First Amendment.

---

[3] In fact, in 2018, President Trump signed an omnibus spending bill that expanded the definition of "essential service providers" to include radio and television broadcasters in recognition of the critical role that journalists provide to the public during crises. As a result, broadcasters, cable and satellite providers are among those entities that have priority access to funding and resources through the Federal Emergency Management Agency during natural disasters in order to restore their services. *See* 42 U.S.C. § 5189e(a)(1)(A)(i); Davina Sashkin, *Repack Funds and First Responders – What Broadcasters Need to Know about the 'Omnibus' Spending Bill of 2018*, CommLawBlog, Mar. 23, 2018 (available at https://www.commlawblog.com/2018/03/articles/fcc/repack-funds-and-first-responders-what-broadcasters-need-to-know-about-the-omnibus-spending-bill-of-2018/).

**Remote ID Exemption for Newsgathering**

The Remote ID NPRM states that its intended purpose is to "to ensure public safety and the safety and efficiency of the airspace of the United States."[4] Remote identification data is intended to be used "to distinguish compliant airspace users from those potentially posing a safety or security risk."[5] The Remote ID NPRM requires that a journalist operating under a "standard remote identification UAS" would be required to transmit the following data elements to the government through a UAS Service Supplier (USS):

1. The UAS Identification (serial number or session identification);
2. An indication of the control station's latitude and longitude;
3. An indication of the control station's barometric pressure altitude;
4. A time mark;
5. An indication of the emergency status of the UAS;
6. An indication of the unmanned aircraft's latitude and longitude; and
7. An indication of the unmanned aircraft's barometric pressure altitude.[6]

Under well-settled First Amendment law, the Government can impose reasonable time, place, and manner conditions on newsgathering, but only when those conditions are narrowly tailored to address a legitimate government interest.[7] Requiring a journalist operating a standard remote ID UAS to provide the government with seven pieces of detailed, real-time location data for both the journalist and the drone via wireless internet and broadcast transmission – even in Class G airspace – does not comport with those conditions. This level of detail and type of data far exceeds the amount of information that is required of manned aircraft operating in the same airspace, which involve significantly heavier equipment and potentially riskier behavior. This constitutes impermissible government

[4] Remote ID NPRM at 72439.

[5] *Id.*

[6] *Id*. at 72472.

[7] *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (content-neutral regulations "may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.") (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)). For instance, effective January 1, 2020, a fixed wing or rotary wing aircraft operated by the news media must broadcast its location through Automatic Dependent Surveillance – Broadcast (ADS-B), if it intends to operate in certain restricted airspace, to maintain the safety of the NAS and the security of restricted airspace. 14 CFR § 91.225.

surveillance of a journalist's drone operations in airspace the FAA has concluded is low risk (*i.e.*, Class G) and creates a disparate impact on journalists operating a drone compared to the operation of manned aircraft in the same airspace. This level of government real-time tracking of a journalist's operations creates an unreasonable First Amendment limitation on the manner of operating a drone that is not narrowly tailored to a legitimate government interest.

Therefore, the Coalition requests that the FAA create a remote identification and tracking exemption for the news media to avoid the impermissible government surveillance of a journalist's drone without a legitimate government interest in Class G airspace. We recommend that the final rule include an accommodation for journalists operating a drone in Class G airspace to exempt their drones from government tracking.

To achieve this reasonable accommodation for the news media, the Coalition requests that the final rulemaking include an "accredited news representative" designation under which the government would not track news media drones operating in Class G airspace. The FAA already relies on this designation in its existing regulations to allow "accredited news representatives" to operate in the NAS in ways that the general public may not.[8] The FAA also allows manned aircraft owners and designated representatives to block flight tracking data.[9] By using existing FAA precedent providing journalists with First Amendment accommodations when operating in the NAS, the government can establish the "accredited news representative" classification to prevent the government from tracking or surveilling news drones. An "accredited news representative" classification is technologically feasible within the framework created under the Remote ID NPRM.

## Support for Session Identification

The Coalition supports the FAA's inclusion in the Remote ID NPRM of a "session identification" (Session ID) option for UAS identification. Session IDs for drone operations address similar privacy concerns regarding the access to flight data that led the FAA to create "the Privacy International Civil Aviation Organization (ICAO) Address Program,

[8] *See* 14 C.F.R. 91.137 (stating "(c) When a NOTAM has been issued under paragraph (a)(2) of this section, no person may operate an aircraft within the designated area unless at least one of the following conditions are met….The aircraft is carrying properly **accredited news representatives**, and, prior to entering the area, a flight plan is filed with the appropriate FAA or ATC facility specified in the Notice to Airmen and the operation is conducted above the altitude used by the disaster relief aircraft, unless otherwise authorized by the official in charge of on scene emergency response activities.") (emphasis added).

[9] *See* FAA Limiting Aircraft Data Displayed (LADD) *available at* https://ladd.faa.gov/.

which allows operators to use alternate, temporary ICAO aircraft addresses not attributable to an owner/operator in the publicly available Civil Aviation Registry."[10]

As discussed above, the Coalition does not believe that the First Amendment tolerates the tracking of a journalist when operating in Class G airspace, nor, as discussed below, does it tolerate the real-time tracking of journalists as a routine matter. A Session ID would help protect the privacy of journalists operating in restricted airspace by preventing public disclosure of its serial number. This is particularly important to permit journalists a level of operational privacy that would help prevent the subject of investigative journalism from receiving the serial number of the drone through the broadcast or wireless network transmission of its remote identification. The FAA could still correlate the serial number of the drone operating in restricted airspace and personally identifiable information (PII) where there is "probable cause" or "reasonable suspicion" that a crime has been committed, as discussed in greater detail below.

The Coalition is concerned, however, that Session IDs may not be available for standard remote identification UAS when operating in an area that lacks the wireless network connectivity to generate a unique Session ID. The Coalition encourages the FAA to consider in the Remote ID Final Rule how a Session ID could be generated for a standard remote identification UAS that is not connected to a wireless network. Including Session IDs in the Remote ID Final Rule, and making sure that it is available for both standard and limited remote ID UAS, is a valuable and necessary option for operators.

## Concerns with Specific Proposed Rules

Although utilizing Session IDs would be a meaningful improvement, that alone will not alleviate all of the Coalition's concerns. The FAA must also reconsider its proposed rules regarding (1) the need to provide location information via both wireless internet connection and broadcast frequency, and (2) the near-simultaneous access to identifying information by law enforcement and third parties.

### WIRELESS INTERNET CONNECTIVITY

The Coalition echoes the concerns of other stakeholders regarding the proposed rules' requirement that drones operating under either standard remote ID or limited remote ID share their location information via wireless internet connection.[11] In addition to

[10] U.S. Department of Transportation, "Privacy ICAO Address Program," *available at* https://www.transportation.gov/individuals/privacy/privacy-icao-address-program.

[11] *See, e.g.*, *We Strongly Support Drone Remote ID. But Not Like This*, DJI (Jan. 14, 2020), *available at* https://content.dji.com/we-strongly-support-drone-remote-id-but-not-

questioning whether such a belt-and-suspenders approach for standard remote ID UAS is necessary, the Coalition is concerned that requiring standard remote ID UAS to connect to the internet, when it is available, could hamper newsgathering efforts.

*1. The feasibility of retrofitting of existing drone fleets is not a guarantee*

News organizations have, over the last several years, invested heavily in their current drone fleets. Although the FAA suggests that 93 percent of drones on the market today may be capable of being retrofitted,[12] questions remain about whether the proposed regulations, if implemented, will render many drones immediately obsolete.

Coalition members report that it is unclear whether manufacturers will develop firmware or hardware updates to enable the retrofitting that the FAA will require. Coalition members are also concerned that retrofitting their drones may require attaching additional equipment to existing hardware, which could affect the weight, balance and performance of drones. For example, although many news drones have radio frequency transceivers and the ability to transmit data, these capabilities may be limited to a local connection between the controller and the UAS. If drones are required to communicate outside that closed system, many drones used by news outlets today would not meet the required standards.

*2. Drones must be allowed to operate in areas where the "availability" of wireless internet is uncertain*

The FAA vaguely states that it will consider the internet to be available "if cellular or other forms of wireless internet connectivity such as Wi-Fi are available in an operational area with sufficient signal strength to maintain a connection between the UAS and the internet."[13] The FAA says that, in practice, this will operate similarly to the manner in which smartphones "connect automatically to the internet when there is sufficient signal strength and coverage."[14] The FAA further says that "[i]f the internet is available but the

---

like-this/; *FAA Proposes Restrictive Remote ID Technology for Drones*, Drone U (Dec. 27, 2019), *available at* https://www.thedroneu.com/blog/faa-proposes-drone-remote-id/.

[12] Remote ID NPRM at 72489.

[13] *Id.* at 72467.

[14] *Id.*

operator's Remote IDD USS is not working, the operator would be required to connect to another Remote ID USS or the UAS would be restricted from taking off."[15]

The FAA does not, however, provide sufficient details to ensure that the availability or unavailability of internet will not impede a significant amount of newsgathering efforts. As all consumers are aware, the search for wireless connectivity from your smartphone can be maddening, and at times, your phone may say that internet is available and yet you still cannot get an app to load. When that happens, is the internet available to you?

In the UAS context, if a drone operator subscribes to Provider A, which is not available in the area, but Provider B has service in the area, does that mean that wireless internet is, or is not, available? And what happens if a drone operating in an area with unreliable cellular service successfully launches, lands, tries to relaunch, and is unable to re-connect to its Remote ID USS? Will the drone be permitted to relaunch, or will the drone register that internet is available, in which case it would not be allowed to launch?

Much news reporting takes place in areas without reliable cellular service, including rural areas, areas impacted by natural disasters, and areas with large groups of people, which can strain the capacity of wireless networks. Coalition members report that in the aftermath of the California wildfires and North Carolina hurricanes, in particular, cellular and power infrastructure were severely damaged or destroyed. Often in these scenarios, cellular towers will operate at a reduced capacity or range for several hours, and once the tower battery backups expire, all service ceases. If a drone registers that the internet is still available in these cases, yet the Ppilot in Command is unable to connect to the Remote ID USS, nder the FAA's current proposed rules, it appears that the drone would not be able to take off.[16]

The Coalition's concerns are also not limited to rural areas and those impacted by natural disasters. As one Coalition member reported, its drones experience difficulty maintaining cellular connectivity as they fly higher, even in urban environments, which typically have reliable wireless connectivity. This news organization frequently encounters such problems when reporting from heights of 400 feet above ground level or from the tops of high-rise buildings.

---

[15] *Id.*

[16] In one instance reported by a Coalition member, while trying to launch a drone in the aftermath of Hurricane Irma, the operator needed to conduct an unlock through the drone manufacturer to operate in airspace subject to an FAA airspace waiver, but was unable to do so because of interrupted wireless connectivity.

At a minimum, if the FAA requires drone operators to transmit location data via the internet, the rules must not de facto prohibit journalists from launching in areas without reliable wireless internet services.[17]

*3. Remote ID USS providers must be required to facilitate "roaming"*

The FAA must also ensure that Remote ID USS providers are required to facilitate "roaming" in the event a particular Remote ID USS with whom a drone operator contracts is unavailable.[18] Anything short of mandating this "roaming" capability will require drone operators to enter into contracts with multiple USS providers to guard against the potential unavailability of an app. Such an outcome would increase the cost to operators and the potential for confusion when covering a news event.

*4. The FAA must ensure that the cost to comply does not impede the use or expansion of news organizations' and journalists' drone operations*

The FAA assumes that drone operators will pay $2.50 per month, per fleet, for Remote ID USS services.[19] The Coalition notes the concerns raised by several other stakeholders who suggest this could dramatically underestimate the true cost to operators.[20]

If the cost is, in fact, $2.50 per month for an organization's entire fleet of drones, regardless of its size, the cost will not impact Coalition members' drone operations. If, however, the cost is per drone, or at a rate much higher than $2.50 per month, then the cost may impact the ability, particularly of small, local news outlets with drone fleets and individual journalists, to continue to operate, or to expand, their drone offerings. Several Coalition members currently have dozens of drones in their fleets, and news organizations will likely increase the number of drones they operate. The FAA must ensure that its cost

---

[17] Given that Coalition members are primarily concerned about the availability of wireless internet, they report that the ability to operate under the "limited remote ID" standard is of little, to no, value to them. What's more, permitting operators using limited remote ID to operate only within 400 feet of the control station would not allow for sufficient access to many newsworthy environments and is far less distance in many cases than the visual line of sight allowance.

[18] *See* Remote ID NPRM at 72469.

[19] *See id*. at 72492.

[20] *See, e.g., FAA Announces New Remote ID Technology…Why are We Disappointed*, Drone U (Dec. 27, 2019), *available at* https://www.thedroneu.com/blog/faa-announces-drone-remote-id/.

estimates are accurate and that drone operators will not face unexpected, prohibitive costs of compliance.

The Remote ID NPRM also does not address the burden of wireless data services charges. If a drone continuously transmits its location information using cellular service, drone operators will likely need to increase their data capacity. Further, unlike using the same Remote ID USS for an entire fleet, news organizations with several drone teams will need to have data capacity for each as will individual journalists. Given the cost of cellular service, the size of drone fleets, and the budgets of individuals, this could be a tremendous cost burden to these news organizations, and to independent reporters and photojournalists who, in many cases, cover news events without the financial backing of a news organization.

NEAR-SIMULTANEOUS AVAILABILITY OF IDENTIFYING INFORMATION

Journalists' use of drones is in many ways unique when compared to the typical drone user. Whatever newsgathering tool they use, journalists have an utmost interest in conducting operations without surveillance by the government or by the subjects of news reporting. Across the Coalition, members have dedicated significant time, resources and training to ensure the safe and secure operation of drones in a manner consistent with the independence of the press guaranteed by the First Amendment. The proposed rules raise significant potential threats to that independence.[21]

*1. The proposed regulations should articulate a legal standard for law enforcement and security officials accessing UAS database information*

The proposed regulations state that law enforcement and public safety officials will have almost instantaneous access to identifying information about drones in flight.[22] Real-time access to identifying information about every drone in flight does not appear necessary to the FAA's stated goals and raises serious concerns for Coalition members.

As an initial matter, the Coalition does not object to requiring that each drone have a visible unique identifier, akin to a license plate, and that each drone transmit identifying

[21] The News Media Coalition notes that the FAA rejected two proposed regulations discussed in the UAS-ID ARC that would have adopted policies governing news organizations' retention of newsgathering materials and required that journalists operating in Class G Airspace file their flight plans. Both of these proposals raised serious freedom of the press concerns and would have been unconstitutional. The Coalition is pleased to see that the FAA does not plan to include these provisions in its final rules.

[22] Remote ID NPRM at 72470 ("near real-time access . . . for accredited and verified law enforcement and Federal security partners").

information. The Coalition's concerns center around who can access the identifying information and the proposal's lack of any prerequisite for access to such identifying information.

The news media has a unique and nuanced relationship with law enforcement. Journalists and law enforcement work in tandem to keep the public informed and safe. At the same time, however, journalists take seriously their role as the Fourth Estate watchdog on government, which requires that journalists at times investigate the conduct of government officials and law enforcement officers. Providing law enforcement officers near-instantaneous access to information identifying journalists has the very real potential to act as a de facto prior restraint on certain types of coverage, chilling the reporting of stories of great public importance.

As currently written, the proposed rule contains no requirement for public safety officials to determine whether it is necessary to seek identifying information about a particular drone or its operator. Instead, the proposed rule provides officials with unbridled discretion to access a database containing PII and historical tracking information about the operation.

As the FAA's Remote ID NPRM notes, however, the intent of these regulations is to enable quick identification of drones that are behaving in suspicious, or illegal, ways, whether that be flying in a no-fly zone, near a restricted area, or behaving erratically.[23] Much of this analysis can be accomplished without accessing any identifying information. As the Remote ID NPRM further states, law enforcement officers will be able to distinguish between "cooperative aircraft" and "non-cooperative aircraft" by those that are providing identifying information and those that are not.[24] This is a sound assumption and will provide much of the information law enforcement officials need in order to identify potential security threats.

A Pilot in Command operating a drone in authorized airspace, in a manner that reasonably would not arouse legitimate safety concerns, should be permitted to continue the operation without further government involvement or inquiry. Absent an articulable reason to question the intent of a given operator, and in the absence of any articulable safety concern, the official should proceed no further. Permitting law enforcement and public safety officials to identify any drone that they spot, regardless of whether there is any suspicion or actual violation of a law or regulation, is unnecessary and insufficient grounds

[23] *Id.*

[24] *Id.* at 72454.

for public safety officials to query a database and review PII on the drone operator or its flight history.

To ensure that public safety officials act only under appropriate circumstances, any rule governing access to a database should include safeguards that restrict information that could identify a journalist operating a drone, the news organization involved in the newsgathering, or the flight history of that operation or any previous operations conducted with the drone. Law enforcement officials already are familiar with the "probable cause" and "reasonable suspicion" standards, under which the law strikes the balance between public safety and individual freedoms. Indeed, current laws and regulations already contain numerous examples that limit access to information about journalists' activities to instances where law enforcement is able to satisfy legal standards:

- The Privacy Protection Act, which governs the issuance of search warrants to journalists, provides that "it shall be unlawful for a government officer" to search or seize a journalist's work product unless "there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense to which the materials relate[.]"[25]

- Similarly, the United States Attorney General's policy regarding obtaining information from, or records of, journalists, applies in all instances except where the government has "reasonable grounds to believe that the individual or entity is", for example, "a member or affiliate of a terrorism organization."[26] Moreover, before authorizing a subpoena in a criminal matter, the Attorney General himself must articulate, among other requirements, "reasonable grounds to believe, based on public information, or information from non-media sources, that a crime has occurred[.]"[27]

Permitting unfettered real-time access to location information is unnecessary to achieve the stated goals of remote identification of drones, and is far more lenient than the standards under which law enforcement officials must operate in other contexts when seeking journalists' materials.

---

[25] 42 U.S.C. § 2000aa(b).

[26] 28 CFR § 50.10(b)(1)(ii)(B).

[27] *Id.* at (c)(4)(ii)(A).

*2. The proposed regulation should require the FAA to maintain a record, subject to the Freedom of Information Act, listing all instances where public safety officials access the database*

Accountability of the government, especially where it concerns accessing the PII of its citizens and tracking their movements, is at the core of the First Amendment. Transparency best fosters public confidence in its government.

Given the First Amendment, Fourth Amendment, and general privacy implications inherent in accessing information about drone operators and operations – and especially information about the independent operations of journalists – the FAA should serve transparency by establishing a central record of all instances where a public safety official accesses the database. That record should contain, at a minimum, the date of access, the agency and officer accessing the information, the probable cause or reasonable suspicion for accessing the information, and the agency's determination as to the validity of a threat.

The Coalition understands that because of the exigencies in responding to a perceived threat, in many instances this information cannot be logged simultaneously with the event. Any proposed rule therefore should provide that, within a reasonable time period following the conclusion of a public safety official's response to an inquiry about a UAS, the official must complete the information in the FAA's central record. The proposed rule also should provide that the central record is subject to the federal Freedom of Information Act, 5 U.S.C. § 552.

*3. The regulations should prohibit law enforcement from accessing the identifying information of journalists except under very narrow, clearly articulated circumstances*

The FAA's proposed rules are intended to ensure the safety of our airspace and to allow law enforcement to efficiently address safety issues that may arise.[28] As discussed above, journalists take seriously their role as the Fourth Estate watchdog over government. This role requires that journalists be prepared to investigate and report on the actions of law enforcement officers. In some cases, the nature of this role can lead to the harassment of journalists by law enforcement officers, including through the use of court subpoenas seeking journalists' work product.

Although, as mentioned above, the United States Attorney General has a policy regarding obtaining information from, or records of, journalists, 28 CFR § 50.10, and some states have "reporter's shield laws," there is no uniformly applicable federal reporter's

[28] Remote ID NPRM at 72470.

privilege against divulging sources and work product, leaving reporters exposed to the potential for harassing subpoenas. Even when news outlets or journalists successfully oppose a subpoena, and the process imposes tremendous burdens on newsrooms and individual journalists.

Coalition members are concerned that absent clear direction from the FAA, some law enforcement officials will exploit access to this identifying information in order to identify which news organization(s) are covering a news event and to subpoena those organizations' materials. The FAA should make clear that its rules allowing law enforcement to access PII do not contemplate, or permit, such use of identifying information.[29]

4. *Third-party access to journalists' identifying information raises additional privacy concerns*

Similarly, the FAA's proposal to allow third-parties to develop apps that would communicate with law enforcement compounds the Coalition's First Amendment and privacy concerns about the dissemination of their identifying information.[30] Any FAA rules permitting the development of third-party apps must clearly spell out their required terms of service rather than leave such questions to the free market.

*5. Message elements that will be broadcast and transmitted by standard remote ID UAS*

Although the FAA says it is "not proposing for the identity of the owner of the UAS to be included in the message elements," the Coalition still has significant concerns that the "message elements would generally be available to the public."[31] As the NPRM later notes, the message elements "would be considered publicly accessible information," and "any of the message elements that are broadcast directly from the unmanned aircraft could be received by commonly available consumer cellular phone, tablet, or other wireless device capable of receiving that broadcast.[32]

---

[29] This direction should also make clear that the prohibition on accessing information for purposes other than to identify a safety threat extends throughout the entire proposed six-month retention period for accessing remote identification message elements. *See* Remote ID NPRM at 72484.

[30] *Id*. at 72471, n.66.

[31] *Id*. at 72460.

[32] *Id*. at 72485.

Even if the identity of the owner of the UAS is not readily available to the public, allowing the public to access the location of the drone and Pilot in Command is unnecessary and exposes the pilotC and their drone to risk of interference and harassment by members of the public. Given the very real safety threats facing journalists today, and the sensitivity of much of the reporting that journalists undertake, being under the constant risk of identification by a member of the public could impede the ability of journalists to investigate and report certain stories.

## Looking Ahead

The Coalition recognizes that gathering the news from the air involves safety and security considerations that drone operators must take into account when operating in the national airspace system. As noted in the preamble to the NPRM regarding operations over people or at night, that rule will not be finalized until rules governing the remote identification of drones are in place.[33] The Coalition therefore encourages the FAA to quickly finalize a remote ID standard consistent with these comments so that journalists can expand their newsgathering operations in service to the public.

And as the FAA does so, the Coalition hopes that the agency bears in mind that its rules cannot supersede the First Amendment rights to gather, report and receive the news. While the Coalition does not take a position on the necessity of these proposed rules for the average drone user, journalists have proven themselves to be responsible users of drones who hold themselves to the highest safety standards. As noted by the FAA itself, "[a]lthough remote identification of UAS may not deter nefarious actors, it would allow the swift interdiction of the clueless and careless persons . . ."[34] Given the strict adherence by Coalition members to FAA rules and regulations, the agency should not adopt a one-size-fits-all approach that risks the ability of journalists to gather the news.

The Coalition appreciates the opportunity to participate in this important regulatory process, and looks forward to working with the FAA and other industry stakeholders as we move forward toward expanding the use of drones in new and exciting ways.

---

[33] *Operation of Small Unmanned Aircraft Systems Over People*, Notice of Proposed Rulemaking, 84 Fed. Reg. 3856, 3861 (Feb. 13, 2019) ("the FAA plans to finalize its policy concerning remote identification of small UAS—by way of rulemaking, standards development, or other activities that other Federal agencies may propose—prior to finalizing the proposed changes in this rule that would permit operations of small UAS over people and operations at night.").

[34] Remote ID NPRM at 72471.

Very truly yours,

Charles D. Tobin
BALLARD SPAHR LLP

On behalf of the News Media Coalition:

Advance Publications, Inc.
American Broadcasting Companies, Inc.
American Society of Media Photographers
The Associated Press
Capitol Broadcasting Co.
Fusion Media Network, LLC
Gannett Co., Inc.
Getty Images (US), Inc.
Gray Television, Inc.
Media Law Resource Center
National Press Photographers Association
NBCUniversal Media, LLC
News Media Alliance
Nexstar Media Group, Inc.
The New York Times Company
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
The E.W. Scripps Company
Sinclair Broadcast Group, Inc.
Society of Professional Journalists
TEGNA, Inc.
WP Company LLC