

June 2, 2016

Angela Simpson
Deputy Assistant Secretary
National Telecommunications and Information Administration
Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Re: National Telecommunications and Information Administration (NTIA) Multi-Stakeholder Best Practices on Privacy, Transparency, and Accountability Regarding Commercial and Private UAS (“Best Practices”).

Dear Deputy Assistant Secretary Simpson:

The National Association of Mutual Insurance Companies (“NAMIC”) appreciates the opportunity to provide comments regarding the Best Practices.

On February 15, 2015, President Obama issued the Presidential Memorandum “Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems,” which established a “multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private Unmanned Aircraft Systems (UAS) use in the National Air Space (NAS).” NAMIC greatly appreciates the work of the NTIA staff on this project, as well as the diligence of the stakeholders who consistently attended the sessions and provided thoughtful analysis.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country’s largest national insurers. The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. Through our advocacy programs, we promote public policy solutions that benefit NAMIC companies and the consumers we serve.

As the leader at the intersection of insurance and UAS, NAMIC has actively participated in every NTIA session and produced the *Compendium of State Laws and Proposed Legislation Related to Unmanned Aerial Systems/Drones* for the NTIA and stakeholders. NAMIC has also worked on UAS regulatory issues directly with senior UAS officials at the NTIA, has testified before Congress and state legislatures on UAS issues, and has coordinated on a national level with UAS trade and interest groups.

NAMIC members are interested in using UAS for insurance services and a number of NAMIC members already have Federal Aviation Administration Section 333 Exemptions for such use. Insurance is a significant area of commercial UAS use, with the FAA forecasting that insurance will be among the top four commercial users of the 11 million commercial UAS that the FAA predicts to be in use by 2020. Responsible commercial development of UAS use will need property casualty insurance companies to be involved in the process from beginning to end, including possible future liability coverage of UAS drone use. . In addition, NAMIC members are providing insurance coverage for certain policyholders and examining additional, practical means to provide further insurance protection for policyholders.

Reluctantly, NAMIC is not able to support the best practices document that was accepted by the stakeholders at the NTIA May 18, 2016 meeting. Most importantly, the best practices document defined private data as information that could be linked to an individual's name or other personally identifiable information. First and foremost, many areas of the law already define and protect various types of data or information about identified individuals. Adding yet another definition in the Best Practices further complicates the issue. The focus of the Best Practices should be limited to images of individuals, as defined in existing law and regulation. NAMIC has maintained throughout the process that the multi-stakeholder engagement process had no authority to modify or create new legal or regulatory standards.

As directed by the President's Memorandum, these best practices do not represent an advisory committee to any governmental or judicial authority, are not intended to supersede existing laws and policies, are to be implemented consistent with applicable law, and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party. The legal extent of privacy is defined and explained in the laws, regulations, and judicial opinions of local, state and federal government, and should apply to UAS privacy questions whenever possible. This problem is magnified as legislative and regulatory authorities – including proposed language during the FAA Reauthorization - have suggested that these best practices should serve as a model or guide for future law and regulation.

During the multi-stakeholder engagement process and otherwise, NAMIC has not been presented with details or analysis of identifiable and common uses of UAS that result in unique situations in which existing privacy laws, regulations and judicial opinions are not practically applicable.

In the unlikely event that the use of UAS results in a unique situation in which these existing privacy laws, regulations and judicial opinions are not practically applicable, these best practices should not be considered as authoritative, but only as a compendium of the opinions of certain industry, civil society, and academia representatives..

Even if we were to accept the validity of including definitions in the best practices, the definition of “covered data” that exists in the document is not workable for insurance UAS use. Every image that is collected by an insurer during a roof inspection and other UAS use will by definition have a link to an individual policyholder’s name or personally identifiable information. We believe, and advocated during the NTIA sessions, that it is important to make sure that covered data specifically applies to information that “visually” identifies a particular person (like a photograph or video), as opposed to just information (for example, concerning the extent of damage to a roof) that has a link to an individual’s name or personally identifiable information. Under the existing definition in the best practices document, almost all data collected by insurers would be considered covered data.

We also believe that the best practices accepted during the May 18th NTIA meeting will result in unintended consequences and do not adequately integrate with existing privacy requirements of insurance companies and other financial services companies. For example, under section IV1(b) of the best practices document, there is a requirement to provide a privacy "policy" which may conflict with existing requirements for insurance companies under other law, including the Gramm-Leach-Bliley Act (GLBA). Pursuant to GLBA, insurance companies are required to provide defined privacy notices to consumers under specific conditions and circumstances. There are also business related disclosures that are permitted under GLBA that do not require a privacy notice to be delivered. Any company considering adding the layer of a voluntary best practices disclosure will need to determine how and where they fit with the various federal and state mandate disclosure policies.

NAMIC will continue to work with the NTIA and others, and will advocate for productive legislative and regulatory developments for our members. If you have questions or comments, also please feel free to contact me at 202-628-1558, tkarol@namic.org.

Respectfully submitted,



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