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June 3, 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

Dear Deputy Assistant Secretary Simpson:

The Property Drone Consortium (“PDC”) appreciates the opportunity to provide comments to regarding the above-referenced matter.

Property Drone Consortium

The PDC (<http://propertydrone.org/>) represents a collaboration among insurance carriers, construction industry leaders and supporting enterprises who have agreed to work together to promote research, development and the establishment of regulations for the use of Unmanned Aerial System (UAS) technology across the insurance and construction industries. We (i) research and assess use of UAS and sensors for property inspection, (ii) provide data, training, and operational best practices to develop products, and (iii) raise awareness of the regulatory & legislative UAS environment. PDC is also working with government agencies to develop best practices for use of UAS by first responders.

The PDC’s focus on the use of UAS for inspection is to improve conditions for inspectors who risk injury or fatality operating under hazardous conditions. The PDC believes that the use of UAS will save lives and increase safety for workers in the insurance and construction industries. For example, fatalities in the roofing industry roughly 11 times greater than the occupational average. UAS can be used to collect information required to assess roof damage without requiring In addition, the insurance industry expects that using UAS will allow for more efficient processing of claims, which will reduce both time and cost.

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Multi-stakeholder process

The PDC has actively participated in the National Telecommunications and Information Administration (NTIA)-convened multi-stakeholder process concerning privacy, transparency, and accountability issues regarding commercial and private use of UAS. However, as a representative of one of the major industries that is expected to incorporate UAS into existing workflows, the PDC had a number of concerns about the multi-stakeholder process that impacted the group's final product.

The PDC believes that the multi-stakeholder process was convened much too early in the life-cycle of UAS, particularly in regard to their potential commercial applications. As of May 25, 2016 the Federal Aviation Administration (FAA) has only granted 5,238 exemptions to use UAS for commercial purposes in the United States, with some companies receiving several exemptions. All of these exemptions have been for very small UAS (less than 55 pounds when fully loaded with sensors and related technology) and with a number of operational constraints that limit their applicability for a number of commercial purposes. In addition, most of the companies that have received permission to operate are these UAS for commercial purposes are very small companies whose sole business model involves operating drones.

Simply put, it is much too early to try to develop "best practices" when it is still not clear how the majority of US businesses, large and small, will integrate data collected from UAS into their workflow. In addition, the technology is expected to evolve greatly over the next several years. These changes will have an impact on privacy in both a positive and a negative way. The PDC contends that the internet would not have provided the tremendous economic, governmental and societal benefits it does today if a group of self-selected "stakeholders" had tried to develop best practices on its use when there only approximately 5000 commercial users of the technology.

One of the key indicators that the stakeholder process was convened too early in the technology adoption cycle of the UAS was that the PDC was one of the few potential "users" of data collected from UAS that were active participants in the process. Numerous studies have pointed out the potential for UAS in a variety of commercial applications. The economic and societal benefits are predicted to be wide-ranging. However, many of the active participants represented DC-based "think tanks", associations representing UAS manufacturers and large companies interested in using UAS for purposes other than data capture. The PDC believes that potential users did not actively participate because they recognize, quite understandably, that they do not have enough experience yet to determine what should constitute best practices. However, their absence was notable in the focus and nature of the discussion.

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Best Practices

As a result, the PDC also has a number of concerns with the Voluntary Best Practices for UAS Privacy, Transparency and Accountability (the “NTIA Best Practices”) that were produced through this multi-stakeholder process. Its primary concern is that it will create a complex regime around UAS collected data that does not apply to identical data collected from other technologies. For example, smart phones and security cameras can collect images of the same nature as UAS, but are not subject to the NTIA Best Practices. While the PDC recognizes that there may be some unique privacy issues associated with UAS, these risks do not require fundamentally changing how such data is collected or used.

The PDC is also concerned that the definition of “Covered data” in the NTIA Best Practices is too broad. For example, every image of an insured’s property will be tied to a name or address and will therefore be likely included in this definition. The PDC is concerned that an image unintentionally collected of an individual on a neighboring property may be considered Covered Data even if a face cannot be identified, because in many instances the associated location metadata can be geocoded to an address. The effect in both cases is to create a new expectation of privacy for an individual that is not currently grounded in law or in practice. The unintended consequences of such a result would be significant for a variety of technologies and applications.

Moreover, the PDC believes that the privacy and information security practices under the NTIA Best Practices are overreaching. An image of an individual in a public place captured by a UAS should not automatically trigger ISO 27001 standards or Federal Trade Commission and National Institute of Standards guidance. The insurance industry, and many others, already comply with a number of privacy and data protection legal and regulatory regimes and should not face additional requirements for UAS-collected data simply due to the size or sensitivity of their business.

In fact, the PDC is concerned that complying with these best practices may conflict with its responsibilities under other regulatory regimes. For example, Section 2(e) of the NTIA Best Practices states that UAS operators should establish a process appropriate to its size and complexity to receive, and presumably respond, to requests to “delete, de-identify, or obfuscate” a suspected data subject’s request of covered data. Establishing such a process will prove onerous and in many instances unnecessary. It is also likely to directly conflict with existing state statutes and the National Association of Insurance Commissioners (NAIC) Market Conduct Record Retention and Production Model Regulation on the need to retain and be able to produce

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documentation, including photos and video imagery, related to adjustment of a claim and the underwriting and sale of many types of insurance policies.

Finally, the PDC does not believe that the NTIA Best Practices is strong enough in warning the user that the document should not be used as a basis for law or regulation. As should have been expected, the document has already taken on a life of its own in the press and social media. Subtle comments and references are often overlooked in such reports. As a result, the PDC is concerned that without clearer disclaimers as to intent, purpose and limitation, the document will soon become the foundation upon which lawmakers and regulators will build additional legal requirements. That was not the stated intent of the Presidential Memorandum "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems" issued by President Obama on February 15, 2015 that created the multi-stakeholder process.

In addition for the reasons stated above, the PDC suggested the NTIA Best Practices have a sunset clause such that it would no longer be considered valid after 18 months. This 18-month period would allow for (i) a better understanding of the true privacy risks associated with commercial use of UAS (instead of conjecture as to what they might be); (ii) further development of technological solutions to address some of these concern; and, (iii) broader use of UAS in a different applications so that it would be easier to balance the privacy risks versus the opportunity costs associated with not being able to use UAS for critical missions due to privacy concerns. After 18 months the NTIA could either reconvene a multi-stakeholder group to revise the best practices or decide that a legal and regulatory framework had sufficiently developed. Unfortunately, this suggestion was not adopted.

Next Steps

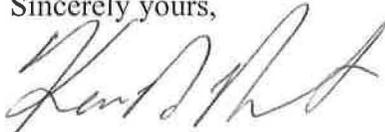
As a result, the PDC will not support the NTIA Best Practices. However, we will continue to work with our members, others in the insurance and construction industry, as well as federal and state authorities to develop legislative and regulatory framework that address any unique privacy,

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civil liberty and civil liberty issues associated with UAS. In that regard, we would be happy to meet with you in person to discuss our concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Kevin D. Pomfret". The signature is fluid and cursive, with a large initial "K" and "P".

Kevin D. Pomfret
Outside Counsel, Property Drone Consortium