



National Press Photographers Association

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Via Email

February 27, 2019

Ms. Anita Ramasastry, President – Uniform Law Commission
Mr. Paul Kurtz, Chair – Tort Law Relating to Drones Committee
Mr. Mark Glaser, Vice-Chair – Tort Law Relating to Drones Committee
c/o Uniform Law Commission
National Conference of Commissioners on Uniform State Laws
111 North Wabash Avenue, Suite 1010
Chicago, Illinois 60602

Re: Tort Law Relating to Drones Act - March 2019 Draft

Dear Ms. Ramasastry, Mr. Kurtz, and Mr. Glaser:

As an observer to this committee and general counsel for the National Press Photographers Association (NPPA), I write once again to express our concerns regarding the current draft of the Tort Law Relating to Drones Act (dated March 1-2, 2019, “March 2019 Draft”) being presented to the National Conference of Commissioners on Uniform State Laws (“ULC”) at its March 1-3, 2019 meeting in Washington, D.C.

We believe the March 2019 Draft will continue to unduly inhibit the development of emerging uses for drones through technology-specific restrictions that are impossible to comply with, impossible to enforce, and likely will still conflict with the existing authority, regulations and intent of the Federal Aviation Administration (FAA).

While we commend the replacement of “strict liability for *per se* aerial trespass” and the 200’ minimum altitude restriction we are still concerned that the newly proposed “substantial interference” determination and “totality of the circumstances” standard will cause protracted litigation. Some of the considerations listed in *Section 5: Airspace Intrusions* are extremely subjective, such as “the altitude at which the unmanned aircraft was operating” and whether the UAS was actually “over the property.” Others such as “whether the unmanned aircraft recorded or captured audio, video or photographs while in operation over the property” and “the operator’s purpose in operating the unmanned aircraft over the property” cannot be determined without discovery. Once again, because it is very difficult to determine a drone’s altitude or exact overhead location while looking up from the ground, property owners are likely to file erroneous claims based on inaccurate assessments of a drone’s whereabouts. The potential onslaught of litigation would require courts to guess at whether a property line or altitude threshold was crossed, not to mention

the operator's intent and what images or sounds (if any) were recorded or captured.

As pertains to newsgathering, it will be daunting if not impossible for journalists to obtain consent from land owners to operate drones over their property, especially during breaking news events. What person or entity with the legal authority to grant such aerial access would a journalist contact for permission to fly over a vast and varied assortment of real property? What about a condominium with 100 tenants? Or an empty field with no structures or residents? These questions remain unanswered.

It is indeed unfortunate that while *Section 7: Landowner Duties and Responsibilities*, contains the admonitions to "act with reasonable care in relation to known unmanned aircraft operating in the navigable airspace over the landowner's property" and that "a landowner shall not take any action intended to interfere with the flight of unmanned aircraft over the landowner's property;" there are no concomitant remedies provided for the UAS operator should the property owner fail to abide by these duties. Without such language we are extremely concerned that the March 2019 Draft will embolden property owners to exercise self-help.¹

The March 2019 Draft no longer contains even the original fleeting reference to First Amendment protections, thus further chilling drone use by journalists to gather and disseminate the news to the public, and the public's right to receive news, as guaranteed by the U.S. Constitution. The daunting legal repercussions involved in trying to strike a balance between those protections and a totality of the circumstances tort claim will tax an overburdened court system and thwart the federal government's efforts to bring about a sensible regulatory regime for this evolving technology.

Therefore, we respectfully request that the Committee along with the Commission consider our comments in revising the March 2019 Draft.

Thank you for your attention and consideration in this matter. We look forward to working with you to create a more even-handed approach to this issue.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

¹ See: *Long Island man busted for shooting down drone that was tracking missing pup*
<https://www.nydailynews.com/new-york/ny-news-man-shoots-down-drone-missing-dog-20190224-story.html>