

February 24, 2012

Michael P. Huerta
Acting Administrator
United States Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

Dear Administrator Huerta,

We, the undersigned consumer rights, technology, and civil rights organizations, are submitting the following Petition to the Federal Aviation Administration (“FAA”) under the Administrative Procedure Act.¹ We request the Agency to conduct a rulemaking to address the threat to privacy and civil liberties involved in the integration of drones in the national airspace system pursuant to the FAA Modernization and Reform Act of 2012 §§ 321-333.²

Drone Use in the United States is Increasing

A "drone," or "unmanned aircraft," is an aerial vehicle designed to fly without a human pilot onboard. Current regulations only permit civil organizations to operate drones within the United States with an “experimental” designation.³ Despite this limitation, many individuals have found the means to operate drones within the course of business.⁴

The Bureau of Customs and Border Protection (“CBP”) currently operates nine drone vehicles, which were procured specifically to monitor the United States borders.⁵ In 2011, CBP allowed a local law enforcement unit in North Dakota the use

¹ 5 U.S.C. § 553(e) (2011).

² FAA Modernization and Reform Act of 2012, Pub. L. 112-95 (2012), *available at* <http://www.gpo.gov/fdsys/pkg/BILLS-112hr658enr/pdf/BILLS-112hr658enr.pdf>.

³ Unmanned Aircraft Operations in the National Airspace System, 14 C.F.R. 91 (2007), *available at* <https://www.federalregister.gov/articles/2007/02/13/E7-2402/unmanned-aircraft-operations-in-the-national-airspace-system#p-12> (“Under FAA policy, operators who wish to fly an unmanned aircraft for civil use must obtain an FAA airworthiness certificate the same as any other type aircraft. The FAA is currently only issuing special airworthiness certificates in the experimental category.”).

⁴ Drones: Who is Watching You (ABC News 2012), *available at* <http://news.yahoo.com/video/us-15749625/drones-who-is-watching-you-28326842.html>.

⁵ Press Release, United States Bureau of Customs and Border Protection, CBP Receives Fourth Predator-B in Arizona; Agency Now Operates 9 Unmanned Aircraft (Dec. 27, 2011), *available at* http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/2011_news_archive/12272011.xml.

of a drone within the unit's normal operations.⁶ This incident represented the first occasion where drone use resulted in an arrest of a U.S. Citizen.⁷

Many law enforcement agencies are acquiring their drones that permit new forms of aerial surveillance.⁸ In 2011, the Miami-Dade Police Department purchased a Honeywell T-hawk with funds from the federal stimulus.⁹ Later that year, The Montgomery County Sheriff's Office in Texas purchased a ShadowHawk with a grant from the Department of Homeland Security ("DHS").¹⁰ Drones are also used by police in South Carolina and Colorado, and drones may soon be used for surveillance in New York City.¹¹ Experts estimate that up to 30,000 new drones could be launched in the United States in the next decade.¹²

Drones Pose Substantial Threats to Privacy

Drones greatly increase the capacity for domestic surveillance. Gigapixel cameras used to outfit drones are among the highest definition cameras available, and can "provide real-time video streams at a rate of 10 frames a second."¹³ On some drones, operators can track up to 65 different targets across a distance of 65 square miles.¹⁴ Drones may also carry infrared cameras, heat sensors, sensors that detect movement, and automated license plate readers.¹⁵ In the near future these cameras may include facial recognition technology that would make it possible to

⁶ Brian Bennett, *Police Employ Predator Drone Spy Planes on Home Front*, Los Angeles Times (Dec. 10, 2011), <http://articles.latimes.com/2011/dec/10/nation/la-na-drone-arrest-20111211>.

⁷ *Id.*

⁸ Ana Campoy, *The Law's New Eye in the Sky; Police Departments' Use of Drones is Raising Concerns Over Privacy and Safety*, Wall Street Journal (Dec. 13, 2011), <http://online.wsj.com/article/SB10001424052970204319004577088891361782010.html> ("As of September, there were 285 active permits requested by 85 government groups, including public universities, federal law enforcement agencies, and police departments.").

⁹ *Drone May be Coming to Miami-Dade*, WSVN-TV (Jan. 6, 2011), <http://www.wsvn.com/news/articles/local/21003198189967/>; *The Law's New Eye in the Sky*, *supra* note 8.

¹⁰ Clay Dillow, *A Texas Sheriff's Department is Launching an Unmanned Helodrone that Could Carry Weapons*, PopSci (Nov. 3, 2011, 8:27 AM), available at <http://www.popsci.com/technology/article/2011-11/texas-sheriffs-department-launching-unmanned-helo-could-carry-weapons>.

¹¹ *The Law's New Eye in the Sky*, *supra* note 8; Brian Naylor, *Look, Up in the Sky! It's a Drone, Looking at You*, NPR (Dec. 5, 2011), <http://www.npr.org/2011/12/05/143144146/drone-technology-finding-its-way-to-american-skies>.

¹² Lynn Herman, *30,000 Drones in American Skies, Civil Liberties in Jeopardy*, Digital Journal (Feb. 13, 2012), <http://www.digitaljournal.com/article/319564>. One report attributes the number to the FAA itself. Shaun Waterman, *Drones over U.S. get OK from Congress*, The Washington Times (Feb. 7, 2012), <http://www.washingtontimes.com/news/2012/feb/7/coming-to-a-sky-near-you/>.

¹³ *US Army Unveils 1.8 Gigapixel Camera Helicopter Drone*, BBC News Technology (Dec. 29, 2011, 1:11 PM), <http://www.bbc.co.uk/news/technology-16358851>.

¹⁴ *Id.*

¹⁵ Customs and Border Protection Today, *Unmanned Aerial Vehicles Support Border Security* (July/Aug. 2004), available at http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml.

remotely identify individuals in parks, schools, and at political gatherings.¹⁶

The increased use of drones is an imminent threat to the privacy of every United States citizen.¹⁷ Google, inc. has already started using drones in other countries to supplement the images for their Street View service.¹⁸ In Hollywood, companies are developing “paparazzi drones” in order to follow and photograph celebrities.¹⁹ Private detectives have also found use for drones to assist with persistent tracking of their targets.²⁰ Criminals and others may use drones for purposes of stalking and harassment.²¹

The consequences of increased government surveillance through the use of drones are even more troubling. The ability to link facial recognition capabilities on drone cameras to the FBI’s Next Generation Identification database, the largest collection of biometric data in the world,²² increases the First Amendment risks for would-be political dissidents. In addition, the use of drones implicates significant Fourth Amendment interests and common law privacy rights.²³ With special

¹⁶ Clay Dillow, *Army Developing Drones that Can Recognize Your Face From a Distance*, PopSci (Sept. 28, 2011, 4:01 PM), <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind>.

¹⁷ See M. Ryan Calo, *The Drone as a Privacy Catalyst*, 64 Stan. L. Rev. Online 29 (2011), available at <http://www.stanfordlawreview.org/online/drone-privacy-catalyst>.

¹⁸ *Micro Drones for Google?*, Google Blogoscoped (Aug. 7, 2010), <http://blogoscoped.com/archive/2010-08-07-n43.html>, citing to von Sebastian Matthes and Bernd Mertens, *Zivile Drohnen für Google*, Wirtschafts Woche (Aug. 7, 2010), <http://www.wiwo.de/technologie/luftueberwachung-zivile-drohnen-fuer-google/5156046.html>.

¹⁹ Clay Dillow, *Plan for Celebrity-Stalking Paparazzi Drone Reveals New Roles for Unmanned Civilian Aircraft*, PopSci (Nov. 11, 2010, 12:01 PM), <http://www.popsci.com/technology/article/2010-11/paparazzi-drone-reveals-emerging-roles-civilian-drone-aircraft>.

²⁰ See Neal Ungerleider, *Unmanned Drones Go From Afghanistan to Hollywood*, FastCompany (Feb. 15, 2012), <http://www.fastcompany.com/1816578/unmanned-drones-go-from-afghanistan-to-hollywood>.

²¹ W.J. Hennigan, *Idea of Civilians Using Drone Aircraft May Soon Fly with FAA*, Los Angeles Times (Nov. 27, 2011), <http://articles.latimes.com/2011/nov/27/business/la-fi-drones-for-profit-20111127>; *Plan for Celebrity-Stalking Paparazzi Drone Reveals New Roles for Unmanned Civilian Aircraft*, *supra* note 19.

²² See *Next Generation Identification*, Federal Bureau of Investigation, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ngi (last visited Feb. 17, 2012).

²³ Many state governments have enacted legislation to protect citizens from the type of persistent surveillance that drones would facilitate. Sometimes called “Peeping Tom” laws, each state prohibits the intrusion upon a person’s seclusion. See *Elements of an Intrusion Claim*, Citizen Media Law Project, <http://www.citmedialaw.org/legal-guide/elements-intrusion-claim> (last visited Feb. 21, 2012) See also, e.g. Cal. Civ. Code § 1708.8 (West 2011); Neb. Rev. Stat. § 20-203 (2011). Unlike trespass laws, intrusion does not require a physical trespass. *Id.* This is important since the United States has established that a person has no property rights in the airspace over their property. See *U.S. v. Causby*, 328 U.S. 256 (1946); See also 49 U.S.C. § 40103 (2011) (“The United States Government has exclusive sovereignty of airspace of the United States.”). However, there is a possibility that certain drone operators may be guilty of common law trespass, particularly in regard to small-sized drones flying at low altitudes. *Id.* Many states have laws with even higher levels of privacy protection, such as California’s regulation on the use of telephoto lenses to photograph private property. Cal. Civ. Code § 1708.8 (West 2011).

capabilities and enhanced equipment, drones are able to conduct far-more detailed surveillance, obtaining high-resolution picture and video, peering inside high-level windows, and through solid barriers, such fences, trees, and even walls.

FAA Regulation of Drones

The FAA is required to “promote safe flight of civil aircraft.”²⁴ Drones have unique value both commercially and as a cost-effective means to supplement government surveillance.²⁵ In order to accomplish their statutorily mandated mission, the FAA must first act to resolve the privacy problems association with the highly intrusive nature of drone aircraft, and the ability of operators to gain access to private areas or to track individuals over large distances.

The FAA Modernization and Reform Act requires the FAA to, within a certain amount of time, “develop a comprehensive plan” to implement drones into civil commerce.²⁶ The plan must “define the acceptable standards for operation” for civil drone use.²⁷ In addition, the FAA is required to “provide guidance on a public entity’s responsibility when operating an unmanned aircraft.”²⁸ Before May 14, 2012, the FAA must “simplify the process” by which government entities operate drones in the national airspace.²⁹

Request for Agency Action

The threat posed by the operators of drone aircraft to the privacy and civil liberties of every American citizen is great. An assessment of the safety of incorporating drones into the national airspace would not be complete without allowing the public to submit meaningful feedback on this issue. In light of the aforementioned considerations, the undersigned petition the FAA to perform the following notice and comment rulemakings:

1. The FAA must conduct a notice and comment rulemaking on the impact of privacy and civil liberties related to the use of drones by civil operators. In order to adequately address all of the potential threats, the FAA should examine and report on the impact on privacy to American citizens within the scope of their comprehensive plan to safely integrate civil drones into the national airspace, required under § 322(a) of the FAA Modernization and Reform Act.
2. The FAA must conduct a notice and comment rulemaking on the impact of privacy and civil liberties related to the use of drones by government

²⁴ 49 U.S.C. § 44701(a).

²⁵ See *The Drone as a Privacy Catalyst*, *supra* note 17 at 30.

²⁶ FAA Modernization and Reform Act § 322(a)(1).

²⁷ FAA Modernization and Reform Act § 322 (a)(2)(B)(i).

²⁸ FAA Modernization and Reform Act § 324(a)(4).

²⁹ FAA Modernization and Reform Act § 324(c)(1).

operators pursuant to the agency actions required under § 324(c) of the FAA Modernization and Reform Act.

3. The notice and comment rulemakings should take into consideration the use and retention of data acquired by drone operators; the relation between drone operation and property rights; the ability of an individual to obtain a restraining order against a drone vehicle; and use limitations on drone vehicles and requirements for enforcement. In relation to the government use of drones, the rulemakings should also consider the application of the Privacy Act of 1974 to the information gathered by drone operators.

Thank you for your consideration of this petition.

Sincerely,

Electronic Privacy Information Center (EPIC)

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