

WILLIAMS MULLEN

Direct Dial: 703.760.5204
kpomfret@williamsmullen.com

November 14, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: UAS and Privacy

Dear Ms. Ramirez:

The Property Drone Consortium (“PDC”) appreciates the opportunity to provide comments to the Federal Trade Commission (“FTC”) on privacy concerns associated with unmanned aircraft systems (“UAS”).

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 and 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 are roughly 11 times greater than the occupational average. UAS can be used to collect information required to assess roof damage without requiring inspectors to climb roofs or access difficult locations, particularly in the aftermath of a catastrophic event where hundreds if not thousands of inspectors will be called out to assess property damage. In addition, the insurance industry expects that using UAS will allow for more efficient processing of claims, which will reduce both time and cost, and again, in the case of a catastrophic event, allow insurance companies to more readily offer financial relief to distressed homeowners.

WILLIAMS MULLEN

Federal Trade Commission
Office of the Secretary
November 14, 2016
Page 2

Recommendations

With respect to UAS, the PDC recommends that the FTC consider the following before taking any steps to regulate UAS.

1. Importance of clarifying unique privacy concerns associated with UAS.

Critics of UAS have raised a number of potential privacy concerns. However, many of these concerns are reflective of the technological changes that have occurred over the past several years that have enabled Big Data. It would be a mistake for any government agency to try to address all of the potential privacy associated with a Big Data society by regulating UAS. Instead, any regulations should focus solely on the unique aspects of UAS that raise legitimate privacy concerns. The PDC agrees with one of the panelists at the recent FTC Fall Technology Series on UAS, that the two unique aspects of UAS are (i) the remoteness of the UAS operator and (ii) the ability of UAS to get closer to persons and property than other platforms, when in otherwise not easily accessible locations.

2. Commercial Use and Associated Risks of UAS are Still Unknown.

Despite all of the discussions regarding UAS over the past several years, we still do not fully appreciate how UAS will be used in commercial settings, their full benefits, or the associated risks. The reason is that until the fall of 2014, commercial use of UAS in the U.S. was prohibited and until this past August, use was so restrictive that many companies felt that the potential benefit was not worth the time or the cost. For example, the PDC and its members believe that UAS can replace individuals conducting physical inspection and evaluation of property claims by climbing on roofs. Such a use of UAS would provide enhanced physical safety, as such inspections come with substantial risk when carried about by individuals, particularly in the aftermath of storms or disasters when structures may be compromised or access blocked. In addition, UAS could be much less intrusive to the property owner than having an inspector walk around, through and inside a property.

However, the members of the PDC are still evaluating whether such a use case of UAS is feasible and if so what are the best operational procedures in which to integrate UAS into the existing workflow. As a result, the PDC believes that developing regulations or policies on privacy before being able to better understand the potential benefits is premature.

WILLIAMS MULLEN

Federal Trade Commission
Office of the Secretary
November 14, 2016
Page 3

3. Creating a “Reasonable Expectation of Privacy” in Public Space Goes Against Years of Jurisprudence.

Many of the privacy concerns associated with UAS pertain to collecting images of individuals while they are in public or otherwise observable to the public. There is a long history of jurisprudence in the U.S. that provides that individuals do not have a reasonable expectation of privacy when in public. The PDC believes that any change to that fundamental principle with regards to UAS will quickly be applied to other technologies. This would result in a number of unintended consequences. As a result, the PDC recommends that there be no effort to create a reasonable expectation for an individual to not have an image of him or her taken from a UAS when observable to the public.

4. Fair Information Practice Principles Do Not Work Well With UAS.

The PDC believes that while the Fair Information Practice Principles have served a useful role in protecting consumer privacy, their role is limited with respect to technologies such as UAS. For example, concepts such as notice, consent and access can be applied easily in one-to-one settings such as accessing a web site, but are much more difficult to apply – and arguably much less effective – in a one-to-many situation, such as when a UAS is collecting imagery of a large area. As a result, the PDC believes that a new privacy construct should be developed that takes into account the unique aspects of UAS. The PDC recognizes that developing such a construct will take time, and will require substantial input from a number of stakeholders, but believes that such a process is necessary in order to balance the benefits and privacy risks associated with UAS.

Thank you for allowing the PDC to provide these comments. Please let me know if you have any questions or wish to discuss this in further detail.

Sincerely yours,

Kevin B. Pomfret, Esq.
Outside Counsel to the Property
Drone Consortium