

News Drones Updates: Micro UAS and Privacy

By Charles D. Tobin and Christine N. Walz

This month, the federal agencies working on the integration of unmanned aircraft systems (“UAS”), commonly referred to as drones, have taken important steps toward resolving key issues slowing the take-off of daily UAS journalism. A coalition of nearly two dozen news organizations has played a key role in the discussions with these agencies, which are tasked with considering safety and privacy issues.

Micro Drones and Overhead Flights: On February 24, 2016, the Federal Aviation Administration (“FAA”), the agency responsible for the safety of the national airspace, [announced](#) the creation of an Aviation Rulemaking Committee to provide recommendations on which types of micro UAS should be permitted to fly directly over people.

Currently, commercial UAS use, which the FAA defines to include newsroom use, requires a special FAA exemption. Except in certain very specific circumstances, typically closed movie sets where all people on the ground are participating in the production, the FAA's exemptions ban all flights over people. For many newsrooms that restriction is an obstacle to daily UAS journalism.

The FAA's decision to take a fresh look at the issue, and invite stakeholder discussion, follows-up on FAA's rulemaking process addressing small UAS (all UAS weighing 55 lbs. or less), which began in early 2015. In that process, the FAA had invited comments about whether to create a separate “micro UAS framework,” which the FAA had contemplated defining as UAS models weighing 4.4 lbs or less. The FAA has now announced that this weight-based categorization will not be flexible enough. Instead, it has proposed a new framework that is “performance based” rather than weight or speed specific.

The announcement of an Aviation Rulemaking Committee on micro drones is a strong indication that the FAA is poised to ultimately allow certain types of small drones to fly directly over people, however, the timing of the announcement also suggests that this permission may come later than originally anticipated. Previously, it was anticipated that the release of a micro drone rule would be announced at the same time as the final small UAS rule. The announcement of this Committee suggests that the FAA may now release a single rule for all small UAS, with more stringent requirements, and later release a more permissive micro-drone rule based on the Committee's recommendations.

Along with manufacturers and industry trade associations, the FAA has [invited](#) representatives of a coalition of nearly two dozen news media entities to participate in the advisory committee, which will ensure that the FAA receives important input about newsgathering drones, including input on specific UAS models and specific news scenarios.

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The Committee is expected to conclude its work by April 1, 2016.

Multistakeholder Negotiations on Voluntary Privacy "Best Practices": On February 24, 2016, the National Telecommunications and Information Administration ("NTIA") – the agency tasked with facilitating a multistakeholder process to develop voluntary privacy best practices for the use of UAS – held its fourth public meeting and discussion on best practices. At this meeting, stakeholders considered a best practices [proposal](#) put forth by the news media coalition incorporating the following principles to ensure that First Amendment protections:

- Government-endorsed best practices cannot restrict the First Amendment or require journalists to defend use of images collected by UAS on a case by case basis;
- Existing technology-agnostic state laws, rather UAS specific-laws at either the federal or state level, are the appropriate way to address privacy concerns;
- Images and sounds gathered in public places are not private and should not be entitled to protection; and
- Editorial decisions, including decisions about data collection and retention, must be left to journalists.

This proposal is a contrast to other proposals under consideration, which have the potential to have a significant, technology-specific impact on the media's ability to gather, retain and use images taken by UAS in public places.

The multistakeholder process is on-going and participants are now considering whether consensus support can be reached for a best practices proposal. The next step is for participants to determine whether there is consensus for any of the current proposals, for another approach combining the proposals on the table, or for multiple best practices, including separate best practices for the news gathering community.

The next multistakeholder meeting will be scheduled for the end of March or early April.

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