



National Press Photographers Association

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Via Email

July 24, 2018

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

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 to express our strong opposition to the current draft of the Tort Law Relating to Drones Act (dated June 19, 2018) (“the draft Act”) being presented to the National Conference of Commissioners on Uniform State Laws (“ULC”) at its annual meeting tomorrow, July 25, 2018.

We believe this draft Act will unduly restrict the development of emerging uses for drones by establishing a technology-specific restriction that is impossible to comply with, impossible to enforce, and likely will conflict with the existing authority and regulations of the Federal Aviation Administration (FAA).

This draft Act creates strict liability for *per se* aerial trespass under which journalists could be sued if a UAS they operate were to stray into airspace below 200 feet over one property while actually gathering newsworthy information of a different nearby location. This is problematic as the current FAA Part 107 regulations limit the maximum operational altitude of drones to 400 feet, thus effectively creating a 200-foot operational corridor. Flying a drone in such a narrow band would be virtually impossible and the restrictions would effectively restrict lateral movement or take-off and landings. 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 location. The potential onslaught of litigation would require courts to guess at whether a property line or altitude threshold was crossed.

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?

While the draft Act acknowledges the authority of the FAA, its language flies in the face of both common sense and federal preemption. And despite its passing referral to the First Amendment, the draft Act poses a serious risk to the uses 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 chilling legal repercussions involved in trying to strike a balance between those protections and a strict liability 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 not finalizing the draft Act as written.

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