



July 23, 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:

The Commercial Drone Alliance (“the Alliance”), an independent 501c6 non-profit organization led by key members of the commercial drone industry,<sup>1</sup> hereby expresses its 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 later in July.

As an overarching comment, the draft Act does not appreciate the U.S. government’s exclusive role in regulating matters of aviation safety, nor does it consider that Congress has vested the Federal Aviation Administration (“FAA”) with the authority to regulate the areas of airspace use, management and efficiency, air traffic control, and aircraft noise at its source, among other areas.<sup>2</sup> It has disregarded the numerous letters and guidance from the FAA to local jurisdictions seeking to enact UAS-related laws and regulations.<sup>3</sup> Indeed, the U.S. Department of Transportation and the FAA have made

---

<sup>1</sup> See <https://www.commercialdronealliance.org/> for information about the Alliance’s Board, Members, and Co-Executive Directors.

<sup>2</sup> See, e.g., 49 U.S.C. §§ 40103, 44502, 44701-44735; see also State and Local Regulation of UAS – Fact Sheet (FAA, Office of Chief Counsel, December 17, 2015) (“FAA Fact Sheet”).

<sup>3</sup> See, e.g., FAA Fact Sheet; Letter from B. Goldberg, FAA, to J. Randolph regarding Town of Palm Beach Proposed Drone Ordinance No. 08-2016 (May 18, 2017).

clear that they do not concur with the draft Act, nor have they taken any official position on the relationship between federal regulation and state/local authority that would support the draft Act.<sup>4</sup>

Although the Alliance is concerned about several aspects of the draft Act, we focus our comments at this time on the provision establishing liability for *per se* aerial trespass. The Committee has not articulated a compelling reason why a strict liability version of aerial trespass – as reflected by the Committee’s newly-created *per se* aerial trespass doctrine – is necessary with respect to FAA authorized operations of UAS.

The draft Act establishes what amounts to a “No Fly” or “Exclusion” zone for UAS up to 200 feet above ground level or any structure on the land. It is not the province of the Committee or any State or local jurisdiction, however, to carve-up the airspace with arbitrary altitude thresholds. Congress has vested the FAA with the authority to regulate the areas of airspace use, management and efficiency, and air traffic control. As the FAA has explained in commenting on a local municipality’s proposed UAS ordinance, “Federal courts have upheld the Federal Government’s preemption of aircraft flight, including flight altitude. . . . To the extent that this provision regulates where UAS may fly, it would not be consistent with the Federal statutory and regulatory framework as described in the Fact Sheet.”<sup>5</sup> This is a critical point because “[s]ubstantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft.”<sup>6</sup> Simply put, the No Fly zone at 200 feet would conflict with the federal preemption in this area and be in “in tension with decades of established precedent in the Federal courts, which have rejected the notion of applying the traditional elements of basic trespass law to aircraft overflight of private property.”<sup>7</sup>

In addition, the draft Act removes the requirement with respect to aerial trespass that any UAS operation must have interfered substantially with the landowner’s use and enjoyment of the land – substantial interference otherwise being a requirement for a claim of aerial trespass under Restatement (Second) of Torts, Section 159(2). The failure to include any requirement for substantial interference or impact is another significant flaw with the *per se* aerial trespass proposal in the draft Act. It will lead to an explosion of potential claims against UAS operators even when the UAS operations traversing the airspace above one’s property have absolutely no impact or interference on the landowner’s use and enjoyment of the land – e.g., even when the landowner is not present during the flyover.

---

<sup>4</sup> See Letter from S. Bradbury, General Counsel – DOT, and C. Trippe, Chief Counsel – FAA, to Messrs. Kurtz and Glaser (July 11, 2018).

<sup>5</sup> Letter from B. Goldberg, FAA, to J. Randolph regarding Town of Palm Beach Proposed Drone Ordinance No. 08-2016 (May 18, 2017).

<sup>6</sup> See Fact Sheet.

<sup>7</sup> See Letter from S. Bradbury, General Counsel – DOT, and C. Trippe, Chief Counsel – FAA, to Messrs. Kurtz and Glaser (July 11, 2018).

The commentary claims that the draft Act provides a necessary bright line rule which will benefit landowners and UAS operators. We disagree. A rule with a No Fly zone up to 200 feet and with *per se* aerial trespass liability not requiring any showing of harm or interference may be a bright line, but it certainly will not benefit UAS operators. On the contrary, the creation of such No Fly zones and the lack of any requirement for a demonstration of substantial interference with a landowner's use or enjoyment of the land overflown would prohibit many beneficial uses of UAS for many businesses, non-profits, and consumers, and thereby stifle an industry with the potential to inject billions of dollars into the U.S. economy.

The Alliance therefore respectfully requests that the Committee take these comments into account and not finalize the *per se* aerial trespass provision as written.

Sincerely,



[www.commercialdronealliance.org](http://www.commercialdronealliance.org)

For more information, contact:

A handwritten signature in blue ink that reads "Lisa Ellman".

Lisa Ellman  
Co-Executive Director  
Commercial Drone Alliance  
P: (202) 297 2650  
E: [lellman@commercialdronealliance.org](mailto:lellman@commercialdronealliance.org)

A handwritten signature in blue ink that reads "Gretchen West".

Gretchen West  
Co-Executive Director  
Commercial Drone Alliance  
P: (650) 670 2814  
E: [gwest@commercialdronealliance.org](mailto:gwest@commercialdronealliance.org)