



National Press Photographers Association

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Via Electronic Filing

Docket Operations, M-30
U.S. Department of Transportation (DOT)
1200 New Jersey Avenue SE
Room W12-140, West Building Ground Floor
Washington, DC 20590-0001

**Re: Docket No. FAA-2015-4378
Clarification of the Applicability of Aircraft Registration Requirements for
Unmanned Aircraft Systems (UAS) and Request for Information Regarding
Electronic Registration for UAS**

Administrator Huerta:

The National Press Photographers Association (“NPPA”) joined and supports the Comment under the above referenced docket offered by the News Media Coalition. We respectfully submit the following supplemental information on behalf of the organizations listed below to reflect our concerns with what could become the unintended consequences of UAS registration. We are concerned that any UAS registration requirement may also render a UAS operator subject to the existing statutory requirements that “[a]n operator of an aircraft shall make available for inspection a certificate of registration for the aircraft when requested by a *United States Government, State, or local law enforcement officer*”¹ or be liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern).²

As the News Media Coalition previously noted, any registration process established by the FAA must avoid placing an undue burden on the First Amendment right to gather and disseminate news. A registration process that would require all UAS operators to carry a certificate of registration with them, and produce it on demand to a federal, state or local police official, would constitute an undue burden on the First Amendment.

¹ 49 U.S. Code § 44103 - Registration of aircraft, subsection (d) Certificates Available for Inspection (emphasis added). Available at <https://www.law.cornell.edu/uscode/text/49/44103>

² 49 U.S. Code § 46301 - Civil penalties, subsection (a)(1). Available at <https://www.law.cornell.edu/uscode/text/49/46301>

To be clear, we are not opposed to a reasonable registration requirement, within the parameters set forth in the News Media Coalition's comments. But having UAS operators also fall under the requirements for producing registration papers on demand – a requirement that would not, and lawfully could not, apply to any other newsgathering device (such as a camera or recording device) – is not a valid exercise of the Federal Aviation Administration authority. The stated purpose of the UAS registration and marking requirement is the safe integration of UAS into the national airspace. The FAA has asserted one of the ways to insure that is to “have a means to identify and track the UAS to its operator.”³ Requiring a UAS operator to produce papers on demand will not aid in the safe integration of UAS.

Indeed, we are concerned that a regime like this it will be used by police and prosecutors in a pretextual way to chill free speech and freedom of the press. Journalists often encounter this type of interference. Police officers who do not like news coverage of an event often use vague charges like failing to obey a lawful order or interference with officers at an emergency scene to stop journalists. Many times, these allegations are absurd or falsified.⁴

The courts are replete with cases where police have misused laws as tools of harassment. For example, police arrested photojournalists covering the riots in public areas of Ferguson, Missouri.⁵ In Atlanta, the police used an unconstitutional ordinance to forbid photographers from taking photographs on public streets.⁶ On Long Island, New York, a freelance journalist was improperly arrested for attempting to record a police investigation on a public street, later winning a \$200,000 settlement from the police department.⁷ In another case, the United States Department of Justice (DOJ) filed a Statement of Interest.⁸ Among other things, it was concerned that “discretionary charges, such as disorderly conduct, loitering, disturbing the peace, and resisting arrest, are all too easily used to curtail expressive conduct or retaliate against individuals for exercising their First Amendment rights.”⁹

³ Federal Register, *Clarification of the Applicability of Aircraft Registration Requirements for Unmanned Aircraft Systems (UAS) and Request for Information Regarding Electronic Registration for UAS*, October 22, 2015.

Available at <https://www.federalregister.gov/articles/2015/10/22/2015-26874/clarification-of-the-applicability-of-aircraft-registration-requirements-for-unmanned-aircraft>

⁴ See “New York Police Officer Is Convicted of Lying About Photographer’s Arrest.” *New York Times* (Oct. 15, 2015), available at <http://www.nytimes.com/2015/10/16/nyregion/new-york-police-officer-is-convicted-of-lying-about-photographers-arrest.html>, archived at <http://perma.cc/CCP9-4KGY>.

⁵ See Melanie Eversley, *Getty photographer arrested in Ferguson, Mo., unrest*, *USATODAY*, Aug. 19, 2014. Available at <http://www.usatoday.com/story/news/nation/2014/08/18/getty-photographer-arrested-scott-olson/14265155/>

⁶ See Jennifer Brett & Katie Leslie, *Atlanta to repeal photography ordinance deemed unconstitutional*, *Atlanta Journal-Constitution*, Oct. 2, 2015. Available at <http://on-ajc.com/1L5fQxq>

⁷ See *Wills City, NPPA Member Wins Major Victory Against Suffolk County Police Department*, *National Press Photographers Association*, June 17, 2014. Available at <http://bit.ly/1kNjPBt>

⁸ *Garcia v. Montgomery County*, No. 12-cv-03592-JFM (D. Md.) DOJ Statement of Interest. Available at http://www.justice.gov/crt/about/spl/documents/garcia_SOI_3-14-13.pdf

⁹ *Id.* at 1-2

The U.S. Supreme Court warned about “the danger in putting faith in government representations of prosecutorial restraint,” stating “[w]e would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”¹⁰ This past term the Court furthered its skeptical stance on prosecutorial discretion, writing, “innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech.”¹¹ Similarly, in this instance we are concerned that registration requirements may be used as a pretext to chill otherwise constitutionally protected activities.

In light of the fact that the FAA has itself already issued “Law Enforcement Guidance for Suspected UAS Operations,”¹² we are extremely concerned with these unanticipated and unintended consequences which illustrate how government, and particularly law enforcement, can use discretionary laws to suppress speech activities in ways that were not considered at the time of their enactment. We ask to FAA to be mindful of its own caution to law enforcement “not to mix criminal law enforcement with agency administrative safety enforcements”¹³

To pass constitutional muster and forestall constitutional conflicts between journalists and law enforcement officers, any registration system, must contain provisions that preclude officers from demanding to see journalists’ registration papers, and to then detaining, fining, or seizing property from journalists who are not carrying such documentation with them.

Therefore, we respectfully request you to direct law enforcement personnel that use of UAS for photography or video recording are generally First Amendment-protected activities (as they are on the ground) and that absent articulable facts and circumstances that support reasonable suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity or careless/reckless use, officers may not request an operator to produce a registration certificate or to inspect the identification markings on a UAS.

We further request either lessening the penalties for violations of these registration rules as applied specifically to UAS, or alternatively, consider adopting a sliding scale where first-time offense penalties are minimal and only increase accordingly with subsequent occurrences.

Thank you for your attention and consideration in this matter.

¹⁰ *United States v. Stevens*, 130 S. Ct. 1577, 1591 (2010)

¹¹ *Reed v. Town of Gilbert*, 576 U.S. ___, 135 S.Ct. 2218, 2227 (2015).

¹² FAA Issues UAS Guidance for Law Enforcement, January 8, 2015. Available at <https://www.faa.gov/news/updates/?newsId=81244>

¹³ *Id.*

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Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

On behalf of:

American Society of Media Photographers
American Society of News Editors
Associated Press Media Editors
Associated Press Photo Managers
The McClatchy Company
North Jersey Media Group
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Society of Professional Journalists
Student Press Law Center