June 14, 2019

Ms. Anita Ramasastry
Mr. Paul Kurtz
Mr. Mark Glaser
c/o Uniform Law Commission
111 N. Wabash Avenue, Suite 1010 Chicago, IL 60602

Dear Ms. Ramasastry, Mr. Kurtz, and Mr. Glaser,

The undersigned organizations and stakeholders in the unmanned aircraft system ("UAS" or "drone") industry are pleased to support the adoption of the final Tort Law Relating to Drones Committee draft by the full Uniform Law Commission at its annual meeting in Anchorage this year. While not perfect, the final draft represents a thoughtful, reasoned set of compromises on these critical issues. Adoption of this approach by the ULC (and, subsequently, by the States) will give courts the tools they need to protect landowners from careless, reckless, or improper operation of drones while, if implemented correctly, enabling the UAS industry to continue to grow.

As you know, our organizations submitted letters last year expressing concern about the direction that the Committee was taking in its then-current draft uniform law proposal.[1] In particular, we were alarmed that that draft endorsed a per se 200 foot "line in the sky," below which property owners could exclude nearly all drone flights for any reason or no reason at all.

As we said at the time, this division of the airspace and designation of each landowner as a de facto air traffic controller was unworkable from a practical standpoint, at variance with the way that aviation has been regulated in this country for nearly 80 years, and—perhaps most importantly—presented significant safety risks. Others wrote in and echoed our points, including the Department of Transportation ("DOT") and the Federal Aviation Administration ("FAA"). In a joint letter, DOT and FAA noted that the per se rule then under consideration "would be 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."[2]

Following this round of comments, we were pleased to see the Committee adopt a different approach. The meeting of the Committee in Detroit, Michigan in October of 2018 represented a productive, collaborative discussion, during which members of the Committee took seriously the issues raised with the proposed per se rule. At the same time, the industry stakeholders that participated as observers in that meeting recognized the legitimate concerns that property owners have with reckless or irresponsible use of UAS technology. We noted that while UAS are in the process of making an enormous positive contribution to society in fields like public safety, search and rescue, inspection, and logistics, the same technological innovations that allow drones to conduct these missions could also pose a real threat to the use and enjoyment of property if they are misused.

The result of the Committee's lengthy deliberations in Detroit was a compromise that reflected nuanced give and take on both sides of this issue. It expressly recognized that the "aerial trespass" framework (which has developed to apply to aviation generally) also applies to drones, while also laying out a series of factors that courts may consider in determining whether UAS operations have substantially interfered with the use and enjoyment of property. Critically, these factors acknowledge that because of drones' unique capabilities, they may interfere with the use of property in ways that traditional aircraft do not. The intent of the Committee in adopting these factors was to ensure that serious and legitimate concerns with UAS overflights could be addressed by the courts on a case-by-case basis, in a way that avoided drawing artificial lines in the sky or unnecessarily hampering legitimate, beneficial drone flights that do not substantially interfere with the use of private property.

[1] See, e.g., Letter from Associations and Companies Representing the Unmanned Aircraft Industry to Anita Ramasastry, et al., July 5, 2018; Letter from the Commercial Drone Alliance, July 23, 2018.
[2] Letter from Steven G. Bradbury, General Counsel, Department of Transportation, and Charles M. Trippe, Chief Counsel, Federal Aviation Administration, to Paul Kurtz and Mark Glaser, July 11, 2018.

Since the Detroit meeting, the proposal has been refined, and additional issues have been worked through, both in telephonic meetings and at an additional, in-person meeting in Washington, D.C. Each of the Committee's sessions has been characterized by an active, engaged discussion by Committee members and stakeholders representing a wide range of affected interests, from property owners to trial lawyers to photographers to aircraft operators and manufacturers.

Notably, in the discussions since the Detroit meeting the Committee has addressed privacy issues by making clear that UAS can be the instrumentality of a privacy tort. Stated another way, the current draft appropriately recognizes that when an operator uses a drone to violate the privacy rights of another, the operator can be held liable for that violation. Thankfully, the draft avoids attempting to impose blanket restrictions on UAS operations in the name of privacy protection. Such state-level regulation of the use of the airspace would unduly restrict legitimate operations and likely would be preempted in any event.

We urge the ULC to adopt the draft without change. As you know, at the final meeting there was a last-minute attempt to upend the careful compromise reached by the Committee by inserting a presumption that flying below the height of structures on the property constitutes a trespass. This significant proposed change was an attempt to reintroduce elements of the per se rule that was rejected in Detroit, and was voted down by the Committee by a substantial margin. Nevertheless, we remain concerned that members of the ULC who were not present during the Committee's lengthy deliberations may not fully grasp the hard work, give-and-take, and underlying rationale that went into adopting the present structure, and may seek to introduce changes along the lines of the one described above.

As industry commenters have previously noted, attempts to revive or apply elements of the per se rule would make it impossible for industry and other stakeholders to support the draft.[3] Any such attempts would also go against the will of the Committee, which has now considered and rejected a variety of per se and similar, altitude-based presumptions on a number of occasions — rejecting one of these proposals as recently as last month.

We would like to thank the Committee for its efforts in this area, and for its willingness to take the concerns voiced by the undersigned and others into account in reaching the final compromise. We look forward to supporting the adoption of the draft as-is in Anchorage, and to seeing States take up this important matter during their next legislative sessions.

Sincerely,

Alliance for Drone Innovation
amazon
AMA
AUVSI ALL THINGS UNMANNED
BNSF RAILWAY
CHEROKEE NATION Technologies
COMMERCIAL DRONE ALLIANCE
Consumer Technology Association
C_TEC
ctia Everything Wireless
dji
Kittyhawk
NetChoice
PRECISIONHAWK
Skyward A Verizon company
SMALL UAV COALITION A Partnership for Safety & Innovation
verizon

[3] See, e.g., Letter from C. Szabo, NetChoice and Others to Anita Ramasastry, May 15, 2019; Letter from M. Osterreicher, National Press Photographers Association to Anita Ramasastry, Paul Kurtz, and Mark Glaser, May 15, 2019.