

Client Alert

March 6, 2015

NTIA Kicks Off Drone Privacy Best Practice Process

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Federal efforts to formulate a series of rules governing the commercial use of drones, or unmanned aircraft systems (“UAS”), took another step forward on March 5, 2015, when the National Telecommunications and Information Administration (“NTIA”), an agency of the U.S. Department of Commerce officially kicked off a multistakeholder process to develop privacy, transparency and accountability best practices for the commercial and private use of UAS in the national airspace. This NTIA-convened process is the result of a recent Presidential Memorandum. The President issued his directive to the NTIA in conjunction with issuance by the Federal Aviation Administration (“FAA”) of proposed rules on the operation of small UAS (those that weigh less than 55 pounds). When proposing those rules, the FAA said it would not address drone-related privacy issues, instead leaving those issues to the NTIA. As companies work through the FAA’s proposal, they should also be mindful of (and consider participating in) this NTIA process to develop best practices to address drone privacy issues.

To get this important multistakeholder process underway, the NTIA has requested public comment regarding how the process should be structured, as well as the various privacy, transparency and accountability issues associated with the commercial use of drones. Comments in response to the NTIA’s request are due by **April 20, 2015**. In its request, the NTIA indicated that the first public meeting of the multistakeholder process will take place in the Washington, D.C. area. Although a date has yet to be determined, the meeting will be open to the public. Stakeholders who are interested in attending (whether in person or by webcast) can express their interest at the following website: <http://www.ntia.doc.gov/2015-unmanned-aircraft-systems-privacy-multistakeholder-meeting-expression-intent>.

GENERAL ASPECTS OF THE PROCESS

The NTIA requested comment on how the stakeholder process should be structured, including, for example, whether there should be separate working groups focused on privacy, transparency and accountability. The NTIA also questioned whether UAS platform size (e.g., UAS under 4.4 pounds) impacts privacy, transparency and accountability issues, and whether there is a need to distinguish between micro, small and large platforms. The NTIA also requested comment on any existing best practices that could be a model for the multistakeholder process.

PRIVACY ISSUES

The NTIA requested comment on various privacy issues. In particular, the NTIA appears focused on identifying the commercial uses of UAS that “raise the most pressing privacy challenges” and any best practices that would mitigate those challenges. The NTIA also questioned whether providing services by UAS raises “unique or

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heightened” privacy issues as compared to the same services offered via non-UAS platforms (e.g., “Does UAS-based Internet service raise unique or heightened privacy issues compared to wireline or ground-based wireless Internet service?”).

TRANSPARENCY ISSUES

The NTIA asked a series of questions about transparency. In fact, the NTIA’s request includes more questions regarding transparency than any other issue. The NTIA’s clear focus is determining how companies can provide notice to the public regarding UAS operations and what information UAS operators should make public. The NTIA’s transparency-related questions went beyond privacy issues associated with UAS operations and also addressed potential nuisance and safety concerns. For example, the NTIA questioned how companies can inform the public about UAS operations that “significantly impact privacy, anti-nuisance, or safety interests.”

ACCOUNTABILITY ISSUES

Finally, the NTIA requested comment on several accountability issues. In this regard, the NTIA’s questions are focused on how companies can enforce privacy and transparency best practices. For example, the NTIA questioned whether “audits, assessments, or reporting” can promote accountability and whether rules “regarding conduct, training, operation, data handling, and oversight” would further promote accountability.

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As the NTIA begins what could be a complicated process of addressing very complex drone privacy issues in a multistakeholder format, a few things appear clear. The process will be open to the public, and undoubtedly there will be many voices with potentially divergent views. The NTIA has flagged that UAS can be used for commercial services that are currently being provided by non-UAS means (e.g., manned aerial photography vs. UAS-based aerial photography) and is questioning whether the use of UAS as the vehicle raises greater privacy concerns than may exist today. Moreover, the NTIA appears to be wary of stifling innovation. In each set of questions regarding privacy, transparency and accountability, the NTIA specifically asked what best practices “would promote [privacy/transparency/accountability] while supporting innovation.”

About Our Drone and Privacy Practices:

With drone technology rapidly advancing and the FAA recently starting to open the door to commercial drone use, companies across industries are evaluating how drones can add value to their businesses. Morrison & Foerster’s Unmanned Aircraft Systems (UAS) practice group is at the vanguard of this emerging area. We combine the talents of our aviation, environment and energy, administrative law, product liability, privacy, corporate/M&A, and patent attorneys to address UAS matters for clients. Through this cross-disciplinary effort, we are fully equipped to serve the needs of our clients who are operating in this highly specialized and quickly evolving space.

Morrison & Foerster has a world-class privacy and information security practice that is cross-disciplinary and spans our global offices. With more than 60 lawyers actively counseling, litigating, and representing clients before regulators around the world on privacy and security of information issues, we have been recognized by Chambers and Legal 500 as having one of the best domestic and global practices in this area.

For more information about our people and the services and resources we offer, such as our free online Privacy Library, please visit: <http://www.mofo.com/privacy--data-security-services/>.

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