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# News Media Coalition Weighs in to Support Drone Photographer in NTSB Litigation

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A coalition of news organizations, arguing that the use of unmanned aerial systems (“UAS” or “drones”) for newsgathering should not constitute a “business purpose” under federal regulation, is supporting a drone photographer’s administrative appeal of a \$10,000 fine.

This is the first organized effort by a group of news media to engage with the federal government in the growing debate over regulating civilian UAS use in the United States.

The coalition has appeared as [news media amici](#) before the full National Transportation Safety Board in support of Raphael Pirker, who was fined \$10,000 for flying a camera-equipped model aircraft around the University of Virginia. He successfully challenged the fine before an administrative law judge from the NTSB. The judge ruled that the Federal Aviation Administration’s stringent regulation of commercial drones was unenforceable because the agency had failed to adopt it through appropriate procedures. The FAA has now appealed that ruling to the full NTSB.

While unmanned aircraft have traditionally been used for military and civil applications, recent technological advances have made journalists eager to deploy for news use the same inexpensive model aircraft popular with hobbyists. The FAA, however, has taken the position that the use of UAS for newsgathering would constitute an impermissible “business purpose” under the same FAA policy document that Pirker has challenged.

The administrative law judge ruled that the policy document was unenforceable because it was not enacted under the strictures of the Administrative Procedures Act. In its appeal, the FAA in the appeal argues that the general body of regulations that apply to commercial airplanes, the Federal Aviation Regulations, furnish broad authority to ban UAS use. Pirker counters that the FAA’s broad interpretation absurdly would permit it to regulate frisbees, golf balls, boomerangs, bullets, and children’s toys. According to Pirker, the FAA’s failure to issue regulations through proper notice and comment procedures precludes any penalty for UAS use.

A coalition of eighteen media companies and nonprofit journalists’ associations have filed an amicus brief in support of Piker. The news media organizations have criticized the FAA’s heavy-handed approach and complete ban on UAS, especially as it would apply to journalism. Newsgathering, the coalition argues, does not fall within “business purposes” in the sense of a commercial sale of goods or services. The news media’s brief directed the NTSB to a number of federal policies that have carved out protections for the news media, including: exceptions to temporary flight restrictions over disaster sites; postal rates; campaign expenditure rules; broadcast licensee requirements; and subpoenas to journalists. The brief asks the NTSB, in adjudicating Pirker’s appeal, to likewise recognize the public’s and the news media’s First Amendment interests in news gathering and dissemination.

The news media’s brief also highlights the many ways that drones will aid news coverage, pointing the NTSB to coverage of recent news events, including fires and protests that incorporated video footage provided by drone hobbyists. The brief also cites a survey conducted by the National Press Photographers Association, under the leadership of its General Counsel Mickey Osterreicher, in which journalists anticipate using drones to obtain footage despite obstructions, safety concerns, police restrictions, or hazardous environments and expect that drones will improve their ability to report on fires, accidents, weather conditions, natural disasters, and construction sites. The NPPA’s paper *Charting the Course for the Use of Small Unmanned Aerial Systems in Newsgathering*, includes the full survey results and is [available here](#).

Responding to calls for additional privacy regulations relating to the use of drones, the news media amici argue that privacy concerns relating to this technology do not require a new set of federal laws. Instead, state laws, including invasion of privacy laws, as well as trespass laws, nuisance laws, state electronic eavesdropping or wiretapping laws, and anti-stalking laws, can address those concerns, as they have addressed other developing technologies.

Finally, the news media amici argue that, where First Amendment rights are implicated, it is critical that Congress and regulatory agencies provide clear, constitutional standards that avoid improperly limiting the rights to free speech and a free press. The FAA's ad hoc restrictions on the use of unmanned aerial systems do not currently provide clear standards. As a result, media organizations are at risk of facing enforcement actions like that brought against Pirker. This risk flatly contravenes the First Amendment.

Through their brief, the amici have encouraged the FAA to undertake a proper notice-and-comment rulemaking to establish a workable, constitutional regulatory framework for the safe and lawful use of UAS by the news media.

In addition to the news media's brief, the NTSB has also received amicus briefs from the National Agricultural Aviation Association (supporting the FAA's position), and from a coalition of drone users who have received cease-and-desist letters from the FAA and a technology consulting company that provides services for non-military, commercial uses of drones (supporting Pirker).

The litigation before the NTSB is just one forum in which the public policy debate over UAS regulation is playing out. Congress in 2012 ordered the FAA to issue a comprehensive plan for integrating UAS into the air traffic system by 2015. As part of that goal, the law requires the FAA to issue a rule specifically addressing the use of small UAS. In late 2013, the FAA issued a "roadmap" laying out its plan for the safe integration of UAS, which begins with the establishment of six experimental test sites located around the country to experiment with the use of UAVs in areas with diverse climate, geography and ground infrastructure. Two of the test sites are currently operational. All of the test sites are expected to begin operation before the end of the summer.

The following news media organizations participated in the amici brief: Advance Publications, Inc., A. H. Belo Corporation, the Associated Press, Cox Media Group, LLC, Gannett Co., Inc., Getty Images, Gray Television, Inc., Hearst Corporation, The McClatchy Company, the National Press Photographers Association, the National Press Club, The New York Times Company, Reporters Committee for Freedom of the Press, the Radio-Television Digital News Association, Scripps Media, Inc., Sinclair Broadcast Group, Inc., Tribune Company, WP Company LLC/The Washington Post).

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