



Paula Knudsen Testimony on Drone Technology and the Media

Good morning. Thank you for the opportunity to appear and offer testimony before the Senate Aviation Caucus on unmanned aerial vehicles (UAVs)/unmanned aerial systems (UAS), also referred to as “drones.” My name is Paula Knudsen, and I am Director of Government Affairs/Legislative Counsel at the Pennsylvania NewsMedia Association (PNA), the statewide trade association for newspapers and online news publications, with more than 300 print, digital and related news media organizations as members.

PNA advocates for reforms in the state legislature that will protect and improve newsgathering, increase transparency in state government, and protect the First Amendment. We also provide a legal hotline and file amicus briefs in appellate cases involving the Sunshine Act, Right to Know Law and other issues of importance to our members. Our legal hotline receives approximately 2,000 calls a year, and we consult with members about legal matters impacting our member news organizations, including threatened and filed litigation.

As part of our work for members, we monitor policies and legislation regulating new technologies that are being considered or used by news media companies. News media companies are actively developing and using new technologies, and many PNA members feature apps, online distribution, local video production, enhanced digital agency services and expanded community interaction through social channels. Newspaper readership in Pennsylvania far exceeds national averages, with 83% of Pennsylvania adults reading a newspaper in print or online each week.

Drone technology is one of the areas that PNA and other journalism advocates have been closely monitoring for several years. Drone technology presents unprecedented opportunities for newsgathering purposes. Examples of drone use for newsgathering purposes include: flyovers of natural disaster and traffic incidents, industrial accidents, remote area observation, crowd estimation for political protests and other events, environmental impact observation and more.

Examples of drones [PowerPoint presentation courtesy of the University of Pennsylvania]

Can news media companies use drones?

The Federal Aviation Administration (FAA) currently takes the position that the use of drones for commercial purposes is illegal. The FAA includes newsgathering as a “commercial use” and generally does not grant special use permits to news organizations. In recent years, the FAA has sent warning letters to newspapers that have used drones to gather news, including a warning sent to an Ohio newspaper that posted drone footage to its website taken by a hobbyist. The FAA also sent warning letters to collegiate journalism projects at the [University of Missouri](#) and the [University of Nebraska-Lincoln](#), requesting the programs to cease outdoor drone operation unless they receive FAA authorization. Both programs train journalism students to use drones as a newsgathering tool, and both ceased outdoor drone use as a result of the FAA’s request. Currently, a group of 10 media companies and the University of Virginia are conducting a [drone journalism lab](#) at one of six test areas approved by Congress. The participants are seeking to persuade the government to broaden the commercial use of small unmanned aircraft.

The FAA levied a \$10,000 fine for [unauthorized drone flights](#) against a photographer who flew over the University of Virginia to gather aerial footage. The FAA’s fine in that case was challenged, and several media entities filed a friend of court brief before the National Transportation Safety Board (NTSB), citing the First Amendment as grounds for their opposition to the FAA’s ban on drone use as a newsgathering tool. The parties settled the case, with the photographer not admitting wrongdoing.

In February 2015, the FAA proposed [new rules](#) to govern the use of drone technology, including newsgathering. The proposal is subject to public comment, and the FAA plans to hold a series of public meetings on the issue before final regulations are promulgated. In the meantime, the FAA is offering a [fast-track approval](#) for low-risk drones weighing under 55 pounds that do not create a safety risk. Fast-track approval has been granted at least once under the program for newsgathering purposes. The “Section 333” exemptions of the FAA Modernization and Reform Act of 2012 have also been granted to a number of other industries, including oil and gas, film and agriculture, among others.

Drone use and legislation in Pennsylvania

Drones are being routinely used in Pennsylvania for a number of purposes, including research, as shown in the University of Pennsylvania's PowerPoint. According to reporting by [PennLive/The Patriot-News](#) in August 2013, some Pennsylvania government agencies had already started using drone technology. The Pennsylvania Department of Transportation paid more than \$20,000 for an X-8 eight-rotor UAV to take aerial photos of sinkholes, according to PennLive. The Mount Carmel Township Police Department announced in July 2015 that it will begin using drone technology in Northumberland, Schuylkill, Montour, Snyder and Columbia counties. The devices will be used for search and rescue, among other things. The department reported that it had spent eight months to become certified to use the devices. Read more in [the Daily Item](#) (Sunbury). Beyond research and government purposes, private companies in Pennsylvania are also becoming heavily involved in drone use. An aerial surveying and mapping company based in Pittsburgh, Identified Technologies, estimated in a July 2015 article that drone technology revenue in the Pittsburgh area could be estimated at \$1.5 billion

Despite existing state law covering ownership of space, as well as a variety of available civil and criminal remedies (intrusion; publication of private facts; battery, nuisance; stalking; harassment; "Peeping Tom" laws; and trespass), legislators in many states, including Pennsylvania, are concerned that the federal government is not acting quickly enough to regulate drone use. In fact, Conoy Township, Lancaster County is known to be one of the first municipalities to regulate drone use with an [ordinance passed in 2013](#). A list of proposed Pennsylvania drone legislation from the 2013-2014 legislative session is attached.

Under current Pennsylvania law, "ownership of space" is already defined:

(a) General rule.--The ownership of the space over and above the lands and waters of this Commonwealth is declared to be vested in the owner of the surface beneath, but the ownership extends only so far as is necessary to the enjoyment of the use of the surface without interference and is subject to the right of passage or flight of aircraft. Flight through the space over and above land or water, at a sufficient height and without interference to the enjoyment and use of the land

or water beneath, is not an actionable wrong unless the flight results in actual damage to the land or water, or property thereon or therein, or use of the land or water beneath.

(b) Penalty.--Except in an emergency, no aircraft may land on, taxi or maneuver upon, or take off from a public airport unless operated by a person possessing proof of having attained a national standard of competence in the operation of that aircraft. Any person violating any of the provisions of this part, unless the violation is by this title or other statute of this Commonwealth declared to be a misdemeanor, or any of the rules and regulations adopted by the department pursuant to this part, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$50 and not more than \$200 and, in default thereof, to undergo imprisonment for a period not exceeding 30 days. 74 Pa.C.S.A. § 5501

In the context of this title, “aircraft” is defined as “Any contrivance, except an unpowered hang-glider or parachute, used for manned ascent into or flight through the air.” 74 Pa.C.S.A. § 5102.

State drone laws must protect First Amendment activity

Although the FAA already is working to promulgate rules to govern drone use, if states such as Pennsylvania choose to move forward with their own laws, any legislation must take into consideration First Amendment implications. Under current law, it is not illegal to proceed through “air space” above a privately-held property, so long as there is no interference with the underlying landowner’s ability to enjoy his or her land or any damage caused. As referenced above, there are also a number of common law and statutory protections in place to guard against improper use of drones over private property. Currently then, a journalist could fly overhead and take still photos or video footage of a matter of public concern while in a glider, helicopter, airplane, hot-air balloon, etc. Such action would be lawful, as long as the craft did not unlawfully interfere with a landowner’s use of his or her land.

Journalists should be free to engage in lawful newsgathering activity, such as observation and recording of matters of public concern, as long as they do so lawfully. UAS and UAV technology can be used in numerous ways by the news media industry to help explain and illustrate stories, collect video and still photos of disaster areas, capture thermal information, count numbers of crowds or protesters or gather information about rural or wild areas. The

Sept. 29, 2015

sharing of this information benefits the communities affected by specific incidents and also furthers the constitutionally protected role of the news media in gathering and providing information on matters of public concern.

We welcome the opportunity to work with legislators in preserving the balance between citizens' interests and journalists' First Amendment rights. Newsgathering is a constitutionally protected activity, and the law should consider news media use of drone technology differently than commercial and recreational use of drones. If members of this caucus decide to introduce future legislation on drone usage, we would welcome the opportunity to propose language to protect newsgathering. Thank you in advance for your consideration of this important issue.

Pennsylvania drone legislation 2013-2014 legislative session:

[Senate Bill 875](#) (Sen. Mike Folmer, R-Lebanon) – would place a moratorium on government use of drones until July 2015. Filed 5/6/13 and referred to Senate State Government Committee.

[Senate Bill 1332](#) (Sen. Richard Kasunic, D-Fayette) – would prohibit use of drones to intentionally interfere with hunting and furtaking. Filed 4/7/14. Reported from Senate Game and Fisheries on 6/11/14. Passed Senate 6/26/14 and sent to House Game and Fisheries Committee.

[Senate Bill 1334](#) (Sen. Richard Kasunic, D-Fayette) – would prohibit use of drones to intentionally interfere with lawful fishing and boating. Filed 4/7/14. Reported from Senate Game and Fisheries on 6/11/14. Passed Senate 6/26/14 and sent to House Game and Fisheries Committee.

[House Bill 452](#) (Rep. Jeffrey Pyle, R-Armstrong) – would create the offense of “criminal surveillance” – using a drone to capture images on private property. First offense would be summary level. Filed 1/29/13. Voted from House Judiciary 12/10/13. Final passage 12/17/13. Received in Senate Judiciary 12/23/13.

[House Bill 961](#) (Rep. Angel Crus, D-Philadelphia) – would permit prosecutors to obtain an order to use unmanned aerial vehicles for law enforcement purposes. Filed 3/11/13 and referred to House Judiciary Committee.

[House Bill 2084](#) (Rep. Gerald Mullery, D-Luzerne) – would prohibit the use of drones to interfere with fishing, boating, hunting and furtaking. Filed 3/11/14 and referred to the House Game and Fisheries Committee.

[House Bill 2158](#) (Rep. Gordon Denlinger, R-Lancaster) – would prohibit use of drones by government except in specified circumstances. Filed 4/4/14 and referred to House Judiciary Committee.

[House Bill 2476](#) (Rep. Marc Gergely, D-Allegheny) -- prohibiting the use of aerial drones for viewing or hunting wildlife during big game season. Filed 9/15/14 and referred to House Game and Fisheries Committee.