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COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

OFFICE OF THE DEPARTMENTAL CHIEF INFORMATION OFFICER, OFFICE OF THE SECRETARY OF TRANSPORTATION, DOT

Privacy Act of 1974; Department of Transportation, Federal Aviation Administration, DOT/FAA—801; Aircraft Registration Records System of Records Notice

[Docket No. DOT-OST-2015-0235]
January 14, 2016

By notice published on December 15, 2015, the Department of Transportation ("DOT") solicited public comments on the Department's proposal to reissue a current DOT database, titled "Department of Transportation Federal Aviation Administration: DOT/FAA—801, Aviation Registration System.'"[1] The FAA's Aviation Registration System will include drone registration records. Accordingly, the Electronic Privacy Information Center ("EPIC") submits these comments to the FAA regarding its System of Records Notice for drone registration records. In summary, the FAA should: (1) require that drone registration identification be more readily accessible by mandating that drones routinely broadcast registration numbers; (2) include the drone's technical capabilities (including surveillance capabilities) in the drone database; and (3) narrow and clarify the

[1] Privacy Act of 1974; Department of Transportation, Federal Aviation Administration, DOT/FAA—801; Aircraft Registration Records System of Records Notice, 80 Fed. Reg. 77,697 (Dec. 15, 2015).

"routine uses," including detailing limits on the use and disclosure of personal information obtained for drone registration.

I. EPIC's Interest

EPIC is a non-profit research and educational organization established in 1994 to focus public attention on emerging privacy and related human rights issues, and to defend privacy, freedom of expression, and democratic values.[2] The EPIC Advisory Board is comprised of experts in law, technology and public policy.[3] EPIC has led the charge for strong drone privacy rules in the United States.[4] EPIC provides authoritative reports on drone privacy and security.[5]

EPIC has repeatedly warned the FAA of the privacy and civil liberties risks posed by the deployment of drones in the United States. In 2012, EPIC, joined by more than one hundred experts and organizations, petitioned the FAA to undertake a rulemaking to establish privacy regulations prior to the deployment of commercial drones in the national airspace. In the Petition, EPIC described the many ways in which the deployment of drones would threaten important privacy interests.[6] Earlier this year, EPIC sued the FAA for denying EPIC's petition, and the matter is currently before the U.S.

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[2] *About EPIC*, https://epic.org/epic/about.html (2015).
[3] *EPIC Advisory Board*, https://epic.org/epic/advisory_board.html(2015). *See, e.g.,* Ryan Calo, *The Drone as Privacy Catalyst*, 64 STAN.L.REV. ONLINE 29 (2011).
[4] EPIC, *Domestic Unmanned Aerial Vehicles (UAVs) and Drones* (2015), https://epic.org/privacy/drones/; EPIC, *EPIC v. Army – Surveillance Blimps* (2015), https://epic.org/foia/army/; EPIC, *Spotlight on Surveillance –DRONES: Eyes in the Sky* (2014), https://epic.org/privacy/surveillance/spotlight/1014/drone.html; EPIC, *Spotlight on Surveillance – Unmanned Planes Offer Opportunities for Clandestine Government Tracking* (2005), https://epic.org/privacy/surveillance/spotlight/0805.
[5] *Id*.
[6] Letter from EPIC, et al., to Michael P. Huerta, Acting Adm'r, Fed. Aviation Admin. (Mar. 8, 2012), *available at* https://epic.org/privacy/drones/FAA-553e-Petition-03-08-12.pdf [hereinafter *EPIC 2012 Petition*].

Court of Appeals for the District of Columbia Circuit.[7] In addition to the 2012 Petition, in 2013 EPIC provided extensive comments to the Agency, urging the FAA to establish privacy standards for drone operators at FAA designated drone test sites.[8] EPIC also recently submitted comments to the FAA on the drone registration framework. EPIC expressed support for drone registration, but EPIC also urged the FAA to increase the scope of the registry. Specifically, EPIC recommended the broadcasting of drone registration information, the inclusion of each drone's technical capabilities in the database, and limits on the use and disclosure of personal information obtained for the drone registration database.

EPIC has also testified before Congress regarding the need to adopt comprehensive legislation to limit drone surveillance in the United States. EPIC has informed Congress and state legislatures of the unique threats drones pose to personal privacy, the inadequacy of the current privacy safeguards, and the importance of addressing privacy and civil liberties risks prior to the integration of drones into the national airspace.[9]

Although the FAA has, in violation of law, failed to establish any rules to safeguard the privacy interests of the American public, EPIC wishes to reiterate its

[7] *EPIC v. FAA*, No. 15-1075 (D.C. Cir. filed Mar. 31, 2015). The D.C. Circuit has ruled against the agency's motion to dismiss.

[8] *Comments of the Electronic Privacy Information Center to the Federal Aviation Administration of the Department of Transportation*, Docket No. FAA-2013-0061 Unmanned Aircraft System Test Site Program (2013), *available at* https://epic.org/privacy/drones/EPIC-Drones-Comments-2013.pdf.

[9] *See, e.g.*, *Crimes – Unmanned Aircraft Systems – Unauthorized Surveillance, Hearing on H.D. 620 Before the H. Jud. Comm. of the General Assembly of Maryland* (2015) (statement of Jeramie D. Scott, National Security Counsel, EPIC); *The Future of Drones in America: Law Enforcement and Privacy Considerations Hearing Before the S. Judiciary Comm.*, 113th (2013) (statement of Amie Stepanovich, Director of the Domestic Surveillance Project, EPIC), *available at* https://epic.org/privacy/testimony/EPIC-Drone-Testimony-3-13-Stepanovich.pdf.

support of the agency's registration requirements for the operation of drones in the United States. EPIC believes this is an absolutely essential requirement to establish accountability for the use of autonomous surveillance devices in the United States.

II. The FAA Must Increase Access to Drone Capabilities and Limit Access to Drone Registrant Personal Information

The FAA proposes to establish a database that will provide a drone operator's name and addresses to the public if the registration number on the fuselage of the craft can be obtained.[10] This proposal does little to address the privacy and safety concerns of the public regarding drone information, fails to provide important information on drone surveillance capabilities, and provides little privacy protection for the personal information of drone operators. The FAA states that registration will "help make sure that operators know the rules and remain accountable to the public for flying their unmanned aircraft responsibly."[11] One of the problems today is that it is difficult to identify the drone or the operator of a drone. The current drone registration scheme does little to solve this problem. If drone identification simply requires the display of a small registration code, then the only drones that will be identifiable are those that are recovered after a crash. The vast majority of safety and privacy risks, such as flight on to private property, near collisions, and surveillance, will remain without accountability.

For true accountability, the registration number should readily be available to the public. In previous comments on the drone registration system, EPIC recommended the

[10] 80 Fed. Reg. 77,697, 77,699.
[11] U.S. Department of Transportation, *U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement* (Oct. 19, 2015) https://www.transportation.gov/briefing-room/us-transportation-secretary-anthony-foxx-announces-unmanned-aircraft-registration.

broadcasting of the registration number by the drone.[12] Broadcasting the drone registration number will allow the public to monitor the physical location of a drone and report any conduct that poses a risk to public safety or personal privacy.

The drone registration should also give the public a means to acquire information about the technical capabilities of the drones flying over their heads. *It is not the personal information of the drone registrant that should be readily available to the public, but the technical capabilities of the registered drone.* Therefore, the public should be able to type the broadcasted drone registration number into a database to discover the drone's surveillance capabilities. The name and address of the drone owner should only be made available for legitimate inquiries into unlawful behavior.[13] The public deserves to know the capabilities of the drones that are flying over their head, and drone operators are entitled to some protection for their personal information.

III. FAA's Proposed Routine Uses Need to be Clarified and Narrowed With Respect to Their Application to Hobbyist Drone Registrants

The FAA proposes to disclose personal information from the Drone Registry to:

1. The public (including government entities, titles companies, financial institutions, international organizations, FAA designee airworthiness inspectors, and others) information through the Aircraft Registry, including aircraft owner's name, address, United States Registration Number, aircraft type, and legal documents related to title or financing . . . . The public may only retrieve the name and address of owners of [drones] registered under 14 CFR part 48 by the unique identifier displayed on the aircraft; and

2. To law enforcement, when necessary and relevant to FAA enforcement activity.

[12] *Comments of the Electronic Privacy Information Center to the Federal Aviation Administration of the Department of Transportation*, 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 (2015), *available at* https://epic.org/privacy/drones/EPIC-FAA-Drone-Reg-Comments.pdf.
[13] *See id.* at 12-16.

Although the drone registration database of commercial operators should be publicly accessible, the database of drone operators should only be accessible for limited purposes related to protecting the safety and privacy of the public. The FAA should adopt safeguards to protect registrants' information from improper release and use by both the public and other government agencies. The Supreme Court has recognized a legitimate privacy interest in avoiding the disclosure of an individual's name, address, and telephone number.[14] This interest remains intact even when the information is properly disclosed to the public under certain circumstances.[15] "[A] state intrusion is impermissible if it 'bears no direct relation to the constitutional justification for the intrusion.'"[16] Furthermore, limiting the use and disclosure of personal information submitted by drone registrants is consistent with their expectation of privacy.[17] It would not serve any legitimate purpose to make users' personal information available beyond the scope of a particular privacy or security threat. Therefore it is necessary to establish safeguards to protect the privacy of drone registrants.

The FAA also proposes to include "15 additional routine uses applicable to all DOT Privacy Act system of records."[18] One of these "routine uses" in particular allows the agency to disclose information:

- In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program

[14] *Dep't of Defense v. Fed. Labor Relations Auth.,* 510 U.S. 487, 500 (1994).
[15] *Id.*; *Reporters Committee, U.S. Dep't of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 767, 770 (1989).
[16] Brief for EPIC as Amicus Curiae Supporting Petitioners at 4, *Reno v. Condon*, 528 U.S. 141 (2000) (No. 98-1464), https://epic.org/privacy/drivers/epic_dppa_brief.pdf (quoting *Wilson v. Layne*, 526 U.S. 603, 613 (1999)).
[17] *Id.* at 4, 7-8.
[18] 80 Fed. Reg. 77,697.

> pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.[19]

This routine use would permit the DOT to disclose information to foreign and international agencies, and thus the drone registration information should not be subject to it. The Privacy Act only applies to records maintained by United States government agencies.[20] The Act cannot protect records released to foreign entities. DOT does not have jurisdiction over foreign agents. The information of drone registrants should not be subject to this routine use.

Furthermore, government access to the registration records should be limited and transparent. These broadly stated purposes related to government and law enforcement access should be clarified and access should be limited to circumstances directly related to aircraft identification and operation. Drone operators should not have their personal information subject to indiscriminate access by law enforcement and government agencies for purposes unrelated to aircraft safety.

Conclusion

It's imperative the FAA update the structure and requirements for its drone registration system. As the agency has already acknowledged, the deployment of drones in the national airspace poses many safety and privacy risks. The agency must also ensure that the registration process requires operators to inform the public about the surveillance capabilities of the drones they use. The agency should establish safeguards for the drone

[19] U.S. Department of Transportation, *Privacy Act System of Records Notices*, https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.
[20] 5 U.S.C. § 552a(b).

registry to ensure a minimum privacy burden on drone operators as well. Finally, the FAA must clarify and limit the disclosure of drone registrant information through "routine uses."

Respectfully submitted,

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