



March 3, 2022

## **Letter of dissent to BVLOS UAS ARC Report of February 25 2022**

The Electronic Frontier Foundation cannot sign on to this report, as it did not incorporate the policy recommendations for which we advocated during the Beyond Visual Line of Sight (BVLOS) Aviation Rulemaking Committee (ARC). We summarized those recommendations along with ACLU and EPIC in a memo that we circulated to the ARC leadership and FAA staff (appended to this letter). Some of our most significant concerns can be summarized as follows:

- Privacy practices should not be voluntary. Non-binding principles offer no protection for the public nor any real incentive for operators to comply, leaving the field wide open for abuse.
- The transparency of operators' practices must be mandatory. This ARC was adamant about performance-based and data-driven proposals, so it seems counter to the FAA's mission not to require that basic information that would be necessary to understand the privacy risks be made public.
- Community engagement and control are critical. The "community response to drones" conversation was focused on noise and environmental impact, but not community concerns about privacy and intrusion. It seemed to us important to evaluate whether and to what extent there is a risk of negative community reaction to normalized and scaled BVLOS operations stemming from such concerns, and what the path will be for addressing such reactions. Insofar as the ARC considered negative community responses to drones, the solution that was endorsed was communicating with and educating the public. But that was envisioned as a one-way street; there was a studious refusal to consider whether and how communities should have control over the drones that fly above them.

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- There was no consideration given to negative uses of drones, and how to constrain them, other than government security agency concerns over security threats. We think that the section on “societal benefits” of drones contains many legitimate points about the possible advantages this technology might bring. But the omission of a full, balancing discussion of the technology’s potential downsides (other than security threats) does not reflect our agnostic views on the extent to which drones are likely to provide benefits to the American people. We cannot join what is, essentially, a brief arguing mainly for the advantages of drones without addressing substantial issues they create for the public.

We greatly appreciate that the FAA recognized the need to include privacy advocates as well as various other community and non-aviation stakeholders in this Advisory Rulemaking Committee process. This initial effort at expanding that stakeholder representation was not entirely successful, however.

Industry representatives led the ARC, set its agenda, and dominated in numbers. Reflecting past practice, ARC leaders and participants and FAA staff consistently spoke of the ARC as a process by which “industry” provided feedback to the FAA. Some industry representatives had little interest in discussing challenging questions. Consideration of the privacy risks of drones inherently means thinking about their potential downsides, yet the ARC was dominated by and structured for drone boosters, with much conversation over how to sell the technology to the public. That was inherently in conflict with the desire of privacy advocates to consider the potential downsides of drones and their possible negative uses, and how those might be addressed.

Our participation was also hampered at times by the highly technical nature of some of the discussions. To be sure, we understood that much of the discussion would involve technical safety and other aviation questions about which our organizations hold no opinion. However, it was not always clear when a technical question had policy implications. Even where those implications seemed clear, it was often difficult to have a nuanced discussion on the issues presented and the implications of various decisions. Despite laudable efforts by FAA staff to encourage the industry and aviation community participants to “level-set” and “explain terms,” such participants couldn’t help but slip back into lingo, and the gap in knowledge was significant enough that it effectively excluded non-aviation participants from important discussions.

As the FAA continues to work on incorporating broad multi-stakeholder feedback on drones, which will interact with American life and communities in far more intimate ways than crewed aviation, we recommend that the agency consider convening a separate ARC or other proceeding through which to gather community, privacy, and other non-industry, non-aviation stakeholder input and perspectives, or structuring future ARCs related to the integration of drones to allow such participants to have separate conversations on questions that they themselves define. The model of creating an ARC

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for “industry” input may not make sense as a mechanism for input from this more diverse set of stakeholders in the same way it may have in other ARCs.

We found the ARC a valuable way to learn more about the aviation and drone industry, and we applaud the FAA for inviting privacy groups and other stakeholders to this process. We also found that FAA staff were uniformly helpful, encouraging, and open to hearing our points of view, and we feel it gave us the opportunity to communicate our point of view to the agency even though they are not reflected in the report.

Best regards,

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