

December 2014

NTSB Rules for FAA in Huerta v. Pirker: What's Next for News Drones?

PUBLISHED IN: [MediaLawLetter November 2014](#)

By **Charles D. Tobin and Christine N. Walz**

The National Transportation Safety Board (NTSB) has overturned an administrative ruling in favor of an aerial photographer, upholding the Federal Aviation Administration's (FAA) determination that unmanned aerial systems (UAS), commonly referred to as drones, are "aircraft" subject to federal regulation. [Huerta v. Pirker](#), NTSB Docket CP-217 (November 18, 2014).

In remanding the case to an administrative law judge for further proceedings, the NTSB sidestepped all other issues, including First Amendment considerations.

Background

The agency's decision came in the case *Huerta v. Pirker*, in which photographer Raphael Pirker challenged a \$10,000 fine levied for his 2011 flights of a camera-equipped model aircraft around the University of Virginia. Mr. Pirker had successfully challenged this fine before the administrative law judge, who ruled this past March that Pirker's Zephyr fixed-wing aircraft was a "model aircraft" and that models were not subject to general aviation regulations.

NTSB Decision

In its decision released on November 18, 2014, the full NTSB reversed the administrative law judge and held that the FAA could apply its generally applicable federal aviation regulations to small UAS because they fit within the regulations' broad definition of "aircraft." The regulations define aircraft as "a device that is used or intended to be used for flight in the air."

The NTSB, in sweeping deference to the FAA, said:

[T]he plain language of the statutory and regulatory definitions is clear: an "aircraft" is any device used for flight in the air The [FAA] Administrator's interpretation of this text – that it applies to respondent's operation of his Zephyr to prohibit careless or reckless operations – is reasonable, given the broad language of the section.

The NTSB remanded the decision to the administrative law judge to review evidence and determine whether Pirker's October 2011 flights around the University of Virginia campus were "careless or reckless" under FAA regulations.

The *Huerta v. Pirker* decision is troubling for news media companies hoping to use drones for newsgathering, and it underscores the need for the FAA to enact new, sensible regulations specifically applicable to small UAS. A coalition of news media had submitted an amicus brief before the NTSB urging that the board, however it ruled, take into account the First Amendment interest in lawful newsgathering. The NTSB, however, declined to reach the issue in its decision.

The FAA is expected to release proposed regulations for small UAS for comment in late December. These regulations are expected to focus on UAS safety, UAS pilot training and UAS airworthiness. They are not expected to address privacy concerns.

The Obama Administration has also indicated that President Obama plans to issue an executive order to develop privacy guidelines for using commercial UAS. Specifically, the executive order is expected to charge the National Telecommunications and Information Administration (“NTIA”), a component of the Department of Commerce, with developing voluntary guidelines to address privacy concerns.

The NTIA is expected to convene a multistakeholder process to provide a forum for discussion and consensus-building among stakeholders to develop voluntary privacy guidelines for UAS operators. News of this executive order was leaked in July of this year, but the order has not been issued. It is currently anticipated that the order will be issued shortly before or concurrently with the FAA’s Notice of Proposed Rulemaking.

Media companies and lawyers should keep an eye on the anticipated proposed regulations and the NTIA executive order to make sure that the First Amendment interest in safely gathering news is protected as the law develops.

*Charles D. Tobin and Christine N. Walz are with the Washington D.C. office of Holland & Knight. Along with Gary Halbert of the firm, they represented the coalition of news media amici in *Huerta v. Pirker* and continue to advise the coalition on emerging issues. The coalition includes: 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).*

[PUBLICATIONS](#)

[COMMITTEES](#)

[EVENTS](#)

[ABOUT](#)

[JOIN](#)

[LOGIN](#)

[Privacy Policy](#). [Terms of Use](#).

© 2024 Media Law Resource Center. All Rights Reserved.