

## Aesthetics

### Background

For decades, governments have sought to regulate and/or ban outdoor advertising using their police power for two purported purposes: to preserve and improve scenic beauty (aesthetics), and to advance traffic safety.

C. Alan Sumption, the deputy city attorney who defended San Diego's sign ordinance before the U.S. Supreme Court in the seminal outdoor advertising case, Metromedia, Inc. v. City of San Diego, once indicated that traffic safety was added to avoid a precedent setting California Supreme Court ruling that cities could not ban billboards for aesthetic reasons alone.

The rationale often expressed for overturning municipal regulations based solely on aesthetics was by a New Jersey court which stated:

“Aesthetics considerations are a matter of luxury, an indulgence rather than of necessity, and it is necessity alone which justifies the exercise of the police power to take private property....”

Since Metromedia, many municipal ordinances have passed constitutional muster by using both aesthetics and public safety to justify the use of police power. Critics of outdoor advertising still invoke aesthetics in an emotional appeal to promote the restriction or elimination of advertising signs.

In an effort to combat these unsubstantiated claims, OAAA has compiled the following information to assist its members when an aesthetics claim is raised.

### Message Points

- Outdoor advertising is part of America's visual culture
- Billboards add excitement, showcase creativity, art, and humor.
- Billboards deliver useful information to consumers.
- Commercial and noncommercial speech are protected by the First Amendment to the U.S. Constitution

### Outdoor advertising is part of America's visual culture

The history of the billboard mirrors the history of American graphic design. Signs for the traveling circus, painted billboards for Coca-Cola, and poster art promoting

national unity in time of war are part of America's rich tradition of outdoor advertising.

When an 1878 billboard promoting Buffalo Bill Cody was found in Jamestown, New York, in 2002, art preservationists toiled to restore the artwork. Cody was a pioneer of advertising, putting up billboards to promote live entertainment.



Billboard posters promoting Buffalo Bill Cody (1878)  
Preservationists restored these billboards discovered in Jamestown, NY

For more than a century, top creative artists have produced outdoor advertising. James Montgomery Flagg created the "I Want You" Uncle Sam recruitment poster. Peter Max, N.C. Wyeth, Norman Rockwell, Henri de Toulouse-Lautrec, Jules Cheret, and Eugene Grasset used the outdoor medium. These early signs are often sought after by art collectors and antique dealers as they are prized for their artistry.



"I Want You" Uncle Sam recruitment poster created by James Montgomery Flagg

### **Billboards add excitement, showcase creativity, art, and humor**

Outdoor advertising is often considered a visual energizer in urban settings. Municipal planner, Tom Martinson, observed that “because advertising signs are colorful and illuminated, and since billboard copy changes regularly, billboards can contribute vibrancy to the built environment not easily provided by other means.”

In 2014, leading US museums provided top American art for display on out of home formats nationwide (Art Everywhere US).



Martin Johnson Heade's 1890 "Giant Magnolias on a Blue Velvet Cloth" on a billboard in Atlanta

In published comments, the museum's spokesman for Art Everywhere US pointed to the link between art and the economy:

"In the United States, 3.5 million are employed by the arts, part of our economy in every corner of the nation.

In the 1950s, one of those jobs was held by a small-town kid from North Dakota named Jim Rosenquist. As a college student in Minneapolis, Rosenquist hand-painted billboards for Coca-Cola and other advertisers.

Learning to scale small objects onto large formats, Rosenquist is considered a founder of Pop Art. Now, one of his pieces (“Paper Clip”) is part of Art Everywhere US.

I submit that our strength is our civilization. In August (2014), all can see that strength,” said Maxwell L. Anderson, the Eugene McDermott director of the Dallas Museum of Art.

The outdoor industry showcases and rewards creativity. The OBIE Awards for the outdoor medium are the oldest and among the most prestigious advertising honors. Each year, the industry honors the most creative advertising campaigns and agencies behind them, demonstrating the industry’s commitment to integrating exciting and vibrant outdoor advertising into the visual environment.



### **Billboards also provide useful information to the traveling public**

In fact, three out of four billboard messages promote local businesses, and those local advertisers provide jobs for many local residents.

Many auto travelers rely on billboards to locate gas, food, lodging, and attractions. A common purpose of billboard advertising is to provide directional information to a place of business for passersby. Most small businesses in rural areas that have no ability to provide this information to passersby are destined to lose business.

It is also important to note that billboards are also used to communicate a wide variety of other types of information to consumers, such as types of products and services offered indications of quality, price, convenience, etc. These types of information help a business distinguish itself in a way that appeals to the consumer. As a result, motorist information panels are not a viable substitute for billboards as they only provide identification information, and in many cases, do not provide adequate directional information.



Compare the information contained on the motorist information panel on the left to the directional billboard on the right

For many small businesses, billboards are the most cost-effective medium for reaching their customers. A survey of billboard users shows conclusively that other media options, such as Internet, newspapers, radio, television, and direct mail are not effective substitutes for billboards because of the unique characteristics of the medium. Small businesses in particular often find other media are either too expensive or are inefficient in reaching their target market. Rural businesses are especially likely to be in a position where they have no viable alternative to billboards. Hence, if they have no billboard available, it is very difficult for many of these businesses to attract customers.

Research shows that the public supports the Highway Beautification Act. A majority of the public has positive attitudes towards billboards. In 2002, Charles (Ray) Taylor, PhD, Professor of Marketing, Villanova University, conducted a meta-analysis of public opinion of billboards that included 36 major polls conducted over the past 30 years. The analysis found that more than 75% of respondents indicated that billboards should be allowed in areas zoned commercial and industrial. It was clear that the American public's attitudes toward billboards are highly consistent with the framework of the Highway Beautification Act. Moreover, these opinions have remained stable over the past twenty-five years, suggesting that public opinion would not support any changes in the general framework of the Act, as passed back in 1965.

Furthermore, most Americans recognize the value of billboards. More than 85% believe billboards are useful to travelers; 80% agree that billboards create jobs; and 82% believe billboards help businesses attract customers. While there is no

doubt there is a minority of the population who finds billboards to be aesthetically displeasing, this view is not representative of the population at large. Meanwhile 83.7% find billboards to be informative. When asked directly, over 70% indicate the benefits of billboards outweigh the costs. In light of strong recognition of the benefits of billboards by the public, these results indicate that the public largely supports billboards.

Each year, the outdoor industry provides more than \$400 million in donated space to charities and communities groups. This initiative provides local charities and community groups an opportunity to rely important social and community information, thus, giving them a voice to advance their causes and promote their events.

### **Commercial speech is protected by the First Amendment to the U.S. Constitution**

Billboards are heavily regulated by federal, state, and local authorities. Decades of independent research on public opinion shows that most people favor regulation of billboards, not elimination.

Long recognized by the Supreme Court as a medium of commercial and noncommercial speech, outdoor advertising is an increasingly significant means of communication.

Freedom of speech is a founding principle of our Nation. Strong, clear precedent upholds the right to disseminate information regarding legal products. A seminal Supreme Court decision in 2001, Lorillard Tobacco Company v. Reilly, struck down government prohibitions on commercial speech.

The Lorillard case (2001) had the effect of resolving disputes about bans or restrictions on alcohol advertising in outdoor formats.

Likewise, the Supreme Court has upheld free speech in subsequent rulings, such as Thompson v. Western States Medical Center (2002, speech restrictions were unconstitutional). In 2006 and 2009, federal courts have struck down Missouri, Kansas and South Carolina laws that restricted outdoor advertising of sexually oriented businesses.

## Resources

*An Assessment of the Highway Beautification Act's Consistency with American Public Opinion*, Charles R. Taylor, Ph.D, Professor of Marketing, Villanova University, 2002

OAAA Code of Industry Principles

Signs of the City, by Tom Martinson, planner, author, educator with specialty in architecture, University of Minnesota (1995)

Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981)

Brody, Steven G., "New Judicial Precedents Expand Commercial Speech Protection," Legal Backgrounder, Washington Legal Foundation, April 5, 2002  
(Available upon request by contacting OAAA)

Thompson v. Western States Medical Center, 535 U.S.357 (2002)

"A lesson as school starts: Art is our civilization," Maxwell L. Anderson, Eugene McDermott Director of the Dallas Museum of Art, *The Tampa Tribune*, August 16, 2014