



Association of Directory Publishers



R. Lawrence Angove
President & CEO

Seattle: Motion for Summary Judgment Filed

January 18, 2011

To: All ADP Members
Fr: Larry
Re: Update on Seattle Litigation

As you know, the industry has been working to combat the restrictive legislation that was enacted by the Seattle City Council last fall.

On Thursday, January 13, the Yellow Pages Association, Dex One, and SuperMedia filed in U.S. District Court in Seattle a Motion for Summary Judgment to invalidate Seattle Ordinance 123427, which bans distribution of yellow pages without a license, charges yellow pages publishers for every directory distributed, and forces publishers to print the City's messages on their directories and to participate in a duplicative and burdensome City-run delivery opt-out scheme. The Motion demonstrates that the Ordinance violates both the First Amendment's guarantee of free speech and the Commerce Clause.

- The Ordinance violates the First Amendment because yellow pages are pure protected speech. Yellow pages provide valuable services to millions of people every day, guiding them to products, services, and community information they need. Yellow pages are entitled to the First Amendment's full protection, just like magazines, TV shows, video games, and newspapers. Even if yellow pages counted as pure commercial speech, the Ordinance would still violate the First Amendment because there is no basis for singling out yellow pages for regulation and because the City cannot justify the Ordinance's restraints under even commercial speech standards.
- Meanwhile, the Ordinance violates the Commerce Clause because it has the purpose and effect of favoring Seattle-based directory publishers, such as local chambers of commerce, over out-of-state publishers like Dex One,

SuperMedia and Yellowbook, and because the burdens it imposes on interstate commerce far outweigh its supposed benefits.

There is wide recognition of the fact that the average American continues to use a printed yellow pages once every week, and publishers recognize that some consumers prefer to use Internet directories instead of printed phonebooks. The industry has gone to great lengths to allow consumers to opt out of print delivery if they so choose, and has no desire to irritate consumers or waste money delivering directories to those who don't want them and don't intend to use them.

Unfortunately, the Seattle City Council decided to override the industry solution already in place and instead inject itself into the business of regulating distribution of yellow pages. However, the First Amendment holds that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content, and the Commerce Clause forbids the types of discriminatory and burdensome regulations the City has imposed under this ordinance.

For these reasons, the industry expects the Court to grant our Motion and declare the Ordinance invalid, probably in February or early March. Both sides believe that the case can be decided without need of a trial, but if a trial is necessary, we will seek preliminary injunctive relief by March.

The industry will continue to work on behalf of all its members to ensure that this matter is resolved in their favor and that all publisher members will continue to be able to exercise their right of free enterprise in Seattle and across the country.