

## THE HISTORY OF OUTDOOR ADVERTISING REGULATION IN THE UNITED STATES

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### ABSTRACT

The history of regulation of outdoor advertising in the United States is traced. Since just after the Civil War, a variety of arguments aimed at either banning or severely restricting the use of billboards have been made. Self-regulation by the outdoor industry has proven to be a potent force in responding to most of these arguments and has served to guard against highly restrictive regulation. Arguments based on aesthetics, however, have been the most enduring and have had the strongest impact on regulation of the industry.

### INTRODUCTION

This paper examines the regulation of outdoor advertising in the United States. In particular, the paper focuses on the arguments of critics and how these arguments have been dealt with by those with an interest in preserving the medium. Several arguments have been used over time by those opposed to billboards. These include the following objections:

- 1) Outdoor displays are aesthetically displeasing.
- 2) Billboards represent a safety/construction hazard.
- 3) Outdoor advertisements sometimes carry deceptive messages.
- 4) Some outdoor ads are indecent and/or for objectionable products.

The regulatory impact and response to each of these arguments will be examined in depth.

In addition to examining the primary arguments used by critics of outdoor advertisements, the paper also examines the role of industry self-regulation. Beginning with the establishment of the International Bill Posters Association of North America in 1892, self-regulation has been an important force. Indeed, a central theme of this paper is that organized self-regulation and public relations programs run by the outdoor advertising industry have generally been a potent force in preventing restrictive legislation on billboards.

A second theme of the paper is that, of the arguments voiced by critics, aesthetic arguments against the outdoor mediums have been the most influential and enduring. Since the beginning of large scale outdoor advertising in the USA, objections to posters or billboards on the grounds that they are a scourge on scenery have been lodged (Wood 1958). The primary motivation behind the only two major pieces of federal legislation aimed directly at outdoor advertising, The Federal-Aid Highway Act (a.k.a. The Bonus Act) of 1958 and The Highway Beautification Act of 1965, has been based on the preservation of scenery. Unlike the other categories of arguments, there has been no simple way for the industry to respond to aesthetic arguments without severely limiting the size of the industry. For this reason, combined with increasing environmental concerns, it is concluded that aesthetic arguments will continue to pose a threat to the outdoor medium.

The paper's primary focus will be on early industry regulation - that is the period prior to 1930. However, in order to support the themes expressed above, some coverage of regulation since 1930 is also provided. Additionally, some discussion of the evolution of the medium prior to its appearance in the U.S. is provided in order to allow for fuller understanding of early U.S. practices.

The remainder of this paper will begin by providing some background on the early history of the outdoor medium. This will be followed by a description of the development of the medium during the post-Civil War period. Next, the evolution of regulation of the industry in the early stages of the 20th century will be traced. Then, legislation and regulation since 1930 will be discussed. Throughout the latter three sections, the primary arguments against billboards and the responses made to them by the outdoor industry will be examined. Finally, conclusions will be drawn.

## EARLY HISTORY OF THE OUTDOOR MEDIUM

### Early World History

Long before any controversy over outdoor advertising existed in the United States, the medium had been utilized in many ways and was continuing to evolve from its earliest forms. Widely considered to be the oldest advertising medium, outdoor advertising dates back at least 5,000 years.

The first recorded use of outdoor advertising occurred in Egypt, where notices of rewards for the capture of runaway slaves were printed on papyrus and posted (Agnew 1932). The Egyptians were also known to have inscribed hieroglyphics on obelisks to direct travelers and merchants were known to carve sales messages into stone tablets which they placed along public roads (Outdoor Advertising Association of America 1992).

Later, other uses for outdoor advertising were found. Babylonian merchants were among the first to realize the value of hanging a sign above their place of business in order to identify their trade or call attention to merchandise (Sampson 1974). The ancient Greeks used axones (panel-covered columns) to list the order of contests at public games (OAAA 1992). Government proclamations were also made on tablets in Greece.

During the Roman Empire, signs began to serve a widespread need. Since literacy was low, signs typically displayed objects (such as a goat to indicate a dairy, a bush to indicate a tavern, a bunch of grapes for a wine shop, or an anchor for the ship chandlery) in order to catch the eye or inform the traveler (Sampson 1874). Paintings on walls known as albums, began to appear, indicating the name and profession of the occupant and, in the case of book shops, announcements of new writings that were available. Occasional theatrical announcements appeared, such as those painted by Callades, an artist mentioned in the writings of Pliny. Additionally, crude illustrations of gladiatorial contests on walls near places where people congregated were sometimes used to advertise upcoming exhibitions (Presbrey 1929).

The outdoor medium was also widely utilized in Europe. The heraldic inn signs of medieval times remain famous. Beginning in the twelfth century, the French began to post written proclamations of laws in cities (Presbrey 1929). By the 1300's European businesses were often required by edict to hang a sign identifying themselves (Tocker 1969). The invention of movable type in 1450 by Johannes Gutenberg revolutionized the outdoor medium (Schuwer 1966). The technology allowed for both the circulated handbill and posted bill, both of which would become highly popular. In 1480, William Caxton introduced the typed posted bill to England, advertising a new religious law book, The Pyles of Salisbury Use, on the doors of churches. By the 17th century, the new technology was adapted to outdoor signs, and became popular enough to lead to the observation that, "London was literally darkened with great swinging sign boards of every description..." (Tocker 1969).

Billposting methods were still somewhat primitive during this time. Usually, a boy was given a fistful of bills to post and was paid a few pennies. Soon, people were putting bills over those posted by others.

It did not take long until some advertisers wanted exclusive rights to post bills in desirable locations. The first hoarding (British term for billboard) for commercial advertising appeared in 1740, when a London clothing merchant asked for the town crier's permission to post his bills alongside official proclamations (Presbrey 1929). City council agreed to allow the practice, while establishing a fee for the use of the public channel utilized by the advertiser. Shortly after this government authorization, billposters began to erect their own structures in order to advertise in locations where traffic was heavy (Sampson 1874). Interestingly, while taxing newspaper advertising, the British government did not place a tax on the use of privately owned structures for billposting until many years later. Agnew (1932) notes that this lack of tax on hoardings helped outdoor grow faster than other advertising media.

### Early U.S. History

As posting techniques continued to increase in popularity in Britain, they were received enthusiastically in the colonies. Initially, American signboards were patterned after their European counterparts, and usually pictorial in nature. Presbrey (1929, p. 13) illustrates this with the following description of some early American signs:

Among the first outdoor signs were such symbols of the tobacco shop as the running Negro boy and the Indian with the hatchet which are said to have originated in smaller form as counter statuettes in the tobacco shops in England early in the seventeenth century. With those were figures of Sir Walter Raleigh, the Smoking Dutchman, the Highlander extending his open snuffbox and other mannequins which were also used earlier in England as signs for tobacco shops. The sign gave the shopkeeper an address -- 'At the Sign of the Smoking Dutchman' in the absence of street numbers.

Philadelphia, America's art center at the time, saw the most widespread use of pictorial signs during the colonial period. Many artists and art students made their living by painting signboards while waiting for portrait or landscape painting to bring them fame. A man named Matthew Pratt achieved some level of notoriety in painting signs for Philadelphia taverns. Among these was his one sign which Presbrey (1929, p.177) describes as follows:

Pratt's most effective sign from an advertising standpoint was his painting of the Federal Convention engaged in discussing the Constitution of the United States. There were thirty-eight figures in the picture, and the sign must have been considerable in size. When it was hung out by a tavern at Fourth and Chestnut streets in Philadelphia it brought crowds of people who stood in the street and challenged one another to see who could pick out and name the greatest number of personages represented, among whom the figure of Benjamin Franklin was the one that was familiar to all. It was good advertising. The tavern became well known and popular through its sign.

During the Revolutionary War, outdoor advertising took on new uses. It was through posters that the Boston Tea Party was organized, and it was the poster that served as the primary communication medium throughout the American Revolution (OAAA 1992). The influence of posters would endure well beyond that of the signboard. Municipal laws limiting the size of signs as well as the development of other forms of advertising led to the decreased use in signboards as an advertising medium (Presbrey 1929).

As the use of the signboard decreased, the use of posters gradually began to grow. By 1850, the outdoor medium was far advanced. Early patrons of the medium included notices of the sale of

farm and stock equipment, county and state fairs, theaters, and horse races. One store - Clothing Bazaar in Boston had painted advertisements announcing merchandise for sale on every road within 50 miles (Presbrey 1929). P.T. Barnum was one of the early pioneers in the posting field. About 1840, Barnum ordered posters two feet by three feet (easily the largest produced by any engraver during the time period) to advertise his New York medium (Agnew 1932). Later, Barnum's efforts would help make circuses the number one user of outdoor advertising and contribute to the explosion of the medium.

#### THE POST CIVIL WAR PERIOD: UBIQUITY AND CRITICISM

By the time of the Civil War, the use of bills had increased dramatically. By 1865, there were 275 professional billposters employing from two to twenty men each (Tocker 1969). Presbrey (1929) notes that the "great wave" of patent medicine advertising began in about 1860. Over the following 20 years, brands such as St. Jacob's Oil, Hood's Sasparilla, Dr. Pierce's Golden Discovery, Warner's Safe Cure, and Carter's Little Liver Pills became household names. Painted signs were clearly one of the chief means of advertising in the U.S. at this time. One of the primary locations for signs was on barns. Initially, most farmers required that only the side of the barn on which the advertisement appeared be painted as compensation, making such advertising relatively inexpensive and appealing to many businesses (Agnew 1932). Barnum's efforts also contributed to the growth of the medium. The introduction of advertising for his circus led all institutions in (Agnew 1932, p.329) "...variety, extent and perhaps one might also say in extravagance of its poster advertising." Support from Barnum and other established clients led to the establishment of a national paint service by Bradbury & Hotaling in 1870. This allowed an advertiser to have his message displayed around the entire country by dealing with just one agency.

As the use of outdoor advertising grew, so did abuses, and serious criticism began to arise. Paintings and posters began to appear in many places, often to the annoyance of many. Perhaps the most notorious abuse was a conspicuous advertisement for St. Jacob's Oil painted on a rock at Niagara Falls (Presbrey 1923). This advertisement was so notorious that it was discussed nationally and led the New York state legislature to pass legislation preventing the defacement of scenery. This was the first legislation restricting outdoor advertising.

St. Jacob's was hardly alone in its abuses. One observer in *Printer's Ink* (Untitled, 1938) described the post-Civil War period as follows:

For a time it seemed that the height of efficient achievement in the field of outdoor advertising was to emblazon the name of the product on a church steeple. This was a business in which, during the 1880's, rugged individualism reached a spectacular peak. Rare was the rock of vantage in any spot that did not bear the name of somebody's pills. No fence or wall was immune, for the property owner's permission was rarely sought. One enterprising firm painted a message on four-fifths of the chimneys along every line of the New York elevated system, the painters often using rope ladders to go from roof to roof.

Clearly, many people were becoming annoyed by the ubiquity of outdoor advertising. Highly visible abuses became more common in spite of outrage over the Niagara Falls incident. A patent medicine firm with the mysterious name of "S T 1860 X" was known to paint its letters as high and wide as possible on a multitude of rocks and every attainable barn. A scenic bridge in Lexington, Virginia became known as the "Medicine Bridge," since the words, "WICONA, THE PERFECT CURE" were painted over its entire length (Wood 1958). Patent medicine makers were not the only ones engaging in such practices. A beautiful covered bridge over East Creek in Rutland, Vermont read, "Just Suits Tobacco, Cut Plug." At one point, a building contractor even rented out space at a lower Broadway U.S. Post Office construction site.

The sight of outdoor advertising in the late 1800's was not limited to cities or nearby areas. In fact, (Wood 1958, p. 183) "The occupants of slow-moving wagons, buckboards, buggies, and surries saw advertising all along their country routes... the countryside from New York to Chicago looked like one giant billboard." At its worst, the ubiquity of outdoor ads during the period following the civil war extended to sails on boats, box kites, and even the heads of a series of bald men if they could be viewed from above.

It is estimated that 30 percent of advertising dollars spent in the 1870's went to outdoor media. By the early 1890's, the figure had declined to a still formidable 25%, in part due to the rise of other media. However, it is clear that many of the most "legitimate" users of outdoor knew that public criticism about the ubiquity of the medium and the activities of some unscrupulous advertisers were a threat to the medium's long term survival. This recognition of the need for good public relations was one factor which led to the first attempts at industry self regulation.

### EARLY INDUSTRY SELF-REGULATION AND PUBLIC RELATIONS

The first industry association in outdoor advertising, named the International Billposters' Association of North America, was founded in 1872 (Gras 1939). This organization functioned for twelve years before it lapsed. While the IBANA had little influence on industry regulation, it set the stage for the formation of the Associated Billposters of the United States and Canada (ABUSC) in 1892 ("Regulation of Advertising" 1938). For a number of reasons, the formation of the ABUSC would have a large impact on the regulation of outdoor advertising.

#### The Need for Standardization

A clear recognition of the need for industry organization emerged at the time of the formation of the Associated Billposters of the United States and Canada. One major problem related making sure bills were actually posted (Agnew 1932). The late 19th century billposter often held another job, but at odd times would go around with his brush and bucket of paste putting up posters under an "as chance may offer" contract. Under this system, there was no reliable mechanism for ensuring that the billposter actually put up the number of posters he claimed to. Also, with posters of all sizes being put up in many locations, it was not uncommon for a competing poster to be put up over another within a few hours of the initial posting. Agnew (1932, p. 333) describes typical practices of billposters operating on "as chance may offer":

It was common practice for billposters to post bills on freight cars standing on sidings. Also, it was regarded as clever to stick them onto any freight car of a train that happened to be halted at the time a man with a paste-pail was in the vicinity. One enterprising manufacturer had a large poster printed to call attention to the fact that the car was carrying his product. This poster was pasted on every car. But the billposter who was paid on the unit plan made it his business to stick one on every car he was able to reach. Old barns and unoccupied buildings were frequently covered with painted signs.

As a result of this chaotic situation, owners of billboards and sign space were considered by others in the industry to be unorganized and unbusinesslike (Gras 1939). Clearly, the challenge of ensuring that signs were actually put up for the allotted period of time was a turn-off to many advertisers.

At its first meeting in 1891, the Associated Billposters Association recognized the need to develop industry standards (Tocker 1969). Early on, the ABUSC granted approved franchises (one per city) and established firm rates for posting in order to help standardize the industry on a city to city basis. Soon, the days of "as chance may offer posting" were over (Agnew 1932). In 1909 the ABUSC

in cooperation with interests owning painted bulletin boards adopted resolutions which instituted the policy of leased space. Under leasing, contracts were signed in which the advertiser was guaranteed the exclusive and protected use of billboard space for a specified length of time ("Regulation of Advertising" 1938).

By 1915, the industry association had made significant progress in standardizing use of the medium (Tipper 1919). In 1910, the ABUSC publicized the concepts of showings and coverage. By helping advertisers understand how much space to rent to ensure exposure to most of a city's residents, the association increased the popularity of the medium. Additionally, some advertisers were realizing that outdoor could be very effective in reaching immigrants who did not reach newspapers or magazines (Gras 1939). In 1912, further simplification took place when the 24-sheet poster (8-feet 10-inches by 19-feet 8-inches) was made standard (Agnew 1932). In recognition of this change, the ABUSC changed its name to the Poster Advertising Association. By the time 1915 came around, the association had hundreds of members, representing several thousands of cities and towns. While the organization certainly would not be regarded as highly sophisticated by today's standards, it clearly set the stage for future industry growth by establishing standards and, more specifically, addressing some of the criticisms of the medium that were still being aired.

#### Early Self-Regulatory Responses to Criticisms of Outdoor Advertising

As indicated previously, billboards had drawn the ire of critics prior to the turn of the century. While public opinion and legislation managed to curb some of the most blatant abuses, it was clear that outdoor was becoming a valuable and economical medium for many advertisers, which made it more difficult to control (Wood 1958). From early on, the Poster Advertising Association and its predecessor, the ABUSC, were aware of the importance of good public relations and the need for the industry to police itself in order to head off even louder criticism than it received.

One problem the Associated Billposters' of the United States and Canada had to face in its early days was that of posters found to be objectionable on moral grounds by members of the public ("Billposters Meet" 1911). During the late years of the 19th century, theaters were a very common site for the posting of bills. In fact, the local theater owner frequently had charge of the outdoor advertising in the city in which it was located. This owed in part to the fact that the theaters themselves used posters heavily to advertise upcoming shows. The theaters would generally use most of the available space they had in the 32 week period from mid September to May to advertise their own shows. In the 20 week off season, however, business was built by renting the space to other advertisers. Interestingly, competition for such space was often fierce, as evidenced by the following quote (Tocker 1969, p.26) describing the types of payments received by theater owners:

With the strictly commercial posting, employed mainly by food products, patent medicines, soap, cleansing compounds and the like, it was a common practice to secure protection for the position by giving the landlord or tenant trinkets or tickets of admission to a circus. These were freely, if not lavishly conferred. Subscriptions to magazines, kitchen and pocket knives, watches, and even jewelry were used in payment for posting.

By the turn of the century, it was not uncommon for posters for burlesque shows to occupy space on the theaters' boards. This, as well as reports of a few instances of the appearance of posters which depicted firearms or criminal activity alarmed the ABUSC. In order to control potential damage to the industry, the association sent out a printed warning to lithographers and managers in 1910 stating that the use of "objectionable paper" would not be sanctioned or tolerated by the association. The text of this warning is shown as Exhibit 1 ("Billposters Meet" 1911, p.74). By publicly opposing objectionable ads, the ABUSC did the industry a favor. As Fawcett (1913) indicated, it was the most blatant abuses that caught the attention of the public and gave ammunition to opponents of the outdoor industry. By showing concern in these cases, the industry gained credibility when other charges of

objectionability, a very subjective term (Hotchkiss 1940), were made. For this reason, "objectionable" arguments were not particularly damaging to the outdoor industry through most of the 20th century, although objections to some outdoor advertisements for certain product categories (primarily tobacco and alcoholic beverages) in certain areas would become an important concern by the late 1980s.

In addition to dealing with objectionability, the ABUSC and PAA showed a responsiveness to the concerns of consumer groups such as the Associated Advertising Clubs' Vigilance committee (whose activities were carried out in conjunction with local Better Business Bureaus) regarding deception (Fawcett 1913). Since billboards were a local medium (McCann 1923), they were subject to close scrutiny by vigilance groups whose mission was to combat deception (Borden 1925). The Truth in Advertising Movement, described as beginning in about 1893 (e.g., Starch 1911; Hess 1931) raised concerns about all types of advertising. By attempting to head off these issues early outdoor industry association efforts would very much help the industry during periods when it came under attack. Issues of deception have seldom haunted the outdoor industry since the industry association formed. While this may be in part due to the nature of the medium, in which a very limited amount of information is conveyed, it is clear that early standardization of the medium also has played an important role.

In addition to addressing the issues of objectionability and deception, the ABUSC/PAA was aware that arguments relating to safety and enduring arguments regarding aesthetics needed to be addressed through self-regulation. Several cities, most notably New York and St. Louis, had commissions appointed to deal with the ubiquity of outdoor advertising. In 1911, the New York Mayor's Billboard Advertising Commission recommended a series of far reaching measures to be embodied in various proposed statutes and ordinances, shown here as Exhibit 2. While these regulations were never enacted, they demonstrate the views of anti-billboard activists of the time. In the case of St. Louis *Gunning Co. vs. St. Louis* (1911), the Missouri Supreme Court heard arguments specifically aimed at convincing the court that many billboards were safety hazards. In particular, the city, with the aid of affidavits from the police chief and other city officials argued that (Price 1959):

On many occasions assaults, robberies and larcenies have occurred under the shelter of billboards...; that in many of these instances the offenders concealed themselves behind the billboards and suddenly stepped out upon their unsuspecting victims; that in many instances such offenders have enticed their victims upon some pretext behind the billboards; that it has frequently happened that billboards so located have been used as a shield to persons engaging in illicit and improper cohabitation, and they have frequently been used as a privy or resort of necessity by persons answering calls of nature, and thereby creating unbearable stench and nuisance for persons passing along the street or sidewalk.

In addition billboards were charged with responsibility for the growth of weeds, the collections of debris, the creation of fire hazards, and as a constant threat to pedestrians during windstorms and interference with fire fighting.

Interestingly, the Missouri Court's response in the case was consistent with what the ABUSC had already been considering (and would soon firmly implement): it allowed for regulation of billboards' size, height, number of feet from the ground, and proximity to buildings. Thus, combatting safety issues proved to be a relatively minor problem for the billboard industry. Indeed, since at least 1910, safety issues have never been a legitimate threat to the industry. In all instances, including more recent claims that billboards cause traffic accidents, concerns about safety have either been disproved or dealt with effectively through self-regulation - usually in restricting the form and/or placement of allowable structures (Netherton 1969).

## EXHIBIT 1

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### Text of Warning Letter Against "Objectionable" Paper Sent From ABUSC to Lithographers and Theater Owners

You are respectfully requested to use your influence to end the use of objectionable posters on the billboards; posters of the character that are objectionable because of the titles that are used, or the scenes that are illustrated. The use of these posters are not for your best interests, any more than they are for the best interests of the billposter.

The principal objection existing today against billboards in different communities is caused principally because of objections to some theatrical posters now used on billboards, particularly burlesque and melodrama shows.

The Associated Bill Posters of the United States and Canada have in their by-law that from this time on is to be vigorously enforced; viz: Regarding sensational and suggestive titles used in advertising productions of plays. They have instructed all members under a penalty, to refuse to post any paper that carries titles and pictures that are deemed objectionable.

There are only a few states in the Union which have not already taken up this matter in their Legislatures. Massachusetts was among other states proposed fixing a penalty for the use of posters depicting firearms; depicting crime, and displaying the female figure on the billboards, combining imprisonment as well as a fine.

You see there is absolutely no cause in carrying this character of paper from this time on in advertising your shows. You will fail to have it posted in most communities. It will only be a waste of your money to have it printed, for the posters will have to be thrown away.

Will you not, therefore, lend us your aid in doing what can obviate this objectionable feature, in the use of billboards of today. You can, to a degree, help stop the use of these posters. Will you please spread a desire either through your own endeavors, or with those who are connected with you in your business to stop this?

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### Public Relations Under the ABUSC and PAA

In spite of some favorable legal decisions, those within the outdoor industry during the early part of the 20th century did not take aesthetic arguments lightly. In a key court decision in the City of Passiac vs. Paterson Billposting Co. (1905) involving the possibility of a municipality removing a billboard for primarily aesthetic reasons, it was ruled that, "Aesthetic considerations are a matter of luxury and indulgence rather than of necessity, and it is necessity alone which justifies the exercise of police power to take private property."

Thus, it was found that the property rights of individuals granted under the Fifth Amendment superseded aesthetic concerns. Several other courts of the time ruled that aesthetic concerns were found to lie outside the traditional idea of health, safety, morals, and welfare under the police power of states (Litka 1969).

In the face of such favorable legal decisions, it might have been easy for those in the industry to become complacent. On the contrary, those in the outdoor industry recognized the long-term threat posed by the aesthetic issue. For example, during the annual meeting of the ABUSC in 1919, George Chennell of Columbia, Ohio, president of the association urged his trade members ("Outdoor

## EXHIBIT 2

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### Recommendation of New York Mayor's Billboard Advertising Commission (1912)

1. Prohibition of all outdoor advertising structures (but not shop signs, advertisements on vehicles and the like) on or in the immediate neighborhood of parks, squares, public buildings, boulevards and streets of exceptional character and other places of exceptional beauty or sentiment.
2. Censorship of objectionable advertisements.
3. Regulation of appearance of advertisements.
4. Regulation of immediate neighborhood of billboards, which commission says too often screen rubbish, filth, and the commission of offenses against decency and morality.
5. Prohibition against "disturbing" electric signs and regulation of hours of display in neighborhood of hotels, hospitals, etc.
6. Elimination of fire hazards.
7. No roof signs in restricted districts or on any buildings except fireproof.
8. No advertising signs to cover windows or doors.
9. All outdoor advertisements and structures limited in size.
10. Temporary control by refusing advertising privileges on buildings near parks, notable street views, etc.
11. No advertising in street, except transit stations, or on construction bridges, etc.
12. Regulation in transit stations so as not to obstruct light or air, or obstruct street designations.
13. Prohibition of all outside signs on vehicles and regulation of advertising within.
- 14 & 15. Readjustment of departmental functions to facilitate regulation.
16. Local option to localities within city to determine whether they will prohibit outdoor advertising within their limits.
17. Graded excise tax upon the business of outdoor advertising.

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Association Meets at Atlantic City - Favors Regulation of Billboards" 1919, p. 20): "Make it your business to make friends, not enemies. Do not invade any district where sentiment is overwhelmingly opposed to signs. Make concessions readily. We must recognize the sentiment in the country and guide ourselves accordingly." At the same meeting, the billboard men were thanked by Attorney General Price of Ohio and Governor Frank Lowden of Illinois for patriotic service in the war, during which more than 1.3 million dollars of space was donated.

In addition to showing concern for public standards and donating space to worthy causes, the

industry was also quick to point out that billposting had a positive impact on the economy, both through trying to help land owners better utilize their property and to help create more effective publicity for products and services. Barney Link, a colorful character and leader in the industry who had started out as a bill-poster for the Barnum and Bailey Circus was particularly fond of emphasizing the billposter's role as middlemen: ("Barney Link, Poster Advertising Power, Dead," 1917, p.73)

We are merely 'go-betweens.' In the old days a man who owned a lot and wanted to pay taxes used to build a bill-board and then get the furrier to advertise on it during the fall. When the furriers advertising season was over, the property owner had to get busy and find someone else, and so on throughout the year. It not only took a lot of time, but it meant that the advertiser had to keep a whole lot of accounts, just as he would if he sold direct to a lot of petty dealers instead of the jobber. The need of some third party to handle the work in bulk, and lessen the cost of selling through a properly organized sales force, gave rise to the outdoor companies.

Link was also quick to point out the negative impact that a ban on outdoor advertising would have on the families of those employed in small poster plants.

It is notable that those within the outdoor advertising industry showed a great deal of restraint in public response to criticism of the medium. In response to the NYC Mayor's Commission recommendations shown in Exhibit 2, most representatives of the outdoor industry refused comment in interviews with Printer's Ink. While a few members of association pointed out discrepancies in the mayor's commission report, it is apparent that the industry did not want more publicity generated ("Aesthetes Air Their Views on Outdoor Advertising" 1912).

The question of why the industry was highly public relations conscious in spite of early legal victories is one that should be posed. The answer would appear to lie in the realization that the medium was highly vulnerable to negative publicity when abuses occurred, and the fact that protests against the medium, especially on aesthetic grounds persisted. The Commonwealth v. Boston Advertising Company (1905), in which an ordinance enforced by the Massachusetts Metropolitan Park Commission prohibiting any billboards (except some on-premise signs) from appearing on buildings, spurred a lasting debate as to how far property rights extended (Gardner 1936). While the outdoor interests won the case, aesthetic arguments continued to be voiced in legal battles.

It had been conceived as early as 1900 by a Californian judge that "the views in and about a city, if beautiful and unobstructed, constitute one of its chief attractions, and in that way add to the comfort and well-being of its people." (Goodrich 1929). Gradually, this type of argument would lead courts to believe that macro aesthetics and property rights needed to be balanced (e.g. Berman v. Parker 348 U.S. 26.). Eventually, the U.S. Congress would agree, as evidenced by the passage of the Highway Beautification Act in 1965, an act designed to provide a reasonable balance between aesthetics and property rights. Thus, the outdoor industry was wise to engage in early self-regulation aimed at addressing at least some concerns expressed by the aesthetic groups. With the formation of the Outdoor Advertising Association of America in 1925, concern with responding effectively to critics would increase.

#### THE OUTDOOR ADVERTISING ASSOCIATION OF AMERICA

In the face of continued arguments during the early part of the 20th century that outdoor advertising "polluted" scenery (e.g., Larremore 1906; Millard 1916; Tipper 1919; Calkins 1927), the Poster Advertising Association and the Painted Outdoor Advertising Association merged in 1925 to form the Outdoor Advertising Association of America. Presbrey (1929, p. 503) notes that with the formation of the OAAA: "... came a still more effective organization for the encouragement of outdoor display and a more pleased acceptance by the public."

Among the standards of practice adopted by the OAAA in 1925 were these:

1. No structure shall be erected that constitutes hazards to traffic, i.e., blocks the view of dangerous curves or intersections.
2. Structures are not to be erected upon state-owned highway lands and only upon land leased or owned by the companies.
3. No structures are to be erected which destroy scenic beauty.
4. No structures are to be erected in purely residential districts.

These self-imposed restrictions, clearly aimed at addressing aesthetic and safety-based criticisms appear to have helped lead to more favorable public opinion toward the industry during the late 1920's. In fact, Presbrey (1929) noted that one of the greatest causes of complaint about the industry in the late 1920's came from independently owned stands which were neither erected or maintained in accordance with the standards of the Outdoor Advertising Association. Agnew (1932, p.346) also noted the problem of dealing with those who were not OAAA members:

No one should withhold generous credit to the outdoor interests for the efforts made to maintain the industry on a high ethical basis. It should be remembered, however, that it is a business and not a philanthropic institution and that making a profit for stockholders is the chief business of the industry. This frequently leads to the infraction of the rules which are laid down by the Association. As there is no adequate means for enforcing these rules, failures of affiliated or associated companies to live up to the high standards are sufficiently numerous to create a good deal of public criticism.

While the activities of non-OAAA members would remain a problem for the industry until 1965 when the Highway Beautification Act was passed, the OAAA was nevertheless successful in building positive public relations in the 1920's. As a result, outdoor advertising obtained desirable sites which previously had not been open to it. Soon, however, a Depression and a World War would lead to changes.

## INDUSTRY REGULATION SINCE 1930

### The 1930's and 1940's

During the Great Depression, general advertising expenditures fell dramatically from a peak of almost \$3.5 billion in 1929 to a low of \$1.3 billion in 1933. Not only did advertising suffer a precipitous decline during the depression, but it was also subject to attack on the grounds that it encouraged people to buy things they could not afford (Wood 1958). Thus, it is not surprising that the Depression was a period of contraction for the outdoor industry which, in fact, received little attention. In an early Journal of Marketing article (Duffy 1938) examining the advantages of different advertising media, outdoor advertising was not even mentioned. Hotchkiss (1940) did, however, note that the outdoor industry remained subject to "incessant" criticism pointing out its ugliness.

As in the 1930's, relatively little was written about the outdoor advertising industry during the first half of the 1940's, with the exception of some material on military posters. Thus, the period from 1930-1945 was one in which the nation was preoccupied with concerns larger than how outdoor advertising should be regulated. While the OAAA remained in existence and maintained its code of ethics, business was being done on a smaller scale. This situation would, however, change by the late 1940's, when the industry, as many others would again grow. As will be seen in the next section, criticisms, primarily on aesthetic grounds would grow concurrently.

### The 1950's And 1960's

Once the American economy again became healthy, the outdoor advertising industry would once again flourish. By 1956, it was reported that the organized medium employed over eleven thousand people

and had an annual sales volume in excess of \$200 million dollars. This increase in volume was accompanied by increased scrutiny. Throughout the 1950's, debate over the extent to which the outdoor medium should be regulated was common. Clearly, the very large number of billboards on highways, many of which ignored the OAAA code of ethics, were of concern to the public. From 1955 to 1957, several bills aimed at billboard regulation were introduced in Congress (Enfield 1969). Partly due to effective lobbying by the OAAA, none of these were passed. An additional obstacle to the passage of restrictive legislation was the clear conflict between highway beautification and property rights. Increasingly, the debate over billboard regulation boiled down to balancing the rights of the public to have a scenic view with the property rights guaranteed to individuals under the 5th Amendment.

Finally, in 1958, Congress passed what would become known as the "Bonus Law" as part of the Federal Aid Highway Act of 1958 (P.L. 85-381) which entitled states which voluntarily regulated billboards in accordance with guidelines established in the Act to a monetary payment equal to one-half of one percent of the state's federal highway project funds. The primary features of the regulations that had to be followed were that billboards should be erected only in areas zoned commercial or industrial and that size, lighting, and spacing requirements be established. Since its establishment, over \$42 million have been paid to the 23 states which have filed claims under the Bonus Act (as of 1991).

While several states took advantage of the Bonus Act, it was not effective in reducing the number of billboards on public highways by the mid 1960's. Netherton (1969) noted that during the early 1960's, many motorists felt that highway billboards were too numerous, poorly planned, and misused. Horsbaugh (1969) summarized the arguments of some of the harshest critics of the outdoor medium, calling billboards a "national shame" and a "nuisance" perpetuated by special interests operating in the public domain. The OAAA was keenly aware of these criticisms, and by the early 1960's, had a greatly expanded code of ethics, which now clearly reflected public concern with aesthetic issues (Tocker 1969). This code of ethics is shown as Exhibit 3. The OAAA actively encouraged its members to propose legislation in individual states that would ban billboards in areas zoned as residential. It is also notable that the OAAA developed a model statewide regulatory act in 1960, and again in 1964, aimed at protecting scenic areas and requiring licensing of all outdoor signs.

In spite of the efforts of the OAAA, criticisms of the outdoor medium on aesthetic grounds persisted in the early 1960's (Hermann 1969; Houck 1969). This criticism would eventually lead U.S. Congress to pass the most important piece of legislation in terms of outdoor advertising. Inspired by President Johnson's wife Ladybird, whose goal was to make highways more scenic at a time when unprofessionally erected signs were commonplace, the Highway Beautification Act (23 US 131) was passed in 1965. The HBA established controls on the Interstate and Primary Highway system, and restricted signs to areas zoned commercial or industrial by local authorities. Other key provisions included permitting individual states to establish logo programs and allowing states to impose stricter standards. Four states, Vermont, Maine, Alaska, and Hawaii have used this latter provision to ban billboards altogether, and Rhode Island has banned the construction of new billboards. The HBA also provided funds for the removal of illegal and nonconforming (those erected legally, but not complying with current law - generally related to zoning). According to the U.S. Department of Transportation, the HBA was successful in reducing the number of billboards and 111,000 nonconforming signs being removed since its passage (Billboard Basics 1991). As will be seen in the next section, however, the passage of the HBA has not crippled the outdoor advertising industry.

#### 1970 - present

In spite of reducing the overall number of billboards, the Highway Beautification Act has done little to quell critics of the outdoor advertising industry. In fact, critics argue that the OAAA has turned the HBA into a tool to protect itself. One major source of controversy has been the removal of

### EXHIBIT 3

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#### OAAA Code of Ethics (Early 1960's)

As owners and operators of standardized Outdoor Advertising displays, we, the members of the Outdoor Advertising Association of America, Inc. have voluntarily pledged strict adherence to a rigid code of practices, and endorse adoption of these principles by state and local governments, as follows:

WE share the public interest in natural scenic beauty, parks, and historical monuments. We do not erect our advertising displays in such areas.

WE believe in and support zoning based on sound community planning.

WE locate our structures only in urban areas where business is permitted or exists under zoning.

WE build displays in rural areas along highways only where other business exists or is permitted by state or local regulations.

WE locate our structures with discretion and good taste with respect to frequency and concentration.

WE place outdoor advertising displays only on property we own or lease for that purpose.

WE observe rigid standards of design, construction and maintenance so that our displays will be attractive.

WE only display outdoor advertising which is truthful in every respect and in accordance with high moral standards.

We actively and continuously support worthy public causes through the contribution of outdoor advertising displays.

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nonconforming signs. Initially, several states attempted to use an amortization approach in which sign owners were given a grace period to use the billboard before it was confiscated. The OAAA adamantly opposed this approach, arguing that amortization did not constitute the just compensation guaranteed to property owners under the Fifth Amendment. The OAAA won a congressional ban on amortization in 1978 (Snyder 1991), and a later U.S. Circuit Court of Appeals decision (Naegle v. Durham 1988) effectively eliminated the amortization approach.

With amortization effectively eliminated as a means of just compensation, officials became reluctant to utilize scarce funds in order to tear down billboards. Critics of the industry are angered by the fact that over 90,000 nonconforming billboards remain standing and argue that clutter has not been substantially reduced. Floyd (1991), for example argues that the HBA has not met its objectives of removing clutter from rural roadsides and preventing the spread of new boards along the highways. Citing ineffective removal and what he views as the outdoor industry's manipulation of loopholes in zoning laws, he argues that the HBA has served the OAAA as a shield against state and local regulations that require the removal of nonconforming signs.

The arguments of Floyd and others, such as public interest group Scenic America have led to the introduction of legislation in Congress that would place more severe restrictions on the outdoor industry. To date, however, all such legislation has been defeated, and there does not appear to be a

serious threat of it being passed in the near future. A major reason for this would appear to be the effectiveness of the OAAA in convincing Congress that they are effectively self-regulating the industry.

Interestingly, the OAAA's code of ethics now includes a statement indicating that they fully support the enforcement and implementation of the Highway Beautification Act. One reason for this support is that the HBA explicitly recognizes outdoor advertising as a "legitimate part of the marketing function." Clearly, the OAAA itself does not see the HBA as a long-term threat to its survival. In fact, arguments that they have effectively used the HBA to help achieve long-term legitimacy would appear to have some credibility.

One other activity of the OAAA since 1970 must be commented on. In recent years, objections to billboards for alcoholic beverages and tobacco products appearing in urban neighborhoods have frequently been lodged. While objections to particular product categories are not new (see earlier discussion of burlesque show billboards), these complaints captured much attention. One of the most visible examples was the effort by Reverend Calvin Butts of Harlem to lead demonstrations and whitewash billboards advertising cigarettes (Snyder 1991). While Rev. Butts himself states that he is not against billboards in general, just those for "damaging" products in the inner city, the publicity his actions draw clearly give ammunition to industry critics. As a response to these arguments and others related to the impact of advertising certain product categories (e.g., children should not be exposed to cigarette/alcohol ads near their homes, schools, or churches), the OAAA established a Code of Advertising Practices, which is shown as Exhibit 4. As can be seen, these standards show the OAAA's continued awareness of the need for positive public relations, as well as the need to implement self-regulatory rules that help prevent potentially more restrictive legislation. It should be noted that the recent objections to certain product categories have probably never posed the potential overall threat to the outdoor industry that aesthetic arguments have. At worst, outdoor advertising in the alcohol/tobacco categories, which have declined in importance in terms of percentage of industry revenues in the 1990's (OAAA 1992), might have been restricted.

## CONCLUSION

As of 1991, annual U.S. outdoor advertising revenues were in excess of \$1.6 billion dollars. The relative health of the industry reflects a long history of effective action taken by self-regulatory bodies in response to criticisms of the medium. The industry has been largely effective in responding to criticisms that a) outdoor advertising is a safety hazard, and b) some outdoor ads are deceptive. Establishment of a code of ethics and the discouragement of certain practices by early self-regulatory bodies appear to have largely eliminated these arguments as a threat to the industry. Criticisms based on objectionable product categories also appear to have been effectively dealt with over time. Self-regulatory bodies have clearly encouraged consideration of public standards over the years. In recent years, the development of a code of advertising practices has helped in public relations relative to the advertisement of alcohol and tobacco products.

Easily the most enduring argument against outdoor advertisement is that they are a form of visual pollution. Aesthetic arguments have proven very difficult for even the OAAA to fully deal with. It is this type of argument that was largely responsible for the passage of the Bonus Act and the Highway Beautification Act. However, the industry has been impressively effective in limiting legislation aimed at billboards based on aesthetic grounds. The use of arguments relating to constitutional property rights and the protection of small businesses have been effectively utilized to protect the industry. Without the organized efforts of the OAAA, it is very likely that these arguments would not have been heard as clearly by legislators. In spite of this, growing concern with all aspects of the environment

## EXHIBIT 4

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### OAAA Code of Advertising Practices (1992)

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Outdoor advertising delivers an advertiser's message to the consumer. This role in the arena of public discourse requires both a vigilant defense of free speech and a sensitivity to contemporary standards and concerns. The OAAA recognizes the need to balance these demands and recommends that each OAAA member company formally adopt standards that reflect the following code of advertising practices:

1. Establish exclusionary zones which prohibit adult product advertisements that are intended to be read from, or within 500 feet of established places of worship, primary and secondary schools and hospitals.
2. Establish voluntary limits on the number of billboards in a market about products that cannot be sold to minors.
3. Continue to assert the right to reject creative content that is in poor taste, misleading, sexually explicit, or overly suggestive.
4. Intensify our traditional commitment at both the national and local levels to display public service messages from nonprofit organizations.
5. Encourage greater diversity of advertised goods and services in all markets.

An international children's symbol has been adopted by the OAAA to mark billboards that are off-limits to any product or service illegal for sale to minors. To date, over 20,000 decals have been posted nationwide by OAAA member companies.

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make it virtually certain that aesthetic arguments will continue to be voiced. The primary challenge for the OAAA in the future will be to counter the "eye pollution" arguments that date back to the period following the Civil War but may grow louder.

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