

Submission to Inquiry into the regulation of billboard and outdoor advertising

House Standing Committee on Social Policy and Legal Affairs

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Introduction

As David Bernstein (1997: 12) has pointed out, “advertising began outdoors”. Bill posters, sandwich boards, advertisements painted on the sides of tall buildings and other forms of outdoor advertising gave birth to the modern advertising industry, which has of course extended beyond the city into other forms of media.

The placement of advertisements in urban spaces has always generated controversy over its 100 year history (Baker 2007; James 1968). Debates about outdoor advertising have a very specific inflection because by their nature, they are also debates about the nature of urban public spaces. In this submission, I focus on two sets of issues which I believe to be of importance for the Committee’s deliberations – the content and the form of outdoor advertising.

1. Content

As outdoor media companies are fond of pointing out to potential advertisers, outdoor is the only medium that you cannot turn off (Hampp 2007). As such, the regulation of its content is particularly important. There have been occasional controversies over the content of outdoor advertisements in Australia.

They include:

1.1 BUGAUP and tobacco advertising

In the 1970s, when tobacco advertising was banned from television, it proliferated on billboards. A group of activists working under the banner ‘BUGAUP’ (Billboard Utilising Graffitists Against Unhealthy Promotions) engaged in a concerted campaign to modify those tobacco billboards with anti-tobacco messages. Tobacco advertising was eventually banned on outdoor advertising, with BUGAUP credited for playing an important role in asserting the priority of public health concerns over the profitability of tobacco companies (Chapman 1996).

1.2 Sexist representations of women

The use of sexist imagery to sell products has historically attracted criticism. At various times in different places, activists have also targeted that sexist imagery for critique and modification. Around the same time that BUGAUP were active, there was also an organised campaign under the banner ‘GAS’ (Graffitists Against Sexism). Nowadays, while modification of sexist imagery still occurs, it is less organised. Nonetheless, complaints are also regularly received by regulators about sexist imagery.

1.3 Sexually explicit content

More recently, the use of billboard advertising a product promising to help people have “longer lasting sex” have generated controversy. Here, there seems to be a concern that young people’s exposure to these advertisements might be inappropriate. In response to the complaints to the Advertising Standards Board, billboard providers eventually stopped the advertisements, or insisted that they be modified to make their messages more obscure (“longer lasting sex” became “make love longer”) (Lee 2008).

1.4 Censorship

In Australia, outdoor advertising companies have recently refused to carry advertisements by atheists and animal rights activists, each of whom had wanted to pay for advertising space with outdoor media companies (Iveson 2009, Marr 2009). In both cases, the advertisers argued that their advertisements were raising legitimate issues in a manner that was no more likely to offend reasonable members of the public than other forms of advertising. However, as a private media provider, APN had no obligation to accept their argument, and the advertisements were not published. This censorship was a source of particular frustration for the advertisers as they were attempting to put their advertisements on publicly-owned infrastructure (buses and train stations), but had to deal with a private company in order to do so, and had no rights of public appeal when their advertisements were rejected.

1.5 Contradictions with public policy via inappropriate advertisement placement

There are other issues to do with the content of advertising that have received less public criticism or attention, but which I believe ought to receive more consideration. In particular, I would argue that some advertisements, while not ‘offensive’, ‘indecent’ or illegal of themselves, are inappropriate for display *in certain places*. For instance, car makers are especially keen to advertise on bus stops and train stations, no doubt in the belief that those waiting for public transport to arrive might be persuaded to drive instead. In some cases, such advertisements explicit make reference to the problems of public transport and the benefits of driving. At a time when governments are trying to convince more people to use public transport, is it appropriate for billboards and advertisements on public transport infrastructure to carry advertisements which try to convince them to drive? Likewise, alcohol companies are keen to advertise in public places where there is a concentration of pubs and clubs. At a time when several local governments are engaged in strategies attempting to reduce alcohol consumption, it is appropriate for street furniture which they manage in partnership with outdoor media companies to carry alcohol advertisements?

1.6 Regulating the content of outdoor advertising

As can be seen from this brief list, sometimes concerns about the content of outdoor advertising are expressed through letters of complaint, sometimes they are expressed in situ as critics assert their ‘write of reply’ on the advertisements themselves (as BUGAUP activists put it), sometimes they are barely raised at all.

In response to such concerns, in my view two principles should inform the regulation of outdoor advertising content. First, where public authorities are involved in partnerships with outdoor advertising companies for the provision of advertising on publicly-owned or provided infrastructure (see section 2 below), they should insist on having a recognised role in decisions about approving the content of advertisements as part of the agreement. In playing this role, the decisions of public authorities should be guided by approval guidelines that have been democratically determined and made available to the public and potential advertisers. This should not only involve a ‘final instance’ right to reject certain advertisements, but a more active role in ensuring acceptable speech is not unacceptably censored (see Recommendation 1).

Second, public policy objectives should outweigh commercial imperatives where the two may be seen to be in conflict. Regardless of whether advertising for a given product is legal or illegal, advertisements should not be allowed in places where their placement might compromise those public policy objectives. This should be made a permissible and enforceable grounds for complaint and oversight by outdoor advertising regulators (see Recommendation 2).

2. Form

While it is important to consider the content of outdoor advertising, it is also important to think about the forms that it takes, and the wider impact of outdoor advertising on urban environments more generally. As Armand Mattelart (1991:214) noted:

many debates on the “effects of advertising” on society are affected by a serious flaw. They remain too close to the individual advertisement or consumer, while our society is immersed in advertising as the dominant mode of communication. A mode of communication which, whether one wishes it or not, structures choice by establishing a scale of priorities and social preferences in the use which society makes of collective resources—not to mention the individual, as both consumer and citizen.

2.1 The growth and changing forms of outdoor advertising

In recent years, Australian cities have seen a fairly dramatic transformation in both the form and the quantity of outdoor advertising. Outdoor advertising revenues in Australia rose from \$297 million in 2003 to \$400 million in 2009 (Outdoor Media Association 2011). The bulk of this growth can be attributed to recent rapid increases in the advertising revenues derived from ‘street furniture’ (bus and tram shelters, kiosks, telephone booths, etc.). Street furniture advertising now commands the highest share of the outdoor advertising market (40%), outperforming other formats such as billboards and transit advertising. Further, advertising space on street furniture in Australian cities is increasingly concentrated in the hands of two global corporations, Adshel and JCDecaux. These two companies have benefited from (and indeed helped to instigate) the growing trend towards private provision of urban infrastructure, by securing exclusive contracts with local governments and transit providers to provide street furniture with third party advertising rights. In Sydney, for instance, Adshel holds contracts for street furniture provision with over 20 local governments (see Figure 1

below). Other public authorities, such as public transit providers providers, also increasingly enter into partnership arrangements with these large outdoor media companies to raise revenue through advertisements on buses, billboards at train stations and airports, and the like. The NSW Opposition has recently announced that if elected, it would explore the potential for further advertising on Sydney’s trains, including so-called ‘wrap’ advertisements that cover entire carriages (Smith, 2011).

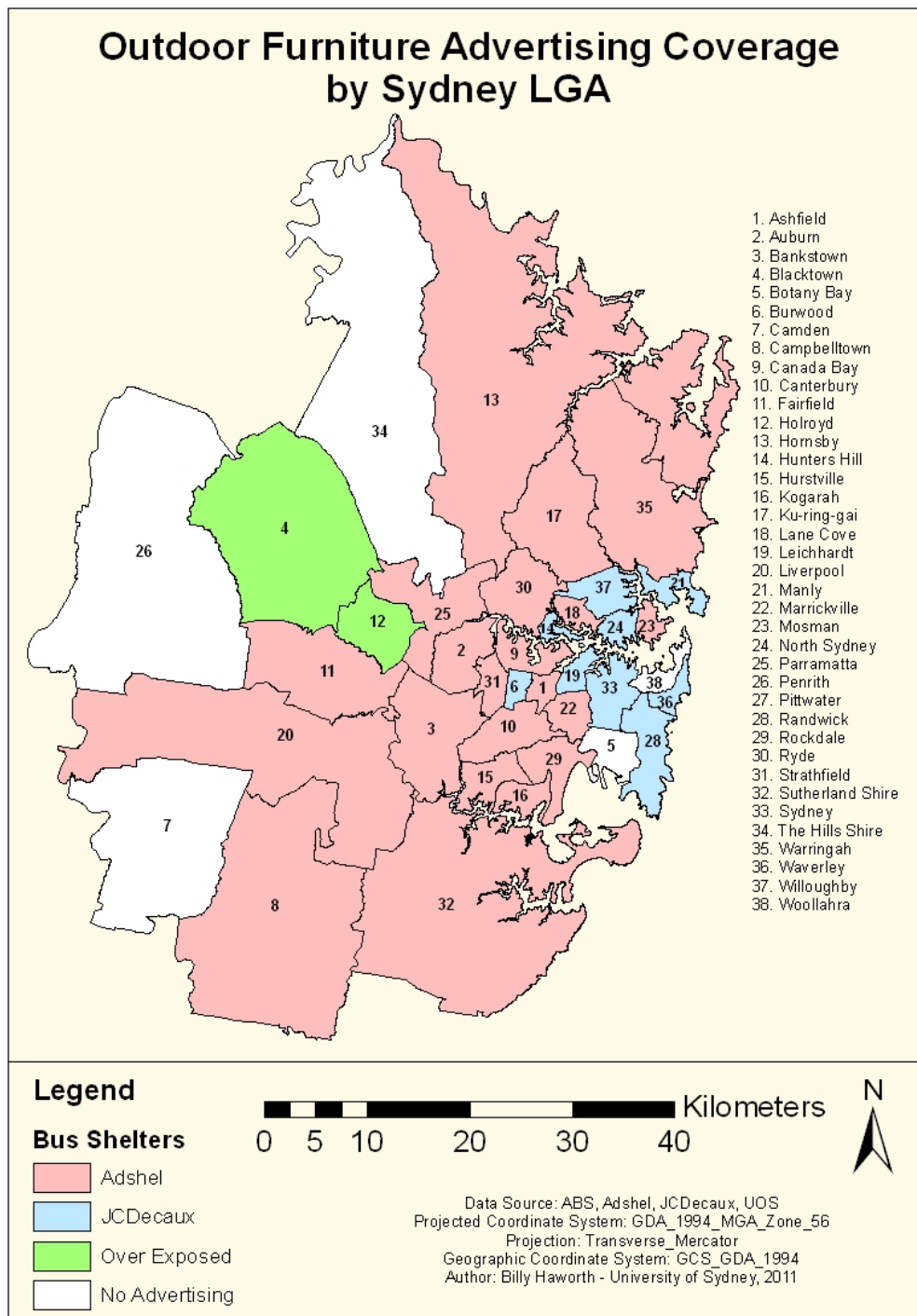


Figure 1: Outdoor advertising street furniture contracts in Sydney, by LGA

2.2 The costs of outdoor advertising-funded infrastructure

The use of advertising to fund street infrastructure, alongside other more conventional arrangements between private companies and public authorities such as the contracts for advertising on buses and billboards on train lines, are typically said to be ‘win-win’ arrangements by those involved because they involve no cost to the taxpayer.

However, we should be clear that advertising-funded urban infrastructure is not ‘free’ to the taxpayer. Rather, advertising-funded infrastructure represents a shifting of costs from local governments and urban authorities to the private sector. While the desire to shift costs might be understandable from the perspective of cash-strapped local governments in particular, the need for extra revenue is in part a product of the shifting of costs to local governments from other levels of government (House of Representatives Standing Committee on Economics 2003). In any case, while advertising-funded infrastructure reduces costs to government, it does not reduce costs for the public. Infrastructure is not free, ‘we’ still pay for it – either through contributing to state revenue, or through paying for advertising as part of the cost of the products we buy. However, the public’s contribution to advertising revenue is less transparent than its contribution to state revenue through taxation and rates. And there are also other potential ‘costs’ of these arrangements. There are three principle areas of concern about the growth of outdoor advertising in public space: safety/functionality, aesthetics, access.

2.3 Safety/functionality

Some have raised concerns that the placement of advertisements (particularly attention-seeking advertisements on moving scrolls and digital screens) near busy streets and intersections compromises driver and pedestrian safety. Of course, advertisers are attracted to the most highly-trafficked parts of our cities, because they are the places where the advertisements can attract the most ‘eyeballs’. But as Harold Scruby of the Pedestrian Council of Australia notes, such advertisements could also be described as ‘driver distraction by design’ (Scruby 2007), potentially attracting drivers’ (and indeed pedestrians’) attention from the road at key places and times.

Similarly, in NSW Parliament Clover Moore (MP and current Lord-Mayor of City of Sydney) has raised the question of whether the placement of bus stops and telephone booths near busy intersections by advertisers keen to achieve maximum exposure is in the best interests of bus passengers and phone users:

I am currently battling against the inappropriate placement of J. C. Decaux street furniture, which is placed for the benefit of the advertiser, not to provide a service to the community. For example, advertising phone booths are placed in front of the El Alamein Fountain at Kings Cross; bus shelters are erected that do not provide shelter yet make the footpath too narrow for pedestrians, particularly those pushing young children in strollers; and telephone booths are placed on heavily trafficked corners that are too noisy to use phones (Parliamentary Debates, NSW Legislative Council, 16 November 1999: 2911).

It is crucial that safety is not compromised by commerce. I agree with Scruby (2007) that there should be “a universal, mandatory policy, covering all local councils, which must be rigorously adhered to and enforced”, informed by best-practice principles in driver and pedestrian safety (see Recommendation 3 below).

2.4 Aesthetics and civic spaces

The proliferation of outdoor advertising has attracted criticism for contributing to the ugliness of urban environments through ‘visual pollution’. Former Prime Minister Paul Keating is one high-profile critic of outdoor advertising on this basis – in a 2006 speech, he argued colourfully billboards were making Sydney ugly, and that “kicking outdoor advertising companies ought to become a national sport” (Norrie 2006).

For their part, outdoor media companies argue that good quality outdoor advertising can add to the vibrancy of neighbourhoods. In equally colourful language, an outdoor advertising executive attacking a proposal to remove billboards from the city centre of Auckland said that a city centre without advertising would produce a city reminiscent of the “Eastern Bloc before the fall of the Berlin wall” (Trevett and Orsman 2006).

These aesthetic questions are important to cities. Of course, there is an economic dimension, given the growing importance of ‘place-marketing’ in economic development strategies – here, there is concern that too much advertising will detract from the attractiveness of urban environments to potential shoppers, residents and tourists. But beyond this economic dimension, there is also a civic dimension – should some places be relatively or completely free of private commercial communications, because their aesthetics intrude on the civic, non-commercial dimensions of those places (see Figure 2)?



Figure 2: In their 'Delete' project, Christoph Steinbrener and Rainer Dempf covered all commercial signage and advertising in a street in Vienna yellow, to make a point about its saturation of urban landscapes. Notice here how basic non-commercial signage provided for important public information (eg the no-entry sign) stand out when everything else is blanked out. Source: http://www.steinbrener-dempf.com/index.php?article_id=5

This issue is coming to the fore more and more as outdoor advertising expands. In doing a deal with Adshel for advertising-funded bus stops, the ACT Government effectively over-turned what was until then a complete ban on outdoor advertising in Canberra, which had originally been put in place because it was considered inappropriate for private advertising to be placed in the civic spaces of the national capital (Iveson 2007). In Italy, there was consternation when the city government allowed the placement of advertising in the Piazza San Marco, in order to help fund restoration works (Hall 2008). In response, the Mayor replied: "It is neither ugly nor beautiful but simply necessary. We are forced to move in this way because we have limited resources."

Clearly, there are public debates to be had about the placement of outdoor advertising. Some places should be off-limits altogether, and in other places its proliferation should be carefully regulated. However, the principles on which such decisions should be made are not necessarily clear. As with safety, the civic life of our cities is of course not completely incompatible with private advertising, but not should it be compromised by commerce. Here, the regulation of outdoor advertising through formal planning approvals processes plays an important role. In their haste to shift costs and raise revenue, governments should be mindful of civic life too.

At the very least, the regulation of new outdoor advertising infrastructure through formal planning approvals should be open to public input and debate. In order for members of the public to have the

opportunity for informed input on these decisions, all information about the planning approval process *and the location of approved advertising infrastructure* should be easily accessible to the public (see Recommendation 4). Not only would this allow informed debate, it would also assist with the enforcement of these regulations. In Toronto, a group of concerned citizens have used such information to map the existence of illegal billboards in that city, where proper planning approvals have not been followed – see <http://illegalsigns.ca>.

2.5 Access to the city as outdoor media space

A final important factor for consideration – and one which typically receives less attention – concerns the accessibility of the city’s outdoor media landscape for those who cannot afford to, or should not be required to, pay commercial advertising rates.

Cities are in fact home to various forms of outdoor media. In our publicly-accessible spaces, paid advertisements exist alongside variety of forms, including: information and safety notices posted by public and private authorities; ‘unpaid’ advertising such as bill posters and pole posters which might draw attention to entertainment events, political causes, lost cats, etc; graffiti and street art (both legal and illegal). The co-existence of these forms of outdoor media is not necessarily peaceful, and the outdoor media landscape is the object of contestation among a variety of interested parties including regulators, advertisers, artists and activists. Some outdoor media are legally sanctioned; others involve semi-legal or illegal confiscations of publicly accessible private property. Some spaces are acquired for a commercial fee, others are used (either legally or illegally) “for free”.

The accessibility of the city as a media space, I would argue, is particularly important for those groups who do not have the resources to pay for media space in mainstream commercial media outlets such as television, radio, and print media. It is important because it is relatively ‘free’. This remains true even now, despite the recent proliferation of relatively cheap access to new forms of digital media such as blogs.

The nature of the legal and commercial arrangements in place in different cities will have a profound impact on the accessibility of the outdoor media landscape to different publics and their associated media. In my view, we should not allow the provision/expansion of commercial outdoor advertising to occur at the expense of other forms of outdoor media which make a valuable contribution to the recreational, political, and neighbourly life of cities. Commercial outdoor advertising companies must not be allowed to monopolise outdoor media.

This certainly does not mean we should allow a ‘free-for-all’. Rather, it means that both the regulation of the outdoor media landscape must ensure that both governments themselves and citizens maintain access to the city’s outdoor media spaces without having to pay commercial advertising rates. This becomes all the more important when governments and government-owned agencies enter into partnerships with privately-owned outdoor media companies. There is some evidence from around the world that government agencies are helping outdoor advertising

companies in their efforts to increase the profitability of outdoor advertising spaces by reducing the amount of competing “free” space available to other advertisers and publics (see for example Deliso 2006). The City of Sydney, which is in a street-furniture advertising partnership with JCDecaux, has also recently enacted a crackdown on other outdoor media such as bill posters and pole posters, which have existed in a legal grey area and historically been tolerated in certain places.

Here, there are two important things that public authorities should do to maintain legitimate non-commercial access to the outdoor media landscape. First, spaces should be set aside for non-commercial advertising to avoid the commercial monopolisation of outdoor media space. In response to concerns about monopolisation, the City of Sydney has erected eight poster poles available for free use (Gibson 2008). To put that number in perspective, JCDecaux alone has over 150 advertising panels in the same geographical area, and APN Outdoor also operates dozens of billboard and transit advertising panels in the Central Business District. There must be a more even balance (see Recommendation 5).

Second, in their tender processes and contractual arrangements for partnership arrangements with outdoor advertising companies, public authorities should be guided by the principle that there must be genuine non-commercial access to outdoor media (see Recommendation 5). This could take a number of forms. For instance, the tender documents for street furniture contracts might include requirements for the successful tender such as:

- the installation and maintenance of freely available community/public notice boards as well as other forms of street furniture such as bus shelters and telephone booths;
- the setting aside of a given proportion of commercial advertising panels to community notices and/or public artworks, either on a permanent or temporary basis;
- the “taxing” of all advertising revenue raised from third-party advertising revenue, so that a proportion is returned to municipal authorities who could use it to provide and maintain their own outdoor media space for public use.

So, for instance, if the NSW Opposition were to go ahead and allow the complete ‘wrapping’ of a certain number of train carriages in advertising, it should also set aside a number of carriages for public art projects and other media interventions by those who cannot afford commercial rates.

Taking such action is often difficult for public authorities, particularly for local governments, who find themselves in negotiations with giant multi-national advertising companies such as JCDecaux and Adshel in a situation of relative ignorance – while some local authorities might have successfully negotiated clauses such as those listed above, the details are ‘commercial-in-confidence’, and the advertising companies are unlikely to share information about such deals. Here, there is the potential for information about best practice to be collected and widely circulated, to better empower public authorities to negotiate the best outcomes with outdoor advertising companies if these partnerships continue into the future (see Recommendation 6).

3. Recommendations

1. Public oversight of advertising standards

Where public authorities such as transport providers and local government enter into partnerships with private outdoor advertising companies, those public authorities should insist on having a recognised role in decisions about approving the content of advertisements as part of the agreement. In playing this role, the decisions of public authorities should be guided by approval guidelines that have been democratically determined and made available to the public and potential advertisers.

2. Appropriate placement of advertising

Public policy objectives should outweigh commercial imperatives where the two may be seen to be in conflict. Regardless of whether advertising for a given product is legal or illegal, advertisements should not be allowed in places where their placement might compromise those public policy objectives. This should be made a permissible and enforceable grounds for complaint and oversight by outdoor advertising regulators.

3. Pedestrian and driver safety

The Commonwealth should work with the State Governments through COAG's Local Government and Planning Ministers' Council to develop and implement a universal, mandatory safety protocol concerning the placement of advertising infrastructure on or near streets, covering all local councils, which must be rigorously adhered to and enforced, informed by best-practice principles in driver and pedestrian safety.

4. Publicly-available information about outdoor advertising approvals

All information about the planning approval process and the locations of approved advertising infrastructure should be easily accessible to the public.

5. Non-commercial access to outdoor media space

Local and State planning authorities should ensure that spaces are set aside for non-commercial advertising, to avoid the commercial monopolisation of outdoor media space. This should take the form of community noticeboards, 'zones of tolerance', and the like.

6. Best-practice in tender processes to ensure accessibility, safety and appropriateness of outdoor media

The Commonwealth should work with the State Governments through COAG's Local Government and Planning Ministers' Council to draft and circulate a set of 'best-practice' guidelines for public-private partnerships between infrastructure providers and outdoor advertising companies. These guidelines should assist public authorities to negotiate with outdoor advertising companies on issues of access, placement, and content.

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