



Association of Directory Publishers

R. Lawrence Angove  
President & Chief Executive Officer

## Updates:

### Seattle and San Francisco

August 15, 2011

To: All North American Members

Fr: Larry

Re: Seattle and San Francisco Lawsuits

The term “doldrums of summer” certainly applies to the glacial pace of progress on both industry lawsuits.

Lest the details become obscured by the pace of progress, please find below summaries to the current status of these actions.

#### **SEATTLE:**

The lawsuit challenging the City of Seattle’s publisher licensing and opt-out ordinance on First Amendment (and related Washington state law) grounds was filed in the federal District Court in Seattle on behalf of Dex Media, SuperMedia, and the Local Search Association in November 2010. ADP provided financial support for that lawsuit. In May 2011, the District Court denied the publishers’ motion for a preliminary injunction and an appeal from that denial was taken by the publishers to the United States Court of Appeals for the Ninth Circuit, which heard oral argument on that appeal in mid-July 2011. Meanwhile, in June 2011, the District Court denied the publishers’ motion for summary judgment and granted the City’s motion for summary judgment on the federal constitutional claims. In late July 2011, reacting to the District Court’s rulings on the summary judgment motions, the Court of Appeals raised questions about whether the appeal relating to the preliminary injunction motion is moot and should therefore be dismissed in the expectation

that the issues will be presented to the Court of Appeals in the still-to-be-filed appeal from the summary judgment orders. The parties will respond to the questions from the Court of Appeals on August 12. Because summary judgment motions on the state law claims remain pending before the District Court, an appeal from the adverse summary judgment rulings on the federal constitutional claims has not yet been filed. In short, the publishers have lost in the district court and will continue to seek relief from the Court of Appeals. Relief from the Court of Appeals will be delayed if that court determines to dismiss the currently pending preliminary injunction appeal in favor of waiting for the appeal from the summary judgment orders.

### **SAN FRANCISCO:**

In June 2011, a lawsuit was filed on behalf of the Local Search Association against the City and County of San Francisco challenging, on First Amendment grounds, San Francisco's draconian "opt in" yellow pages delivery ordinance. AT&T, Valley Yellow Pages, and ADP are providing financial support for the litigation. The case was assigned to a senior-status federal District Judge whose calendar reportedly will not accommodate hearing motions in this matter until January 2012. Because the ordinance is set to become effective in May 2012 and may already be adversely affecting sales of yellow pages advertising in San Francisco, the publisher interests are planning to seek a preliminary injunction to bar the effectiveness of the ordinance until the case can be fully heard in the District Court. The publisher interests are currently considering whether there are procedural steps that could be taken to get their preliminary injunction motion heard and decided before January 2012.

Please let me hear should you have any questions or wish clarification on any points.