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First Amendment: Topanga Press, Inc., et. al., v. City Of Los Angeles, No. 91-55865, 1993 U.S. LEXIS 5207 (U.S. Mar. 22, 1993).

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## CASE SUMMARIES

### Selected Case Summaries - Spring 1993

#### FIRST AMENDMENT

TOPANGA PRESS, INC., ET. AL., v. CITY OF LOS ANGELES, No. 91-55865, 1993 U.S. LEXIS 5207 (U.S. Mar. 22, 1993).

*The City of Los Angeles appeals the district court's grant of a preliminary injunction prohibiting the City from enforcing its Adult Entertainment Business Zoning Ordinance which prohibited adult businesses from being established, substantially enlarged, or subject to transfer of partnership within 500 feet of churches, schools, parks, residential zones, or within 1,000 feet of other adult businesses. The City of Los Angeles conducted a study which determined that concentrations of adult entertainment businesses were creating "blight" in business neighborhoods. The city therefore enacted the municipal code stated above, that prevented their establishment near homes, churches, parks, and schools. The statute required businesses in violation of the statute to cease operation within four years, unless a site consistent with the ordinance was not reasonably available elsewhere. The business could then continue operation for two more years if financial hardship was proved. The plaintiffs, who owned adult businesses, filed a complaint challenging the constitutionality of the ordinance and were granted a preliminary injunction of the City's enforcement of the ordinance.*

*Held:* The test for determining whether the Adult Businesses' First Amendment rights are threatened is whether a local government has "effectively denied . . . [the Adult Businesses] a reasonable opportunity to open and operate" their enterprise within the city in question. This Court holds that this test allows a court to consider economics when evaluating whether an Adult Business has been given a reasonable opportunity to relocate. The district court did not abuse its discretion in finding that the balance of hardships tips sharply in favor of the Adult Businesses, as the City may not have provided the Adult Businesses with reasonable alter-

native avenues of expression. This is a constitutional question which by definition is a "fair ground for litigation" that presents serious questions of law. Therefore, the district court's grant of a preliminary injunction is affirmed, and Adult Businesses is awarded attorney fees. *Affirmed.*

L.A.

## FIRST AMENDMENT

CITY OF CINCINNATI V. DISCOVERY NETWORK, INC., No. 91-1200,  
1993 U.S. LEXIS (U.S. Mar. 24, 1993).

*City of Cincinnati, defendant, appeals a 6th Circuit Court of Appeals decision that its city ordinance prohibiting the distribution of "commercial handbills" in freestanding newsracks on public property, violated the First Amendment under the "reasonable fit" standard applied to the regulation of commercial speech. Plaintiff, Discovery Network, Inc., had received authorization from the City of Cincinnati to place freestanding newsracks on public property to distribute free magazines advertising its adult educational, recreational, and social programs. One year later the city revoked its permit arguing that the newsracks created unsafe areas and visual blight. The city supported their selective ban on commercial publications (not "regular" newspapers) by arguing that since the Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression, its preferential treatment of newspapers over commercial publications was a permissible method of serving its legitimate interest in ensuring safe streets and regulating visual blight.*

*Held:* The Court held that the City of Cincinnati's ordinance violated the First Amendment because the ordinance was not a permissible regulation of commercial speech. The city's interests are unrelated to any distinction between commercial handbills and newspapers. The city had not met its burden of establishing a "reasonable fit" between its legitimate interests in safety and aesthetics and the means it chose to serve those interests. Both commercial and non-commercial publications are equally responsible for the city's concern over safety and visual blight, yet only commercial publications were prohibited. Also, it is not a valid time, place or manner restriction on protected speech since it is not content neutral. *Affirmed.*

L.A.