

ROCK MOUNTAIN LAND USE
INSTITUTE

16th Annual Land Use Conference

March 7-9, 2007

University of Denver Sturm College
of Law



Managing CEOs: Tips for Successfully Regulating Sexually Oriented Businesses”

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Legal Issues Pertaining to Sexually Oriented Businesses

- A. The Social Issues.

SEXUALLY ORIENTED BUSINESSES
ARE PART OF THE PORNOGRAPHY
INDUSTRY.



DEFINITION OF PORNOGRAPHY

- Pornographic material: sexually explicit pictures, writing or other material whose primary purpose is to cause sexual arousal.
- Pornography may not be fully protected under the free speech guarantees of the First Amendment



DEFINITION OF SEXUALLY ORIENTED BUSINESS

- Any business that, as one of its principal business purposes, offers for any form of consideration any entertainment, materials, or services that appeal to a prurient (lustful, lewd, or lascivious) interest in sex.



THE CONNECTION BETWEEN PORNOGRAPHY AND SEXUALLY ORIENTED BUSINESSES

- A sexually oriented business could deal in pornographic material, but might also deal in items or services that would be outside the technical definition of pornography.



EXAMPLES OF SEXUALLY ORIENTED BUSINESSES

- adult arcades; adult book, novelty or video stores; adult cabarets, night clubs, gentlemen's clubs, go-go clubs or strip bars; adult motels and adult hotels; adult motion picture theaters or adult theaters; escorts or escort agencies; massage parlors; nude model studios; and sexual encounter centers



PERVASIVENESS OF PORNOGRAPHY GENERALLY

- 1. Pornography annually generates \$57 billion of revenue worldwide.
- 2. Pornography annually generates \$12 billion of revenue in the United States.
- 3. Pornography attracts 12 million viewers per year.
- 4. There were, at last count, 4.2 million pornographic web sites, which is 12% of all web sites.
- 5. There were, at last court, 372 million pornographic web pages.



PERVASIVENESS OF PORNOGRAPHY (continued)

- 6. There are 68 million search engine requests for pornographic material per day, which is 25% of all search engine requests.
- 7. There are 2.5 billion pornographic e-mails per day, which is 8% of the total number of e-mails.



pornography directed to youth may generate customers for SOBs in the future

- 1. 89% of pornographic or sexual solicitations made to youth occur in chat rooms.
- 2. 20% of youth participating in chat rooms receive pornographic or sexual solicitations



Pornography directed to young people (continued)

- 3. The average age of a youth's first Internet exposure to pornographic material is 11 years old.
- 4. In terms of age groups, the largest consumer group of Internet pornography is the 12-17 years old age group.



Pornography directed to young people (continued)

- 5. 80% of 15-17 year olds have had multiple exposures to Internet pornography.
- 6. 90% of youth aged 8 to 16 have viewed online Internet pornography, most while doing homework.
- 7. Pornographic enterprises have taken control of over 40,000 domain names, including such names as Barbie, Disney and ESPN.
- 8. 25% of pornographic sites don't allow exiting (through a device called "mouse-trapping").



SEXUALLY ORIENTED BUSINESSES

- The Legal Issues



SOB Legal Issues

- 1. The U.S. Constitution may protect materials that are “indecent” but not “obscene.”



SOB Legal Issues

- 2. Even businesses that deal in protected “indecent” materials may be subject to regulation because of “adverse secondary effects” that are not related to protected free speech



Adverse Secondary Effects Commonly Associated with Sexually Oriented Businesses

- unlawful sexual activities
- sexually transmitted diseases
- a deleterious effect on surrounding businesses



Adverse Secondary Effects (continued)

- declining property values in surrounding residential neighborhoods
- increased crime, blight, deteriorating quality of life in the areas near the sexually oriented business



Legal basis for regulating sexually oriented businesses

- Even the otherwise protected “indecent” materials in sexually oriented businesses may be regulated to minimize the secondary adverse effects.



Regulation is based on a state's “police power”

- “Police Power” is the power to regulate land use and other activities to preserve citizens' health, safety and welfare.



POLICE POWER REGULATION

- In using its “police power,” a state may not prohibit a sexually oriented business altogether, but may regulate the business in such a way as to minimize specific adverse secondary effects.



2 Types of Land Use Regulations for Sexually Oriented Businesses

- ZONING
- LICENSING



ZONING REGULATION OF SEXUALLY ORIENTED BUSINESSES

- Specify places where such businesses may operate
- Declare purpose to minimize adverse secondary effects
- Specify the particular effects targeted
- Clustering or dispersal



LICENSING OF SEXUALLY ORIENTED BUSINESSES

- Require detailed background of owners and operators
- Prohibit certain types of behavior
- Regulate hours of operation
- Revoke license for violations



KEY ISSUES IN COURT DECISIONS

- Whether the ordinance serves a SUBSTANTIAL and LEGITIMATE governmental purpose
- Does the ordinance in effect suppress free speech?
- Is the method of regulation appropriate for the legitimate governmental purpose?



KEY COURT ISSUES (continued)

- Are alternative “avenues of communication” available after distance and zoning requirements are imposed?
- Are location requirements based on “content-neutral” considerations?
- Are restrictions or definitions too broad?



KEY COURT ISSUES (continued)

- Does the ordinance provide for reasonable review procedures?
- Are the ordinances too vague?
- Were the state procedural requirements met when the ordinance was adopted?



2007 STATE CASES

- Gold Diggers, LLC v. Town of Berlin, Connecticut: SOB licensing regulation upheld
- Kentucky v. Jameson: SOB ordinance upheld as addressed to specific adverse secondary effects



RECENT UTAH CASES

American Bush v. City of South Salt Lake: nude dancing prohibition upheld over complaint of owner of combination nude dancing/lingerie shop

Doctor John's, Inc. v. City of Roy, Utah: SOB ordinance upheld in face of comprehensive First Amendment challenge



RECENT UTAH CASES

(continued)

- Midvale City Corp. v. Haltom: SOB owner was not able to allege any harm arising from the classification as a sexually-oriented business. Dissent: there must be no unreasonable delay in resolving licensing issues.



BLUE BOUTIQUE
SEXY GIFTS

A large billboard is mounted on a tall black pole. The billboard features a woman with long, wavy brown hair wearing a red dress, reclining on a red, draped fabric. The text "BLUE BOUTIQUE" is in large, white, serif capital letters, and "SEXY GIFTS" is in smaller, white, serif capital letters below it. The billboard is set against a clear blue sky.

SPEED
LIMIT
65

RICHMOND AMERICAN
COM

A billboard for Richmond American, featuring a large, multi-story house with a green roof and white siding. The text "RICHMOND AMERICAN" is in white, and "COM" is in red.

Lemo
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SNARR INDUSTRIAL PARK
Midway Automotive



BLUE BOUTIQUE

BLUE

BOUTIQUE

Gifts, Body Piercing, Tobacco

BLUE BOUTIQUE

Shoes, Lingerie, Clothing

ing, Tobacco

BOUTIQUE

EXIT

BILL
THE HOTEL
Application

Body

BLUE BOUTIQUE

Shoes, Lingerie, Clothing

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