

SB 25

RELATING TO WASTE REDUCTION.

Requires that distributors of telephone directories and advertising materials pick up unclaimed telephone directories and advertising materials within seven days of receiving a request to do so if the telephone directories and advertising materials are not made out of one hundred per cent recyclable materials. Imposes a fine for violations.



Fon Barnes
VP, State Affairs

February 5, 2013

The Honorable Mike Gabbard
Chairman
Committee on Energy and Environment
Hawaii State Capitol
Room 201
Honolulu, HI 96813

Dear Mr. Chairman and members of the Committee:

I am writing on behalf of the Direct Marketing Association (DMA)¹ with a concern about SB 25, which requires retrieval of non-recyclable telephone directories and advertising materials by senders.

The concern with the bill involves the definitions of “advertising material” and “distribute.” While the bill appears to be focused on items which might be individually be left on a person’s property, as “advertising material” is defined, it could also be read to include letters or packages delivered by the US Postal Service (USPS) or a common carrier. This would create a problematic situation since neither USPS nor common carriers are controlled by the sender and therefore would be unable to perform such a retrieval service. The definition could easily be amended to exempt anything delivered by the USPS or common carriers.

As for “distribute,” it is unclear if the definition is intended only to apply to telephone directories as there are several actions listed by an “or” in a row making it possible to interpret “distribute” as meaning “the delivery of giving to another” without involving a telephone directory in addition to “leaving with another of a telephone directory.”

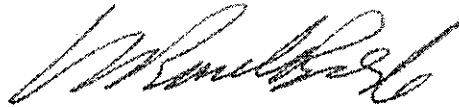
Respectfully, DMA would ask for the affirmative exemption of the USPS and common carriers in the definition of “advertising material” or clarification that “distribute” solely applies to the “delivery, giving or leaving with another” of a telephone directory.

DMA and its members are committed to sustainability. We have established a recycling program to promote the recycling of mailed items instead of disposing of them and regularly work with

¹ DMA is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing tools and techniques, including the U.S. Mail. DMA represents more than 2,400 members including catalogers, financial services, book and magazine publishers, retail stores, teleservices providers, industrial manufacturers, Internet-based businesses, and a host of other segments, as well as the service industries that support them, such as printers.

our members to improve their environmental footprint. I would be pleased to provide any further information and thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Barnes". The signature is fluid and cursive, with a large initial "R" and "B".

Ron Barnes
Vice President, State Affairs



SB 25

Committee on Energy and Environment
Committee on Commerce and Consumer Protection

Testimony of
Wesley K. Young
Vice President of Public Affairs
Local Search Association

Thursday, February 7, 2013

Chairman Gabbard, Vice Chairman Russell E. Ruderman and members of the Committee on Energy and Environment; Chairwoman Rosalyn H. Baker, Vice Chairman Brickwood Galuteria and members of the Committee on Commerce and Consumer Protection; thank you for the opportunity to provide testimony.

My name is Wesley K. Young and I am the Vice President of Public Affairs for the Local Search Association which is formerly known as the Yellow Pages Association. It is the largest trade organization of print, digital, mobile and social media that helps local businesses get found and selected by ready-to-buy consumers.

Summary

While we applaud your efforts to improve the recyclability of printed materials, we are concerned about the ramifications of this particular legislation and feel that the goals of improving sustainability may be better achieved through our successful self-regulatory measures.

Yellow Pages contribute a negligible amount to the municipal waste stream and are already recyclable. Instead, the effects of SB 25 would significantly hamper both the Hawaii economy and its emergency services. Connecting local consumers with Main Street shops, the Yellow Pages industry supports three million local businesses through qualified lead generation. Yellow Pages companies provide consumers with reliable, convenient sources of local business

information so they can find and select a local business however they choose to search for one – through print Yellow Pages directories, Internet Yellow Pages or mobile apps.

Print Yellow Pages directories are also often a highlighted source of information both before and after public emergencies such as natural disasters. Especially when electrical power is unavailable, a print directory is a reliable source for preparedness and recovery information as well as contact information for needed services.

Moreover, a recent unanimous ruling by the U.S. Court of Appeals 9th Circuit holds that Yellow Pages directories are “fully protected speech” under the First Amendment. The case citation is *Dex Media West Inc. v. City of Seattle*, 696 F. 3d 952 (9th Cir. 2012) for your reference. As such, legislation regulating such directories is highly restricted, and regulation targeting Yellow Pages must pass strict scrutiny to ensure it does not infringe upon such constitutional rights.

SB 25 creates uncertainty, risk and exposure for the Yellow Pages industry which in turn makes providing our product both more expensive and less accessible. As such the Local Search Association opposes SB 25.

Sustainability

We are proud of the environmental strides made by our industry. In 2012, the U.S. Environmental Protection Agency (EPA) found that the paper category – which includes newspapers, directories and other mechanical papers – maintains a high recycling rate of 71.6 percent. This is a much higher rate than aluminum beer and soda cans at 49.6 percent, glass containers at 33.4 percent and white translucent bottles at 27.5 percent.

In past studies, the EPA also estimated that directories make up less than one half of one percent of the municipal solid waste stream. That number is now so small that the EPA has chosen to stop measuring directories altogether, signaling the negligible impact of directories on municipal waste.

Yet the Yellow Pages industry continues to use sustainable processes for our products. Much of our paper is manufactured from a combination of recycled paper waste and leftover scraps of sawdust and woodchips from lumber production that would otherwise be sent to landfills. Also, Yellow Pages directories are printed with vegetable-based ink that poses no danger to ground water and adhesives in the binding process that are non-toxic. Paper usage has decreased 50 percent since 2007, driven by changes in directory sizes, more efficient manufacturing, reduction in White Pages deliveries and our consumer choice website www.YellowPagesOptOut.com which I will discuss later.

So while SB 25 requires a Yellow Pages distributor to pick up within seven days an unclaimed directory upon request if that directory is not 100 percent recyclable, the major Yellow Pages publishers in Hawaii have already adopted processes that make the directories recyclable and

make regulation by SB 25 unnecessary. SB 25 nevertheless raises concerns that increase business risk and exposure. For instance, we are concerned that the definition of "100% recyclable" may be interpreted differently than our reading or set through an administrative or regulatory process that would wrongly place our directories beneath this important threshold.

We also want to highlight that all forms of communication have a carbon footprint. Electronic search tools are often touted as an environmentally friendly alternative to print search tools such as Yellow Pages, but when the total environmental impact is measured, print matches up well against e-communications and by some measures even beats the Internet.

In a September 22, 2012 New York Times article by James Glantz entitled "Power, Pollution and the Internet," a yearlong look at the carbon footprint of Internet-based search showed that data centers use an enormous amount of energy and produce a problematic amount of emissions. In addition, according to the EPA, only 20 percent of all electronic search devices were recycled in 2010 compared to the 71.6 percent of newsprint that was recycled in the same time period. As such, when considering the broader carbon footprint of communication, print directories are very competitive especially when conscientious businesses like our industry take such a proactive role in adopting sustainable practices.

We respectfully contend that while it is commendable of the committees to seek a higher quality of life for Hawaii residents through an environmental focus, non-toxic paper is not a significant detrimental feature of sustainable living.

Consumer Choice

As you also know, under SB 25, all directories must feature contact information for their distributors.

We strongly believe that Yellow Pages publishers have nothing to gain by delivering unwanted directories. That is why the major publishers in Hawaii as well as throughout the United States feature a disclaimer on the covers of their directories that let residents and businesses know about YellowPagesOptOut.com. In many cases, the disclaimer is a prominent green box that may look like the following:



When consumers use this website to customize their household delivery, it helps ensure that distributors are delivering only those directories that will be welcome in homes and businesses while also reducing the environmental impact of unwanted directories. The website is free – free to users and free to state and local governments – and information provided through the

website will not be shared with anyone other than directory publishers for the purpose of updating distribution lists.

YellowPagesOptOut.com includes a participation of 167 publishers representing almost all of the Yellow Pages industry. A key to the success of this website is that it is an easy to use 'one-stop shop' where the user can either choose which directories are delivered or stop delivery altogether. Especially since many people are unaware that there are various Yellow Pages publishers, it is very helpful to have a singular location to make delivery choices. If contact information for each publisher is required on their directories covers, it would cause unnecessary confusion.

Additionally, while we do not know the measurements of the carbon footprint of this legislation, it is reasonable to hypothesize that the expenditure of fossil fuels for picking up unclaimed directories would be larger than the promotion of YellowPagesOptOut.com as an easy solution to stopping unwanted deliveries.

Federal court decision

As I referenced earlier, on October 15, 2012, a three-judge panel of the U.S. Court of Appeals 9th Circuit unanimously ruled that Yellow Pages directories are "fully protected speech" under the First Amendment, striking down the City of Seattle's directory distribution ordinance. It is largely expected that this decision will also force the striking of the City of San Francisco's directory distribution ordinance. These are the only major jurisdictions that enacted such a law or ordinance; all other jurisdictions at the state and local level that have considered legislation have chosen instead to promote YellowPagesOptOut.com.

Since that October decision, the 9th Circuit has on two separate occasions unanimously affirmed its holding by rejecting various attempts to delay or rehear the original decision. The decision is final unless it is appealed, accepted, and reversed by the U.S. Supreme Court.

Any legislation directly regulating Yellow Pages should first consider the 9th Circuit ruling. Several areas of the bill such as regulating 1st Amendment protected speech together with commercial speech, mandating certain speech be included in the directories, and restricting protected speech are potentially unconstitutional.

Conclusion

Yellow Pages contribute a negligible amount to the municipal waste stream and are already recyclable. But if SB 25 passed, it would cause unnecessary and potentially unconstitutional hardship to Yellow Pages publishers which in turn would undermine an important link between consumers and local businesses.

The Yellow Pages industry wants to continue being an effective partner to the State of Hawaii, both in meeting its environmental needs as well as boosting its economy by supporting local businesses and connecting them to residents and visitors. Our members have demonstrated their commitment and ability to do so.

For example, in 2011, Berry set up convenient drop-off sites at shopping malls on the Island of Oahu and then brought the directories to a recycling facility where they were converted for other uses. In this third year of its "Think Yellow, Go Green" campaign, Berry was able to have over 85 tons of directories recycled.

Yellowbook voluntarily took on the additional responsibilities of sweeping certain large multi-unit dwellings of unclaimed directories and providing building managers with contact information on how to quickly remove such directories.

Many people continue to rely on print directories for everyday commerce, finding local businesses, and making purchase decisions, but residents also rely on them for emergency communications. It is our understanding that during the preparation for potentially catastrophic events, civil defense has made repeated reference to the tsunami inundation zones listed in the directories. In addition to providing ready access to local services, print directories are an integral part of disseminating needed emergency information to residents and visitors.

We would respectfully ask that in lieu of passing SB 25 that you enable the Local Search Association and its member publishers to continue working with you and other lawmakers to address your needs on a self-regulatory basis.

Thank you for your consideration.



R. Lawrence Angove
President & CEO

SB 25

**Committee on Energy and Environment
Committee on Commerce and Consumer Protection**

**Testimony of
R. Lawrence Angove
President
Association of Directory Publishers**

Thursday, February 7, 2013

My name is R. Lawrence Angove and I am the President and CEO of the Association of Directory Publishers, one of two trade associations serving the Yellow Page industry and the oldest, founded in 1898.

In the interest of SB 25, The Association of Directory Publishers concurs with the points presented by Local Search Association in the letter over the signature of Wesley K. Young, Vice President of Public Affairs (attached).

We respectfully ask that in lieu of passing SB 25 that you enable the Association of Directory Publishers and its member publishers to continue working with you and other lawmakers to address your needs on a self-regularity basis.

Thank you for your consideration.

A handwritten signature in cursive script that reads 'Larry Angove'.

R. Lawrence Angove
President & CEO

Hawaii S.B. No. 25
HYP Media Testimony Relating to
Proposed Pick-Up of Unclaimed Telephone Directories

Kith Media, manager of HYP Media and publisher of the Hawaiian Telcom (HT) branded yellow pages appreciates this opportunity to present its concerns regarding Hawaii S.B. No. 25. This proposed legislation would require distributors of telephone directories and other advertising materials to pick up unclaimed directories and advertising materials within seven days of receiving a request to do so if the directory or advertising material is not made out of 100% recyclable materials.

HYP Media opposes the proposed legislation as it is superfluous (since the telephone directories published we already are already 100% recyclable) and would likely amount to an unconstitutional limitation on HYP Media's First Amendment rights. HYP Media is adjoined with Berry as they are our exclusive sales agent in the Hawaii market, and our mutual positions on the proposed bill are completely aligned.

Through Berry, HYP Media publishes and distributes the Hawaiian Telcom branded Yellow Pages and White Pages in Hawaii. As such, S.B. 25 will have the largest impact on HYP Media/Berry as we command the largest share of the directory market.

S. B. No. 25 is unnecessary to regulate HYP Media's activities, since our directories **already are** made out of 100% recyclable materials. This fact is a reflection of HYP Media's ongoing commitment to minimizing the environmental impact of our print directory products. HYP Media has been actively committed to environmental concerns in Hawaii for many years and we have a vested long-term interest in continuing its investments in this area. Our directories are composed of recycled content and use industry-leading practices and materials (i.e. environmentally friendly soy-based inks, water soluble finishes, as well as non-toxic glues and dyes).

Consistent with our sensitivity to environmental concerns, HYP Media, along with its relationship with Berry, has a long-standing recycling program in both Oahu and the Neighboring Islands. Our "Think Yellow, Go Green" recycling campaign on Oahu recently concluded on January 27th. The campaigns are conducted in partnership with local community organizations. Our partner this year -- for the fifth consecutive year -- is

the Lokahi Giving Project, which helps staff directory recycling drop off locations at four shopping malls in and around Oahu. On the Neighbor Islands, we have organized a directory recycling contest among more than 50 local schools, awarding top directory recycling collectors with monetary donations that are used to fund important school projects. In addition, for the past two years we have partnered with Hawaii Foodbank to host a community food drive on the Neighbor Islands. By using the recyclable delivery bags, Hawaiian Telcom Yellow Pages encouraged the community to fill the bags with nonperishable food items. The impact of our recycling programs is significant – last year, more than 74 tons of outdated directories was collected throughout the islands; since 2009, we have collected a total 426 tons.

Additionally, HYP Media arranges for “on-island” processing of the outdated directories so as to ensure that minimal resources are consumed in the recycling effort. To this end, we partner with local recyclers to transport the collected directories to HPOWER where directories are converted to refuse-derived fuel, which generates electricity for more than 40,000 homes, allowing for lower fossil fuel imports.

In sum, SB 25 is unnecessary and probably unconstitutional. HYP Media therefore respectfully submits that the proposed legislation should be rejected.

Hawaii S.B. No. 25

Testimony of hibu Inc., Publisher of Yellowbook Paradise Pages, Relating to Proposed Pick-Up of Unclaimed Telephone Directories

hibu Inc., the publisher of Yellowbook Paradise Pages, appreciates this opportunity to present its concerns regarding Hawaii S.B. No. 25 requiring distributors of telephone directories and other advertising materials to collect any unclaimed items within seven days of receiving a request to do so if it is not made out of 100% recyclable materials.

hibu opposes the proposed legislation as unnecessary because our directories are already 100% recyclable. hibu has an ongoing commitment to minimize the environmental impact of its printed directories. Yellowbook Paradise Pages are printed on paper manufactured from lumber industry waste and bi-products. All Yellowbook Paradise Pages phone books feature our standard industry opt-out notice on the front cover of the directory. Recycle bins are provided throughout the islands. We are constantly evaluating our directory distribution process to increase efficiencies and to ensure our directories are delivered only to those businesses, hotels and homes that use them.

hibu also opposes S.B. No. 25 on First Amendment grounds. A recent U.S. Ninth Circuit Court decision reviewing a Seattle phone book ordinance determined that yellow pages directories are fully-protected speech under the First Amendment. This decision was good news for residents who find value in free and easy access to community information, emergency information, and local business listings. And it was good news for local business owners who rely on Yellow Pages to attract new customers to their businesses at a great return on their investment.

In summary, hibu respectfully requests that Hawaii S.B. No. 25 be rejected as it is unnecessary and unconstitutional.

Hawaii S.B. No. 25
The Berry Company Testimony Relating to
Proposed Pick-Up of Unclaimed Telephone Directories

The Berry Company appreciates this opportunity to present its concerns regarding Hawaii S.B. No. 25. This proposed legislation would require distributors of telephone directories and other advertising materials to pick up unclaimed directories and advertising materials within seven days of receiving a request to do so if the directory or advertising material is not made out of 100% recyclable materials.

Berry opposes the proposed legislation because it is both unnecessary (since the telephone directories published by Berry already are already 100% recyclable) and would likely amount to an unconstitutional limitation on Berry's First Amendment rights.

Berry publishes and distributes the Hawaiian Telcom Yellow Pages and White Pages, the leading telephone directories in Hawaii. As such, Berry is by far the largest player in the market that S. B. No. 25 proposes to regulate.

S. B. No. 25 is unnecessary to regulate Berry's activities, since our directories ***already are*** made out of 100% recyclable materials. This fact is a reflection of Berry's ongoing commitment to minimizing the environmental impact of our print directory products. Berry has been actively involved in environmental issues in Hawaii for many years. Our directories are composed of 40% post-consumer recycled materials and are printed using environmentally friendly soy-based inks, as well as non-toxic glues and dyes.

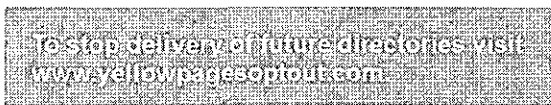
Consistent with our sensitivity to environmental concerns, Berry conducts high profile recycling campaigns each year in conjunction with the distribution of the new year's directories. For example, the 2013 Think Yellow, Go Green recycling campaign on Oahu concluded just last week, on January 27th. Our campaigns are conducted in partnership with local community organizations. Berry's partner this year – for the fifth consecutive year – is the Lokahi Giving Project, which helps staff directory recycling drop off locations at four shopping malls in and around Oahu. On the Neighbor Islands, we have organized a directory recycling contest among more than 50 local schools, awarding top directory recycling collectors with monetary donations that are used to fund

important school projects. In addition, for the past two years Berry has partnered with Hawaii Foodbank to host a community food drive on the Neighbor Islands. By using the recyclable delivery bags, Hawaiian Telcom Yellow Pages and Berry encouraged the community to fill the bags with nonperishable food items. The impact of our recycling programs is significant – last year, Berry collected more than 74 tons of outdated directories throughout the islands; since 2009, we have collected a total 426 tons.

Additionally, Berry arranges for “on-island” processing of the outdated directories so as to ensure that minimal resources are consumed in the recycling effort. To this end, Berry partners with local recyclers to transport the collected directories to HPOWER where directories are converted to refuse-derived fuel, which generates electricity for more than 40,000 homes, allowing for lower fossil fuel imports.

Media coverage related to Berry's *Think Yellow, Go Green* Recycling Programs in Hawaii reflects positive support of the program and Berry's involvement.

As you also know, under SB 25, all directories must feature contact information for their distributors. We strongly believe that Yellow Pages publishers have nothing to gain by delivering unwanted directories. That is why we and the other major publishers in Hawaii, as well as throughout the United States, feature a disclaimer on the covers of their directories that let residents and businesses know about YellowPagesOptOut.com. In many cases, the disclaimer is a prominent green box that may look like the following:



When consumers use this website to customize their household delivery, it helps ensure that we and the other distributors are delivering only those directories that will be welcome in homes and businesses while also reducing the environmental impact of unwanted directories. The website is free – free to users and free to state and local governments – and information provided through the website will not be shared with anyone other than directory publishers for the purpose of updating distribution lists.

YellowPagesOptOut.com includes a participation of 167 publishers representing almost all of the Yellow Pages industry. A key to the success of this website is that it is an easy to use 'one-stop shop' where the user can either choose which directories are delivered or stop delivery altogether. Especially since many people are unaware that there are various Yellow Pages publishers, it is very helpful to have a singular location to make delivery choices. If contact information for each publisher is required on their directories covers, it would cause unnecessary confusion.

Moreover, since the directories published by Berry are already made out of 100% recyclable materials, passage of S.B. No. 25 would only serve to create confusion in the minds of consumers and advertisers. It could also lead to unnecessary uncertainty if specious claims were raised regarding what constitutes "recyclable material."

In addition, the proposed legislation is likely unconstitutional in view of a recent decision by the Ninth Circuit Court of Appeals. In 2010, the Seattle City Council adopted an ordinance requiring the establishment of an "opt-out" registry for telephone directories, and the imposition of a monetary penalty against a publisher if it delivered a directory to a residence that had requested not to receive the book. The court found that Seattle's law is unconstitutional, ruling that yellow pages are commercial speech and therefore entitled to full First Amendment protection. If adopted, it is probable that S.B. No. 25 would similarly be struck down as an unconstitutional limitation on Berry's First Amendment free speech rights.

In sum, SB 201 is unnecessary and probably unconstitutional. Berry therefore respectfully submits that the proposed legislation should be rejected.

SB 25

RELATING TO WASTE REDUCTION

**KEN HIRAKI
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM**

February 7, 2013

Chairs Gabbard, Baker and members of the Committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 25– Relating to Waste Reduction.

While well intended, Hawaiian Telcom believes that this measure is unnecessary. Hawaiian Telcom branded directories are already made out of 100% recyclable materials as part of local and national efforts to minimize the environmental impact of printed directories.

Based on the aforementioned, Hawaiian Telcom respectfully requests that this measure be tabled for this session.

Thank you for the opportunity to testify.

SB25

Submitted on: 2/4/2013

Testimony for ENE/CPN on Feb 7, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Ziegler		Support	No

Comments: Mahalo for this measure. It would also be great if we could get all advertisement inserts in the newspapers to use newsprint instead of the glossy, non-recyclable material.

SB25

Submitted on: 2/4/2013

Testimony for ENE/CPN on Feb 7, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Ed Wagner	Individual	Comments Only	No

Comments: ENE/CPN committee members, This bill misses the whole point of reducing paper waste and reducing the number of trees destroyed to make the paper used in their printing. More and more residents are becoming computer literate so they can use their iPhone, iPad, laptop, etc. to obtain telephone information. Telephone companies (Hawaiian Telephone) should be required to include a statement in monthly billing notices that printed copies of phone directories will only be delivered if a resident or business ops in to receive a printed book. Otherwise, no books will be delivered. I no longer receive printed books. All I need is online.

SB25

Submitted on: 2/4/2013

Testimony for ENE/CPN on Feb 7, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Individual	Support	No

Comments: