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IN DEFENSE OF ADVERTISING IN SPACE

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ABSTRACT

The prospect of orbiting "space billboards" visible from Earth has disgusted many, and prompted a law against them in the United States along with plans to ban them by international agreement. We, however, disagree with the conventional view, and find legal prohibition of such signs unjustified. This paper examines proposals to put billboards in space, considers the laws affecting such billboards, refutes the aesthetic and astronomical objections to space billboards, and finally concludes that restrictions on space billboards are not justified. Instead, space billboards should be permitted out of respect for private property and free-speech rights.

I. BILLBOARDS IN SPACE

Advertising in space is not new, or particularly controversial in itself. Pizza Hut, for example, paid to place its logo on the side of an unmanned Proton rocket in 2000[1] – and Columbia Pictures advertised the famous Arnold Schwarzenegger flop, *The Last Action Hero*, on the side of a rocket carrying the first private commercial space mission.[2] Such publicity stunts have met with little, if any, negative reaction because, after all, they involve ordinary space vehicles people might not otherwise look at, and the money the sponsors pay presumably goes to fund further space ventures.[3]

Hereafter, when this paper refers to "space advertising" it has in mind something more novel and provocative than those relatively mundane efforts: space billboards. For more than a decade, technology has existed that could put billboards in space. Not merely billboards for the many anticipated space tourists of the near future to see as they pass by,[4] but actual signs in low orbit that would be visible from the Earth's surface.

The first and, to our knowledge, only serious proposal to place billboards in orbit around the Earth came from Michael Lawson, chief executive officer of Space Marketing Concepts, Inc., in April 1993.[5] He proposed "environmental billboards" that would carry – in addition to a marketing message – scientific instruments such as "ozone measuring devices."[6]

According to a report by the International Astronomical Union, the Space Marketing billboards would have been about one square kilometer in dimension and would have been comparable to a full moon in their size and brightness in the sky.[7] Other reports, however, have suggested that space billboards might appear half the size of the moon, perhaps one tenth as bright, and only visible during certain hours, around dusk and dawn.[8]

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Lawson's grandest and most specific proposal involved space billboards promoting, or visible during, the 1996 Olympic Games in Atlanta.[9] The City of Atlanta's marketing director even proposed advertising the city itself on a space billboard to then-Mayor Maynard Jackson. He rejected the idea, deeming space billboards "environmental pollution" and noting that – proud as he presumably was of his city – he did not want to see a space billboard promoting it or anything else in the sky.[10]

Lawson's scheme failed for lack of funding – i.e., no one wanted to pay what it would have cost to advertise on one of his proposed billboards.[11] Nonetheless, his plans prompted the United States Congress to ban "obtrusive space advertising" and establish a policy of encouraging other countries to do the same, as discussed in detail in the next section. As a result, no new space-billboard schemes appear imminent, at least in America.

Russian spacecraft designer Alexander Lavrynov, however, purports to have invented a method by which multiple satellites employing sunlight reflectors could create advertising images in the sky visible from Earth.[12] His plan's technological and economic feasibility remain unknown, but Russia has been at the forefront of other space advertising efforts,[13] and also notably launched a failed space mirror intended to light up the night sky in 1999.[14]

II. THE LAW OF SPACE ADVERTISING

A. The United States

As noted above, entrepreneurial efforts to launch space billboards prompted the United States Congress to essentially ban "obtrusive space advertising," defined as "advertising in outer space that is capable of being recognized by a human being on the surface of the Earth without the aid of a telescope or other technological device."[15]

The statute,[16] added October 30, 2000, provides:

> Notwithstanding the provisions of this chapter [49 U.S.C. §§ 70101 et seq.] or any other provision of law, the Secretary [of Transportation] may not, for the launch of a payload containing any material to be used for the purposes of obtrusive space advertising--
>
> (1) issue or transfer a license under this chapter; or
>
> (2) waive the license requirements of this chapter.

The statute further prohibits anyone already holding a license from launching such a payload,[17] and exempts "nonobtrusive commercial space advertising, including advertising on (1) commercial space transportation vehicles; (2) space infrastructure payloads; (3) space launch facilities; and (4) launch support facilities."[18]

Finally, when it passed the above statute, the U.S. Congress also made requests of the U.S. President:[19]

> (1) The President is requested to negotiate with foreign launching nations for the purpose of reaching one or more agreements that prohibit the use of outer space for obtrusive space advertising purposes.
>
> (2) It is the sense of the Congress that the President should take such action as is appropriate and feasible to enforce the terms of any agreement to prohibit the use of

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outer space for obtrusive space advertising purposes.

In May 2005, the Federal Aviation Administration proposed new regulations enforcing this statute – essentially seeking to add to the Code of Federal Regulations the same language already in the statue, directing the FAA to review payloads "to determine if the launch of [a] payload would result in obtrusive space advertising."[20] Although the proposed regulations would have added nothing substantive to the already-existing law, they drew strong comments pro and con from the public.[21] Ultimately, the FAA did not adopt the proposed regulations because it concluded that "the statutory prohibitions are sufficient to prevent the launch of a payload containing obtrusive space advertising."[22]

To our knowledge, the United States so far has not had an occasion to enforce its prohibition on obtrusive space advertising.

B. The Rest of the World

The international agreements on space advertising that the United States Congress exhorted the President to enter have yet to materialize. Other major spacefaring nations, notably including Russia, have not enacted similar bans.

Little evidence exists that an international ban is a high priority. Sergei Negoda of the United Nations Office for Outer Space Affairs told NEWSWEEK in 2005 that the issue was "not on the agenda" and likely would not be "unless all member states . . . reach a consensus." He added that the present push for the commercialization of space (also spearheaded by Americans) made such an agenda item unlikely.[23]

To our knowledge, no one has attempted to argue specifically that existing international law bans space advertising. Some, however, have of course maintained that the 1967 Outer Space Treaty – the foremost document in international space law – bans private property or restricts commercial activity in outer space generally. Such views have been widely rejected, however, and seem unlikely to find much support in light of the ever-increasing drive for private entrepreneurial activity in space.[24] Some might also argue that the Outer Space Treaty bars advertising because it requires that outer space be used "for the benefit of all mankind." As we will see below, however, benefits are subjective, and what is a benefit to one person almost certainly will not be viewed as a benefit by another – and conflicts between the two can only be resolved by the arbitrary exercise of violence in the absence of private property rights.

III. AESTHETIC AND ASTRONOMICAL OBJECTIONS TO SPACE ADVERTISING

The primary objections to advertising have been in two categories: aesthetic and astronomical. That is, people have claimed that space advertising should be restricted or banned because of the advertising's supposed aesthetic offensiveness, or because this mode of communication would restrict the supposedly more important activities of astronomers.

In this section, we consider these arguments and offer some ideas on why these objections fail to justify a ban on space advertising. In the next section, we will offer our view that private property rights are the only means of resolving the disputes regarding the appropriateness of space advertising.

A. Aesthetic Concerns

Perhaps the most widespread objection to space advertising is aesthetic.

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For example, in exhorting his fellow Congressmen to enact the U.S. ban on space billboards, Representative Edward Markey disparaged such advertising by claiming it would "turn our morning and evening skies, often a source of information and comfort, into the equivalent of the side of a bus."[25] A pamphlet from a gloomily monikered group called the International Dark-Sky Association declares that "worse still" than the alleged astronomical problems space billboards cause is "the destruction of the pristine beauty of humanity's view of the universe."[26] A commenter on the FAA's proposed regulation of obtrusive space advertising argued that such advertising should be prohibited because of its similarity to "ugly billboards along highways."[27] And a legal commentator advocates a treaty banning such advertisements worldwide because of their potential to "interfere with nature in a truly profound way."[28]

These negative views, however, do not tell the whole story.

1. Some People Just Might Like Space Billboards

While it is true that many people dislike the sight or even the thought of billboards or other publicly displayed advertising, it is not true that everyone feels that way. If *everyone* agreed, there would be no controversy.

In fact, some people appreciate terrestrial billboards for the information they convey.[29] Others may appreciate them simply for breaking up what they consider to be the monotony of the natural landscape.[30]

In some cases, people may enjoy billboards aesthetically, independent of the substance of the billboards' message. For example, Sony recently hired graffiti artists to paint the sides of abandoned buildings – without even mentioning its brand names or indicating that it was advertising – to advertise its Playstation Portable video game machine in Philadelphia. Some "anti-blight" advocates were appalled – but others appreciated the graffiti as "art" and considered it an improvement over the status quo.[31]

Further, in holding their apparent view that advertising is everywhere and to everyone unpleasant, anti-advertising advocates seem to forget that advertising is *intended to appeal* to as many people as possible in order to sell them a product.[32] An advertisement that disgusts its viewers is unlikely to serve its purpose well. As economic journalist Virginia Postrel has noted, "Competition pushes commercial artists to create attractive, visually appealing images."[33]

Indeed, given that advertisements are generally designed to be pleasing to people, it seems that those who only wish to see nature unfettered have the more peculiar view. After all, it is merely an accident that the Moon's face has been scarred in the way that it has been over the eons. What if, instead of looking somewhat like a "man in the Moon," the Moon's face coincidentally looked like the Pizza Hut logo? In that case, presumably the anti-advertising advocates would have no problem with the logo's presence and would insist that no one tamper with it. So why is a given image acceptable only because it occurred according to no one's design? It seems to us that anti-advertising advocates bear a heavy burden in attempting to defend the accidental status quo over images actually intended to please and presumably benefit[34] humans.

2. A Sky Full of Spam?

Granted, there is at least one form of advertising that virtually everyone hates: e-mail spam. Indeed, spam has been invoked to scare people into supporting space

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billboard prohibition.[35] But e-mail spam is fundamentally different from ordinary spam in two critical ways.

First, there are the economics. E-mail spam is almost costless to transmit, so although almost everyone other than its senders hates it, even a tiny handful of favorable responses may make the enterprise worthwhile.[36] Further, spam is not necessarily intended to advertise to or otherwise please the recipient – often it contains nonsense or obscenities serving no apparent purpose. Space billboards, in contrast, would be expensive to create and launch. Indeed, the billboards Lawson proposed in 1993 apparently were so expensive (reportedly $15 to 30 million)[37] that no one was willing to buy space on one. Presumably as technology improves, costs will decrease – but it seems highly unlikely that a spam-like glut will occur, with or without a ban.

Another crucial distinction between spam and space advertising is relevant to our argument in the section that follows. The spammer invades the property rights of the computer owner who does not wish to receive spam,[38] often with impunity because of the ease of hiding one's identity online. Space advertising, however, does not necessarily intrude upon property rights: a person who owns property on Earth does not own the sky above it, nor does anyone else who has not in some way actually possessed the space.[39]

3. Space Advertising is Not Aesthetically Unique

The idea that space advertising presents a novel situation requiring unprecedented legal restrictions fails, because similar forms of advertising already exist.

For example, at present, one can already advertise in the sky by pulling a banner behind an airplane. The Goodyear blimp provides another example of an arguably obtrusive advertising presence overhead – which tends to delight rather than disgust virtually all who catch a glimpse of it.

A case of space-advertising-in-reverse also recently occurred, as men's magazine *Maxim* placed a 75-by-100-foot reproduction of a magazine cover featuring actress Eva Longoria in the Nevada desert.[40] Whether or not this was actually "big enough to be seen from space," as the magazine boasted, it surely was visible to those, say, flying over in an airplane, whether they liked it or not.

Some may distinguish these examples by stating that those advertisements can only be occasionally seen in a relatively limited geographical area, while space billboards could conceivably always be visible.[41] But to date no one except space billboards' opponents has raised the prospect of advertising that would be visible at all times, or in all places. A gigantic space billboard would likely have a limited lifespan in any event because of the large number of collisions with space debris it would face. The Space Marketing project, for example, expected its billboards to be struck by 10,000 pieces of debris per day until its ultimate destruction.[42]

B. Astronomical Concerns

The present authors are not astronomers, and therefore do not question astronomers' claims that space advertising would make ground-based astronomical observation more difficult.[43] We do, however, question their claim that this justifies them in telling the rest of the world what it can and cannot do in the sky.

The common law has never recognized a right to a view – and, though it may have been altered in various cases by legislation, it still does not.[44] That is, for example, if A buys a piece of property and makes

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observations out of his window with a telescope, then B comes along and puts up a high rise on an adjacent piece of land such that A can no longer make his observations, A has no cause of action against B. Space advertising does not present a situation fundamentally different from this.

There are several serious practical and philosophical objections that can be leveled against the position that people have the rights to own views. First, on the pragmatic front, it would be extremely difficult to establish who owns which view. Merely looking at something is surely less discernable, not to say objective, than "mixing one's labor" with virgin territory, as in the case of homesteading.[45] Then, too, to own something is not merely to be able to (continue) to use it; it is also to be legally able to *prevent* others from so doing. Suppose Jones is the first to see the moon. Thus, under this theory, he owns the view of it. How is he to be able to prevent others from looking at this heavenly body? The problem here is that views are not rivalrous. More than two people, to say the least, can appreciate the sight of the moon. In contrast, cows, cars and candles are rivalrous: if one person uses these things, then others cannot. But the whole point of ownership in the first place is to have a rule determining which person can, and thus which one cannot, access the thing to be owned. If more than one person can look at the moon without interfering with another's view, and if, indeed, millions of people can do so, then what is the point of ownership? There isn't any.[46] Then there are truly anomalous situations; the first person to see a newborn child will in many cases be the obstetrician, not the mother or father. If view ownership is strictly interpreted – and how else are we to interpret it? – this would mean that the medical man, not the parents, is the rightful guardian of the child.

Another rule from the Roman and common law under which astronomers might claim a right to an unrestricted view of the skies has been rejected almost universally: the *ad coelum* doctrine. Under this rule, a party who owned a piece of land also owned everything above it, all the way up through the heavens.[47] This dubious doctrine necessarily died because it would have outlawed aviation and non-advertising satellites.[48]

Thus, rather than invoke a property-rights rule, concerned astronomers seem to want an exception to the rules of property rights. We, however, will advance an argument for strict property rights – with no exceptions for astronomers, astronomer-lovers, or anyone else – in the following section.

For now, we will simply observe that astronomers have failed to make the case that ground-based astronomy is so essential to human well-being that it requires a deviation from the usual rules of property rights. After all, the space-based Hubble telescope has offered unprecedented views of the universe in recent years, free from the so-called light pollution that hampers astronomers' efforts with earthbound telescopes. Undoubtedly, space advertising could reduce the overall level of astronomical observation that occurs – but astronomers have not made the case that an astronomy that tramples on the rights of others results in the economically optimal amount of astronomical research. In the absence of such evidence, the astronomers' efforts appear to be little more than common theft-seeking:[49] that is, seeking government privilege to ensure their continued employment or, at least, advancement of their own special interests.

As with the aesthetic concerns, we again face a situation of conflicting subjective preferences: some favor advertising and less ground-based astronomical observation,

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while others more highly rank no advertising and more ground-based astronomical research. In Section IV, below, we turn to our proposal to resolve these conflicts: strict private property rights. But first, we address some other pragmatic concerns.

C. Other Pragmatic Concerns

1. Space Advertising May Be Inevitable . . .

Regardless of the merits of the advertising haters, space advertising may be inevitable. The technology exists, and if someone wants to put up the money, he can have his name in lights in space. If the United States will not allow the launch, Russia or another country that cannot afford the luxury of turning down such business will.

If this is the case, then the issue is not whether we should allow space advertising, but whether individuals in a given country, such as the United States, should be allowed to take advantage of it. It seems to us a difficult case to make that one's countrymen should be disadvantaged vis-a-vis foreign competitors simply to make at best a fuzzy moral point.

Further, although we favor no regulation (as discussed below), those who dislike advertising may find the results of a lightly regulated domestic market more pleasing than the products of unfettered launches elsewhere – just as those who hate prostitution might, in a lucid interval, prefer regulated brothels to the crude streetwalking that results from absolute prohibition. Advertisers may find it more economical to obey mild regulations restraining their advertisements at home than to go overseas to avoid them. Thus, those who succeed in achieving absolute prohibition of space advertising in their own country may actually harm their own cause.

2. Or It Might Not Happen at All

It may also be that space advertising will not proliferate regardless of whether it is prohibited or permitted. After all, the Space Marketing venture failed because no one wanted to pay the $15 to 30 million the advertisements are reported to have cost.[50] If that is the case, then the prohibition may appear to be harmless. It is not necessarily harmless in any event, however, because it may discourage otherwise-useful innovation and technology that ultimately unsuccessful space-advertising ventures would have developed, or that those not primarily engaged in advertising do not develop for fear of running afoul of the space-advertising prohibition.

IV. SPACE ADVERTISING, PROPERTY RIGHTS, AND FREE SPEECH

There are no objective criteria for resolving the aesthetic and subjective disputes discussed above. There is, however, a non-arbitrary means for determining whether space advertising should be permitted: private property rights. Several points must be made in this context.

Private property rights are the basis upon which all sorts of potential disputes are solved every day, before they become contentious issues. Who has the right to use a particular piano or canoe? Why, the *owner* of course. If ordinary decisions of this sort had to be settled by courts on a case-by-case basis, we would all die of starvation as litigiousness reached epic proportions and we simply had no time to do anything else. Judges, properly, only rule on the smallest tip of the iceberg in this regard. Virtually all other disputes of this sort are settled by property rights, with no fuss. How does this come about? Initially, virgin territory is turned into the private domain by

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homesteading; then, it changes hands through any legitimate title transfer[51] such as trade, purchase, gifts, settlement for gambling debts, etc. Should this grocery store carry venison? Should that pizza parlor feature red or blue tablecloths? Should this car be painted orange? Such decisions are commonly made by their *owners*. Why should the decision as to whether or not to allow advertising be made in any other way?

Second, property rights and free speech are inextricably intertwined. There cannot be the one without the other. For, precisely as in the case of all these other "pedestrian" decisions, the determination of what may properly be said in any given place inevitably falls upon the owner of the property in question. May David Duke or Louis Farrakhan speak at the college campus? This depends upon the views on this matter of the owners of the university, the board of trustees. Is it licit that the sonnets of Shakespeare be recited in someone's living room? That crucially depends upon the opinions on this matter of the owner of said living room. The surest enemy of free speech is to allow government to own all pens, paper, ink, printing presses, and the like. For then the issue becomes one of allocation of "society's" scarce resources, and, seemingly, no long a matter of free speech rights, of which there can be none without such implements.

Third, it is entirely possible that advertising in space will not prove economically feasible. Or, if it does, and there is an outcry against it, that anyone whose products are advertised therein will *lose* customers, not gain them. It is entirely possible that advertising might be allowed on Mount Rushmore or in the Grand Canyon, and that it would *backfire* in this regard: a corporate emblem there would be the death knell of sales. But the only way this can be determined is empirically: fashion the law so that this is allowed, and then make a determination post hoc.

Our property-rights view, though it may strike many as radical today, was once the law, not only in space, but also on Earth. In the United States, at least, Courts long recognized that aesthetic issues are inherently subjective[52] and accordingly refused to allow governments to violate property rights solely on aesthetic grounds.[53] As the Ohio Supreme Court put it, "[M]ere aesthetic considerations cannot justify the use of the police power. It is commendable and desirable, but not essential to the public need, that our aesthetic desires be gratified."[54] Similarly, the California Supreme Court struck down a prohibition on terrestrial billboards in 1909, finding that the fact that "appearance of billboards is, or may be, offensive to the sight of persons of refined taste" does not suffice to justify such "a radical restriction of an owner of property to use his property in an ordinary and beneficial way."[55] In recent years, however, the Courts have abandoned this view, essentially giving lawmakers carte blanche in restricting uses of private property because of aesthetic concerns, allowing them to do so either for its own sake or where ostensibly linked to putative "health or safety" concerns.[56]

V. CONCLUSION

Those who would abrogate private-property and free-speech rights face a heavy burden, and here they have failed to meet it.[57] Therefore, space advertising through private property should be presumed legitimate, all laws against it should be repealed, and no treaties restricting it should be established.

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Notes

[1] *Living Rooms in Orbit*, AUSTRALIAN, July 13, 2000, at 9.

[2] Don E. Tomlinson & Rob L. Wiley, *People Do Read Large Ads: The Law of Advertising from Outer Space*, 47 FED. COMM. L. J. 535, 541 (1995) (quoting Devera Pine, *Selling America on Orbiting Ads*, OMNI, Feb. 1994, at 27, 27).

[3] Presumably criticism of such advertising efforts would come primarily from those who object to *any* commercial activity in space. On those who object to human activity in space generally, see J.H. Huebert & Walter Block, *Space Environmentalism, Property Rights, and the Law*, 37 U. MEM. L. REV. (forthcoming 2007).

[4] On the booming space tourism business, *see, e.g.*, John Schwartz, *More Enter Race to Offer Space Tours*, N.Y. TIMES, Feb. 18, 2006, at C1.

[5] Tomlinson & Wiley, *supra* note 2, at 539 (citing *Orbiting-Billboard Proposal Gets Astronomers' Attention*, SKY & TELESCOPE, at 10, 10).

[6] *Id.*

[7] United Nations General Assembly Committee on the Peaceful Uses of Outer Space, Background paper by the International Astronomical Union, *Obtrusive space advertising and astronomical research* (2001) (hereafter "International Astronomical Union"), *available at* http://www.unoosa.org/pdf/reports/ac105/AC105_777E.pdf.

[8] Tomlinson & Wiley, *supra* note 2, at 539.

[9] *Id.* at 540.

[10] *Id.* (citing Joseph B. Allen, *New Heights (?) for Advertising*, ASTRONOMY, Sept. 1993 at 13, 15.

[11] International Astronomical Union, *supra* note 7, at 4.

[12] *Billboard in the Sky*, ADVERTISER (Adelaide, Australia), Mar. 12, 2004, at 32.

[13] *See, e.g.*, Todd Halvorson, *Russia Takes the Lead in Space Age Advertising*, SPACE.COM, May 31, 2001, http://www.space.com/news/spaceagencies/russia_market_010531-1.html

[14] *Russian Prototype of Artificial Moon Hits Snag*, ST. LOUIS POST-DISPATCH, Feb. 5, 1999, at A7.

[15] 49 U.S.C. § 70102(9).

[16] 49 U.S.C. § 70109a(a).

[17] 49 U.S.C. § 70109a(b).

[18] 49 U.S.C. § 70109a(c).

[19] U.S. Public Laws 106-391, Title III, § 322(c) (2000).

[20] 70 Fed. Reg. 29,164, 29,168 (May 19, 2005).

[21] These can be read on the FAA docket at http://dms.dot.gov/search/searchResultsSimple.cfm?numberValue=21234&searchType=docket

[22] 71 Fed. Reg. 51968, 51969 (Aug. 31, 2006).

[23] Gersh Kuntzman, *Space Invaders*, NEWSWEEK web-exclusive commentary, June 20, 2005, http://www.msnbc.msn.com/id/8292906/site/newsweek/.

[24] *See, e.g.*, Glenn H. Reynolds, *International Space Law: Into the Twenty-first Century*, 25 VAND. J. TRANSNAT'L L. 225, 230 (1992) (arguing that academic consensus supports private property under the Treaty). And on the view that, regardless of what the Treaty means, it *should* allow for private property, *see, e.g.*, Kurt Anderson Baca, *Property Rights in Outer Space*, 58 J. AIR L. & COM. 1041, 1083-85 (1993); Huebert & Block, *supra* note 3; Wayne N. White, Jr., *Real Property Rights in Outer Space*, *in* 40 COLLOQUIUM ON THE LAW OF OUTER SPACE 370 (1998).

[25] *No Place in Space for Adverts*, NEW SCIENTIST, July 10, 1993, at 5.

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[26] *Grass Root Opposition to Space Billboards*, International Dark Sky Association Information Sheet No. 71 (2000), http://www.darksky.org/resources/information-sheets/is071.html

[27] 71 Fed. Reg. at 51,969.

[28] Tomlinson & Wiley, *supra* note 2, at 563 (Mr. Tomlinson advocates a complete ban; his coauthor, Mr. Wiley, does not).

[29] *See, e.g.,* Lawrence Person, *In Praise of Billboards*, 43 FREEMAN 360 (1993).

[30] *See, e.g.,* Walter Block, *Billboards*, LIBERTARIAN FORUM, Nov.-Dec. 1979, at 8.

[31] *Playstation Ads, Disguised as Graffiti, Spark Controversy*, USA TODAY, Dec. 29, 2005, http://www.usatoday.com/money/advertising/2005-12-29-graffiti-ads_x.htm; on the law and economics of graffiti generally, *see* Daniel J. D'Amico & Walter Block, *A Legal and Economic Analysis of Graffiti* (Ludwig von Mises Institute Working Paper), *available at* http://www.mises.org/journals/scholar/damico.pdf.

[32] *See* ISRAEL M. KIRZNER, COMPETITION AND ENTREPRENEURSHIP (1973).

[33] Virginia Postrel, *The Esthetics Police*, FORBES, Nov. 1, 1999, at 174.

[34] Some, such as John Kenneth Galbraith (THE AFFLUENT SOCIETY (1958)) would disagree with this statement. But see these critiques: Friedrich A. Hayek, *The Non-Sequitur of the "Dependence Effect," in* STUDIES IN PHILOSOPHY, POLITICS, AND ECONOMICS (1967); George Reisman, *Galbraith's Neo-Feudalism*, MISES.ORG, http://www.mises.org/web/2793. For other defenses of advertising, *see* Lee Benham, *The Effect of Advertising on the Price of Eyeglasses*, 15 J. L. & ECON. 337 (1972); WALTER BLOCK, *The Advertiser as Hero, in* DEFENDING THE UNDEFENDABLE 68 (Fox & Wilkes 1991) (1976); Walter Block, *Tobacco Advertising*, INT'L J. OF VALUE BASED MGMT., May 1997, at 221; Walter Block, *Coordination Economies, Advertising and Search Behavior in Retail Markets by Bagwell and Ramey: A Comment*, CROSS CULTURAL MGMT., Vol. 10, No. 1, at 80 (2003); Walter Block, William Barnett II & Stuart Wood, *Austrian Economics, Neoclassical Economics, Marketing and Finance*, Q. J. AUSTRIAN ECON., Summer 2002, at 51; Ronald H. Coase, *Advertising in Free Speech*, 6 J. LEGAL STUD. 1 (1977); ROBERT B. EKELUND & DAVID S. SAUMAN, ADVERTISING AND THE MARKET PROCESS (1985); DAVID OGILVY, OGILVY ON ADVERTISING (1985); MURRAY N. ROTHBARD, MAN, ECONOMY, AND STATE 978-83 (Ludwig von Mises Institute 2004) (1962).

[35] *See, e.g.,* Tom's Astronomy Blog, http://astroblog.captcrash.com/ (May 20, 2005, 06:31 EST).

[36] Christopher Westley, *The Economics of Spam*, IDEAS ON LIBERTY, Nov. 2003, at 8.

[37] Tomlinson & Wiley, *supra* note 2, at 539 (citing *Orbiting-Billboard Proposal Gets Astronomers' Attention*, SKY & TELESCOPE, Nov. 1993, at 10).

[38] *See* Walter Block, Roy Whitehead & N. Stephan Kinsella, *The Duty to Defend Injuries Caused by Junk Faxes: An Analysis of Privacy, Spam, Detection, and Blackmail*, 27 WHITTIER L. REV. 925 (2006).

[39] The precise manner of homesteading that would be necessary to acquire property rights in an orbital path or position above the Earth is beyond the scope of this paper. In any event, under no proper theory does one gain property rights in a space vast distances away simply by looking at it in its present state for a long time.

[40] *Eva Longoria Seen from Space*, MIAMI HERALD, Apr. 7, 2006, at A4.

[41] *See, e.g.,* Tomlinson & Wiley, *supra* note 2, at 563.

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[42] *See* International Astronomical Union, supra note 7, at 4.

[43] *See, e.g., id.* at 2-3.

[44] Walter Block, Homesteading, Ad Coelum, Owning Views and Forestalling (2006) (unpublished, on file with the author).

[45] *See* Walter Block, *Earning Happiness Through Homesteading Unowned Land: a comment on 'Buying Misery with Federal Land' by Richard Stroup*, J. SOC., POL. & ECON. STUD., Summer 1990, at 237; HANS-HERMANN HOPPE, THE ECONOMICS AND ETHICS OF PRIVATE PROPERTY: STUDIES IN POLITICAL ECONOMY AND PHILOSOPHY (1993); JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT (Henry Regnery 1955) (1690); ELLEN FRANKEL PAUL, PROPERTY RIGHTS AND EMINENT DOMAIN (1987); MURRAY N. ROTHBARD, FOR A NEW LIBERTY (1973).

[46] N. Stephan Kinsella makes the same point with regard to patents and copyrights; once the information is widely known, A's use of it detracts from B's use by not one whit. *See* N. Stephan Kinsella, *Against Intellectual Property*, J. LIBERTARIAN STUD., Spring 2001, at 1.

[47] This highly problematic doctrine could be interpreted to cut both ways. That is, according to ad coelum, the owner of a few square miles of earth, and thus the proprietor of an increasing sized conical area extending up into the "heavens," would be justified in placing advertising in "his" area of ownership miles above the earth.

[48] Murray N. Rothbard, *Law, Property Rights, and Air Pollution*, 2 CATO J. 55, 84-86 (1982); *see also* Walter Block & Richard A. Epstein, *Walter Block and Richard Epstein Debate on Eminent Domain*, 1 NYU J. L. & LIBERTY 1144 (2005); Walter Block, Homesteading, Ad Coelum, Owning Views and Forestalling, *supra* note 44.

[49] The term most economists would use in this context is "rent seeking." *See* Gordon Tullock, *Rent Seeking*, *in* 4 THE NEW PALGRAVE: A DICTIONARY OF ECONOMICS 147 (1987). But we see no need to besmirch the ancient and honorable practice of renting by juxtaposing it with such a nefarious practice. For more on this, see Walter Block, *Watch Your Language*, MISES.ORG, Feb. 21, 2000, http://www.mises.org/story/385

[50] International Astronomical Union, *supra* note 7, at 4.

[51] ROBERT NOZICK, ANARCHY, STATE AND UTOPIA (1974).

[52] For economic and philosophical support for this contention see JAMES M. BUCHANAN, *The General Implications of Subjectivism in Economics*, *in* WHAT SHOULD ECONOMISTS DO? 81 (1979); SUBJECTIVISM, INTELLIGIBILITY AND ECONOMIC UNDERSTANDING (Israel M. Kirzner, ed., 1986).

[53] Mark Bobrowski, *Scenic Landscape Protection Under the Police Power*, 22 B.C. ENVTL. AFF. L. REV. 697,703 (1995).

[54] *Id.* (quoting *Youngstown v. Kahn Bros. Bldg. Co.*, 148 N.E. 842 (Ohio 1925)).

[55] Charles F. Floyd, *Billboards, Aesthetics, and the Police Power*, AM. J. ECON. & SOC. (forthcoming), http://www.scenic.org/pdfs/Police_power.pdf (quoting *Varney & Green v. Williams*, 100 P. 867 (Cal. 1909)).

[56] *See* Bobrowski, *supra* note 53, at 708.

[57] We would argue that they fail to meet it in all cases, but that is beyond the scope of this paper. *But see generally* Rothbard, *supra* note 45.