

# **LOS ANGELES PUBLIC ACCESS COALITION (LAPAC)**

**David Hernandez, President**

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December 8, 2008

Honorable, Edmund G. Brown Jr.  
Attorney General of California  
California Department of Justice  
PO Box 944255  
Sacramento, CA 94244-2550

**BY FEDERAL EXPRESS MAIL**

Attention: Attorney General Brown     **Urgent Action Requested**

Re:        Time Warner Public Access Studios and Channels, City of Los Angeles

Dear Attorney General Brown,

We are writing to you with the greatest sense of urgency. As the States' top law enforcement official only you can stop what most certainly will be travesty on December 31, 2008, if Time Warner Cable, who has notified the city of Los Angeles, is permitted to close down all fourteen public access studios and channels on that date.

The Los Angeles City Council has failed to take any action to replace the facilities leaving thousands of public access producers and millions of cable subscribers in the dark, without the fourteen channels and studios where vital public programming has been produced and cablecast for over 25 years. The Los Angeles City Attorney, as yet, has failed to take action to protect the public from losing these vital public assets.

The issue has been sitting in committee for over a year and at this late date the council has referred it to a second committee, just days before the closing is to take place, without the benefit of either a Financial Impact Report or Community Impact Report.

Under the 2007 enacted DIVE legislation, the City will be responsible for establishing the public access facility/capacity as of January 1, 2009, but no actions have been approved and there has been no proper evaluation and assessments for the financial resources needed to implement and sustain such an operation.

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The same can be said for the impact on the public welfare. Without a community impact report, our council members can not determine with any accuracy the full extent of the loss to the community.

We realize the process has started and there will be a resolution at some point but for now, we are faced with the clear and immediate fact that the studios will be closing in less than three weeks with no plan, process or procedure in place and the certainty that entire public access will be shut down, harming the residents of the City of Los Angeles.

The studios should not close until the public's rights have been secured and replacement of the lost facilities are in place.

Therefore we are respectfully requesting you take the following action on behalf of the residents of Los Angeles:

**FILE FOR INJUNCTIVE RELIEF under California Business & Professions Code 17200  
section 3. The basis for this action is as follows:**

California's unfair competition statute, Business and Professions Code sections 17200-17208, like its federal counterpart, section 5 of the Federal Trade Commission Act(15U.S.C Section 45 et seq), serves as a general prohibition on unfair and deceptive business practices and also as an antitrust law.

Section 17200 defines "unfair competition" to include any "unlawful, unfair or fraudulent business act or practice" as well as "unfair, deceptive, untrue or misleading ". There are five potentially distinct theories of liability under section 17200.

1. Unlawful business acts or practice;
2. Unfair business acts or practice;
3. Fraudulent business acts or practice;
4. Unfair, deceptive, untrue or misleading advertising; and
5. False advertising and related practices covered by B&P 17500-17577

The broad purpose of Business and Professions Code section 17200 is "to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur."(*People v. McKale* (1979) 25 Cal.3d 626 In particular the purpose of the "unlawful" practice provision is "to extend the meaning of unfair competition to anything that can properly be called a business practice.

The U.S. Supreme Court in *FTC v Sperry & Hutchinson*, 405 U.S. 233, 244(1972), in which the Court held that FTC Act Section 5 could reach beyond "the letter and spirit" of

existing trade regulation laws to other wrongful business practices. The *Sperry & Hutchinson* noted the relevant factors for determining unfairness to be: "(1) whether the practice offends public policy, (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers.

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In brief, the court must weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim.

Here, the action of closing fourteen public access studios and channels offends public policy, is immoral, unethical, oppressive, unscrupulous and causes substantial injury to consumers who will be prevented from viewing independent programs on the City public access channels. The gravity of the harm to consumers outweighs any benefit to Time-Warner.

**We are requesting that you file for a Temporary Restraining Order against Time Warner to continue the service until such time as the City has provided alternative and equal facilities.**

On behalf of the Coalition, associated listed below, and all Public Access Producers, Community Advocates and subscribers thank you for the consideration you will give to this vital and time sensitive matter.



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**Associates of LAPAC**

Missy Woodward  
Critter Crusades

Dr. Dan Wiseman  
You're Neighborhood Council

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Lady Cage-Barile, Producer

Michael Cohen, Producer

Leslie Dutton, Producer  
Full Disclosure Network

Charlotte Laws, Producer

Dr. Susan Block, Producer

Elaine Brown

Kolth Hardine

Shane Devins, Producer