

# METROLINK TRIES TO CENSOR BLOGGERS

*A paranoid transit agency spends public money threatening critical Web sites*

**BY MAX TAVES**

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**FOR BLOGGER AND TECH EXPERT** Bob Arkow, the road to an obscure but powerful Internet über-court in Switzerland began on his ride home to sunny, middle-class Santa Clarita aboard Metrolink's Antelope Valley Line Train No. 213 in August 2006.

Max Taves



(Click to enlarge)

Rider Bob Arkow had the audacity to call his site [metrolinkrider.com](http://metrolinkrider.com).

That was when a fare inspector aboard the Southern California commuter-rail line handed Arkow a ticket for his “misuse of fare media.”

Really, the reason for the ticket was pettier than a standardized form could ever communicate: Arkow had refused to sign his name on his monthly pass. That requirement, the Los Angeles city electrician primly informed the fare inspector, was only disclosed to riders after they bought the ticket from an electronic vending machine. It certainly wasn't included in terms consumers had already agreed to, so Arkow refused to comply on principle.

And he had another reason not to sign his monthly pass: “In the 10 years that I have been riding the train, I never saw them check a signature against a valid ID,” Arkow tells *L.A. Weekly*. “I also pointed out [to Metrolink] that signing my ticket and turning it back in to the city, which I have to do to get my [city-employee reimbursement], exposes me to identity theft.”

Arkow is 57 years old. He speaks quickly when excited — which is often. He turned his childhood obsession with ham radios into a career, and is a veteran communications electrician for the Los Angeles City Information Technology Agency, where he helps manage City Hall's internal phone system.

In his off hours, since the early 1990s, Arkow has been a highly effective consumer advocate. He has sued “between 20 and 30” annoying telemarketers, forcing them to pay him \$15,000 for invading his privacy. He admits that his brooding over these affronts of urban life makes him a bit of a “shit-head” — but millions of Americans have benefited. It was Arkow who played an initial role in launching California's — and then the nation's — Do Not Call lists, and he has testified to the California legislature and been profiled by *Dateline*.

As the bureaucrats at Metrolink are learning, Arkow is absolutely the wrong guy to “write up” for refusing to sign a piece of paper he never agreed to sign. Soon after being forced by Metrolink to appear in court over that refusal, in late 2006, Arkow launched metrolinkrider.com.

It's not exactly Wonkette. A pixelated train moves across a page with competing fonts and clashing colors. One disclaimer declares the obvious: Arkow's is not an official Metrolink site. A tiny community of 200 to 300 visitors a month reads his online bulletin board, offering criticisms on predictable topics like, “Are the fares fair?” “Are the engineers that stupid?” and “Stupid and dishonest rider tricks.”

One fed-up rider wrote: “Where is the Sunday service on the Antelope Valley Line? Why doesn't service run every hour?” What these riders and employees are doing is protected by the First Amendment, and not terribly controversial. But a bevy of small-town California politicians who control the Metrolink board of directors are obsessed with silencing any critics who dare to use the trademarked term “Metrolink” in Web site names.

The transit monopoly has made legal threats to metrolinktrainriders.com and metrolinkmax.com — and already scared one site, Emetrolink.com, into changing its name (to LApasenger.com).

Andrew Breitbart, publisher of Breitbart.com and co-creator of The Huffington Post, says that the agency's “ham-fisted” censorship is backfiring, attracting far more critics: “Now, I want to focus on what is wrong with Metrolink, and why they're wasting their time on this — and not [working] on figuring out how to get people from point A to point B.”

Arkow has responded in an equally withering manner to the Metrolink bureaucrats. His newest site? It's called metrolinksucks.com (soon to be activated).

But now, in a big, embarrassing slap at Metrolink's censorship-oriented board, the Geneva-based World Intellectual Property Organization (WIPO) has ruled that Arkow's site won't get tossed in the free-speech boneyard. WIPO arbitrator W. Scott Blackmer rejected Metrolink's arguments a few days ago, allowing Arkow to keep both metrolinkrider.com and metrolinksucks.com.

“I hope this will teach them two words: customer service,” says Arkow. “Let's assume that they had won. What would it have meant? More passengers? More money in the fare boxes? More subsidies? It would have meant nothing. It was an abuse of power. It was pure arrogance.”

Yet Metrolink's Francisco Oaxaca doesn't regret spending public money and L.A. County lawyers' time trying to shut down Arkow's small sites. He sees it as merely a trial run in silencing other bloggers and Web sites.

“I don't think it was a mistake,” Oaxaca says. “If we do this again, we'll have more information than if we hadn't tried it, to see what is the most effective way to protect our trademark.” He promises that Metrolink is “considering actions against other domain-name holders.”

**HOW AN AGENCY LIKE METROLINK**, subsidized by California taxpayers to the tune of roughly \$130 million a year, decided to spend dwindling taxpayer dollars hauling bloggers and publishers of small Web sites before a foreign panel is a classic tale of unwatched government run amuck. Metrolink is a joint-powers authority for Ventura, Los Angeles, San Bernardino, Orange and Riverside counties. Its seven lines don't serve many — perhaps 20,000 people daily board cars that whip at about 41 miles per hour between L.A., Santa Clarita, Lancaster, San Bernardino and Riverside.

Unlike its closely watched cousin, Metro, which operates the MTA buses and subways, the Metrolink board acts nearly in private, meeting monthly on the 25th floor of a nondescript building downtown. Except for L.A. County supervisors Don Knabe and Michael Antonovich, its 11 board members represent small-time cities like Buena Park, Lake Forest, Moorpark and Temecula.

At its February meeting, behind closed doors, the agency's chief executive, David R. Solow, presented a scheme to silence metrolinkrider.com and metrolinksucks.com — by taking Arkow before the WIPO.

According to Metrolink communications director Oaxaca, a few board members suggested that the public might get upset if Metrolink shut down a Web site that slams it — then took over the site for itself. But the board gave Solow its tacit approval, and its grievances were drawn up at taxpayer expense by Los Angeles County Counsel Raymond G. Fortner Jr. — then sent on to the World Intellectual Property Organization.

Some of the arguments made by Solow, Oaxaca and Fortner border on humorous: The use of "Metrolink" might make readers think it's the official agency site, people who don't speak English might misunderstand the word "sucks" and mistakenly believe it's the official site, Arkow is trying to steal readers from the official site, and Arkow is using "sucks" to tarnish the agency — an act of "bad faith."

The Internet — at least in terms of domain names — isn't the freewheeling frontier often depicted. Domain names are controlled by heavily acronymic organizations that most bloggers and Web site owners have never heard of. The granddaddy is the Internet Corporation for Assigned Names and Numbers (ICANN), a United Nations–created Internet policymaker.

Under ICANN's policy, the Geneva panel's handpicked law professors and private lawyers can force people like Arkow to relinquish a Web site they founded whose site name contains a trademarked word. WIPO even has the power to turn over such U.S.-based sites to whatever entity owns the disputed word.

In this country, to violate a trademark, you must act with a "bad-faith intent to profit." The rule used in Geneva would horrify a First Amendment advocate: A Web site must merely act in "bad faith" — no financial profit need be involved, according to Sam Bayard, assistant director of Harvard University's Citizen Media Law Project.

Bayard reviewed Metrolink's move against Arkow, and called its actions "suspicious" and its arguments "weak." David Peter Allen, a New Jersey–based trademark lawyer and rail advocate, says, "Clearly, what it looks like they're doing is making people who want to complain about it have a hard time of it. ... I see some First Amendment problems here. They're making it difficult to express contrary opinions."

Richard Michael, who runs the small site metrolinktrainriders.com, is another outspoken citizen facing censorship by the Metrolink board. Says Michael: "If it's not good news, they don't want anyone to know about it. ... They kill people a couple times a year. They have crashes multiple times a month. They'd like it if nobody ever reported on it — if no one ever said anything."