

Parents' Place

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Obscene and Indecent Broadcasts

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It's against the Law!

It is a violation of federal law to broadcast obscene programming at any time. It is also a violation of federal law to broadcast indecent programming during certain hours. Congress has given the Federal Communications Commission (FCC) the responsibility for administratively enforcing the law that governs these types of broadcasts. The Commission may revoke a station license, impose a monetary forfeiture, withhold or place conditions on the renewal of a broadcast license, or issue a warning, for the broadcast of obscene or indecent material. For more information about FCC indecency enforcement actions, see <http://www.fcc.gov/eb/broadcast/obscind.html>.

Obscene Broadcasts are Prohibited at all Times

Obscene speech is not protected by the First Amendment and cannot be broadcast at any time. To be obscene, material must meet a three-prong test:

- An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and
- The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.

Indecent Broadcast Restrictions

The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured

by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity. Indecent programming may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience.

Consistent with a federal statute and federal court decisions interpreting the indecency statute, the Commission adopted a rule pursuant to which broadcasts -- both on television and radio -- that fit within the indecency definition and that are aired between 6:00 a.m. and 10:00 p.m. are subject to indecency enforcement action.

First Amendment and Obscenity/Indecency

Expressions of views that do not involve a "clear and present danger of serious substantive evil" come under the protection of the Constitution, which guarantees freedom of speech and freedom of the press. The Communications Act prohibits the FCC from censoring broadcast material, in most cases, and from making any regulation that would interfere with freedom of speech. According to an FCC opinion on this subject, "the public interest is best served by permitting free expression of views." This principle ensures that the most diverse and opposing opinions will be expressed, even though some may be highly offensive. The Courts have said that indecent material is protected by the First Amendment to the Constitution and cannot be banned entirely. Nonetheless, the FCC has taken numerous enforcement actions against broadcast stations for violations of the restrictions on broadcast indecency.

Enforcement of Indecent Broadcast Restrictions

Enforcement actions in this area are based on documented complaints received from the public about indecent or obscene broadcasting. The FCC's staff reviews each complaint to determine whether it has sufficient information to suggest that there has been a violation of the obscenity or indecency laws. If it appears that a violation may have occurred, the staff will start an investigation by sending a letter of inquiry to the broadcast station.

If a complaint does not contain information sufficient to determine that a violation may have occurred, the complaint will be dismissed. In such a case, the complainant has the option of re-filing the complaint with

additional information, filing a petition for reconsideration of the staff action, or filing an application for review (appeal) to the full Commission.

If the facts and information contained in the complaint suggest that a violation did not occur, then the complaint will be denied. In that situation, the complainant has the option of filing a petition for reconsideration of the staff action or an appeal to the full Commission.

Context

In making indecency determinations, context is key! The FCC staff must analyze what was actually said during the broadcast, the meaning of what was said, and the context in which it was stated.

How can I file a complaint about obscenity or indecency on the radio or television?

The Commission asks complainants to provide the following information:

1. the date and time of the alleged broadcast;
2. the call sign of the station involved; and
3. information regarding the details of what was actually said (or depicted) during the alleged indecent or obscene broadcast.

With respect to item (3), in making indecency determinations, context is key! The Commission staff must have sufficient information regarding what was actually said during the alleged broadcast, the meaning of what was said and the context in which it was stated. There is flexibility in how a complainant may provide this information. For example, the complainant may provide a significant excerpt of the program describing what was actually said (or depicted) or a full or partial tape or transcript of the material. In whatever form the complainant provides the information, it must be sufficiently detailed such that the Commission can determine the words and language actually used during the broadcast and the context of those words or language.

You may file a written complaint and mail it to:

FCC
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, SW
Washington, D.C. 20554

or

You can file at fccinfo@fcc.gov

or

Toll Free:

1-888-CALL-FCC (1-888-225-5322) voice

1-888-TELL-FCC (1-888-835-5322) tty

For a list of the Commission's recent enforcement actions in this area, please visit the FCC's Enforcement Bureau Web site at www.fcc.gov/eb/broadcast/obscind.html.

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