An Introduction to Indecency

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MY STATION IS IN LOS ANGELES. COMMUNITY STANDARDS ARE DIFFERENT THAN IN BELL BUCKLE, TENNESSEE. DOES THAT PROTECT ME?

No. The standard applied is a national standard based upon what the Commission believes to be indecent.

MY STATION IS COMPLETELY ORIENTED TO AN ADULT AUDIENCE. IF WE GET A COMPLAINT, CAN’T WE SIMPLY SHOW THAT CHILDREN DON’T LISTEN TO OUR STATION?

No. The FCC has taken the position that all broadcast stations must comply with its indecency policy, no matter what their target audience. The only defense that the FCC will consider is a study which shows that there are no children listening to any station in the market at the time the indecent material.

THE ON-AIR STAFF AT MY STATION REALLY TOW THE LINE. WE MAKE SURE THAT NONE OF THE PATTER GOES TOO FAR. SOME OF THE SONGS THAT WE AIR ARE A BIT ON THE RACY SIDE, HOWEVER. THE COMMISSION DOESN’T FINE STATIONS FOR AIRING NATIONALLY-DISTRIBUTED RECORDINGS BY WELL KNOWN ARTISTS, DOES IT?

It sure does. It fined a station $25,000 for airing “Candy Wrapper” (a song in which various candy bar names symbolize sexual activities) and the Monty Python song “Sit on my Face,” which contains the lyrics “Sit on my face and tell me that you love me... life can be fine, if we both sixty-nine.” The Commission fined a Las Vegas station $2,000 for airing a Prince song that repeatedly used the word “fuck.”

MY STATION HAD NO INTENTION OF AIRING ANYTHING INDECENT. SOMEHOW, A CONVERSATION BETWEEN MY DJ AND A CALLER GOT A LITTLE BIT BAWDY. THE COMMISSION WOULDN’T FINE ME FOR THAT, WOULD IT?

Yes, it would. The Commission has repeatedly rejected arguments that the indecency policy interferes with the spontaneity of talk or call-in shows. Although the Commission has stopped short of requiring that all sources of broadcast programs install delay systems, it has strongly “encouraged” networks and broadcast stations to “undertake such technological measures,” and has noted that delay/bleeping systems can now block fleeting words with “ease.”

A STATEMENT MADE BY THE DJ WAS A ONE-TIME THING. HE SAID AN OFFENSIVE WORD ONCE, REALIZED WHAT HE HAD DONE AND MOVED ON TO A TOTALLY DIFFERENT TOPIC. DOESN’T THE COMMISSION RECOGNIZE THAT PEOPLE ARE HUMAN AND MIGHT SLIP UP NOW AND THEN?

That notion now seems quaint. In the past, the Commission dismissed complaints which merely cited the broadcast of isolated words or phrases, and stated that it would “not necessarily” take action against “the isolated use of unplanned expletives during live coverage of news or public affairs programs.” Any tolerance the Commission once had for fleeting or isolated instances ended with the Golden Globe decision. That decision puts everyone on notice that even a single occurrence of a single expletive may be a violation of indecency standards.

A DJ AT MY STATION NEVER ACTUALLY USED ANY “DIRTY” WORDS, BUT HE DID A HILARIOUS SKIT BASED ON INNUENDO. THE COMMISSION CAN’T GET US FOR THAT, CAN IT?

It sure can. Material may be indecent even if it does not contain graphic descriptions of sexual activity. An indirect allusion may be deemed offensive “if it is understandable and clearly capable of a specific sexual or excretory meaning which, in context, is inescapable.” WIOD (AM), Miami was fined $10,000 for airing material such as “Butch Beer,” a satiric commercial which, in the Commission’s view, contained an “unambiguous .... lesbian theme.” A station’s humorous or ironic intent is not a defense. In fact, the Commission has emphasized that the broadcaster’s intent is irrelevant. The only issue is whether the material is or is not indecent.

WE BROADCAST A DISCUSSION ABOUT THE USES OF CONDOMS. SOME OF THE LANGUAGE IS PRETTY GRAPHIC. DOESN’T THE COMMISSION RECOGNIZE THAT A STATION SHOULD AIR PROGRAMMING THAT IN OTHER CONTEXTS COULD BE CONSIDERED INDECENT?

The Commission’s definition of indecent programming explicitly recognizes that context is important. Material contained in political advertisements, news and public affairs programs has been found not to be offensive because of “context.” For example, the Commission denied a complaint against a political ad in which a mayoral candidate opposed the incumbent’s proposal to buy a clock for the City Hall with the rallying cry, “clocksuckers.” It rejected a complaint against a segment of “All Things Considered” featuring a wiretapped conversation with reputed gangster John Gotti, in which he repeatedly used variations of the word “fuck.” It also denied a complaint against the telecast of a high school sex education class. But context is not an easily defined concept, nor a sure-fire defense. The Commission fined a station $4,000 for a program in which two DJs read from and commented on a Playboy interview with Jessica Hahn. In that ruling, it rejected arguments that the DJ’s remarks were essentially news commentary and warned that “while the newsworthy nature of broadcast material and its presentation in a serious, newsworthy manner would be relevant contextual considerations in an indecency determination, they are not, in themselves, dispositive factors.” The Commission reached a similar conclusion in fining station KRON-TV, San Francisco, $27,500 for an interview with performers in a stage production of “Puppetry of the Penis.” During the interview, included in the morning news program, one of the performers exposed his penis.

I DOUBT THAT ANYBODY WOULD TUNE IN TO A DISCUSSION OF SAFE SEX JUST TO GET THEIR KICKS. I THOUGHT THAT THE COMMISSION WAS ONLY INTERESTED IN THE PANDERING SKITS THAT SOME OF THE DRIVE-TIME DJS ENGAGE IN.

Not true. Material may be indecent even if it is not pandering or titillating in nature. Songs such as “Penis Envy,” “Makin’ Bacon,” and “Erotic City,” were held to be indecent because they contained lewd sexual references, even though those references may not have been titillating. In one instance, the Commission found that a licensee had aired indecent programming when it broadcast excerpts from a critically acclaimed play about a person dying of AIDS.