

Obscene, Indecent and Profane Broadcasts

FCC Consumer Facts

It's Against the Law

It is a violation of federal law to air **obscene** programming at any time. It is also a violation of federal law to air **indecent** programming or **profane** language during certain hours. Congress has given the Federal Communications Commission (FCC) the responsibility for administratively enforcing these laws. The FCC may revoke a station license, impose a monetary forfeiture or issue a warning if a station airs obscene, indecent or profane material.

Obscene Broadcasts Are Prohibited at All Times

Obscene material is not protected by the First Amendment to the Constitution and cannot be broadcast at any time. The Supreme Court has established that, to be obscene, material must meet a three-pronged 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 standards for the broadcast medium, sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory material that does not rise to the level of obscenity.

Indecent Broadcast Restrictions (cont'd.)

The courts have held that indecent material is protected by the First Amendment and cannot be banned entirely. It 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 indecency statute and federal court decisions interpreting the statute, the Commission adopted a rule that 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 prohibited and subject to indecency enforcement action.

Profane Broadcast Restrictions

The FCC has defined profanity as "including language so grossly offensive to members of the public who actually hear it as to amount to a nuisance."

Like indecency, profane speech is prohibited on broadcast radio and television between the hours of 6 a.m. and 10 p.m.

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Enforcement Procedures and Filing Complaints

Enforcement actions in this area are based on documented complaints received from the public about obscene, indecent or profane material. FCC staff will review each complaint to determine whether it contains sufficient information to suggest that there has been a violation of the obscenity, indecency or profanity laws. If it appears that a violation may have occurred, the staff will start an investigation, which may include a letter of inquiry to the broadcast station.

If the description of the material contained in the complaint is not sufficient to determine whether a violation of the statute or FCC rules regarding obscene, indecent and profane material may have occurred, FCC staff will send the complainant a dismissal letter explaining the deficiencies in the complaint and how to have it reinstated. In such a case, the complainant has the option of re-filing the complaint with additional information, filing either a petition for reconsideration, or, if the decision is a staff action, an application for review (appeal) to the full Commission.

If the facts and information contained in the complaint suggest that a violation of the statute or FCC rules regarding obscenity, indecency and profanity did not occur, FCC staff will send the complainant a letter denying the complaint, or the FCC may deny the complaint by public order. In either situation, the complainant has the option of filing either a petition for reconsideration or, if the decision is a staff action, an application for review (appeal) to the full Commission.

If the FCC determines that the complained-of material was obscene, indecent and/or profane, it may issue a Notice of Apparent Liability (NAL), which is a preliminary finding that the law or the FCC's rules have been

Enforcement Procedures and Filing Complaints (cont'd.)

violated. Subsequently, this preliminary finding may be confirmed, reduced or rescinded when the FCC issues a Forfeiture Order.

Context

In making obscenity, indecency and profanity determinations, context is key.

The FCC staff must analyze what was actually aired, the meaning of what was aired and the context in which it was aired. Accordingly, the FCC asks complainants to provide the following information:

- Information regarding the details of what was actually said or depicted during the broadcast.

The complainant may choose the format for providing the information, but it must be sufficiently detailed so that the FCC can determine the words or language used, or the images or scenes depicted during the broadcast and the context of those words, language, images or scenes. Subject matter alone is not sufficient to determine whether material is obscene, indecent or profane. For example, stating only that the objectionable programming "discussed sex" or had a "disgusting discussion of sex" is not sufficient. Moreover, the FCC must know the context when analyzing whether specific, isolated words or images are obscene, indecent or profane. The FCC does not require complainants to provide tapes or transcripts in support of their complaints. Consequently, failure to provide a tape or transcript of a broadcast, in and of itself, will not lead to automatic dismissal or denial of a complaint. Nonetheless, a tape or transcript is helpful in processing a complaint and, if available, should be provided.

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Context (cont'd.)

- The date and time of the broadcast.

Under federal law, if the FCC assesses a monetary forfeiture against a broadcast station for violation of a rule, it must specify the date the violation occurred. Accordingly, it is important that complainants provide the date the material in question was broadcast. Indecent or profane speech that is broadcast between the hours of 10 p.m. and 6 a.m. is not actionable. Consequently, the FCC must know the time of day that the material was broadcast.

- The call sign, channel or frequency of the station involved.

To take enforcement action for the airing of prohibited material, the FCC must be able to identify the station that aired the material. By providing the call sign, channel or frequency of the station, you will help us to quickly and efficiently process your complaint. The name of the program, DJ, personality, song or film; network; and city and state where you heard or saw the program are also helpful.

Any documentation you provide to the FCC about your complaint becomes part of the FCC's records and may not be returned.

How to File a Complaint

There is no charge for filing a complaint with the FCC. You can file your complaint using an online complaint form found at www.fcc.gov/complaints. You can also file a complaint by calling 1-888-CALL-FCC (1-888-225-5322) voice, 1-888-TELL-FCC (1-888-835-5322) TTY; faxing 1-866-418-0232; or writing to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th St., SW
Washington, DC 20554.

How to File a Complaint (cont'd.)

The best way to provide all the information the FCC needs to process your complaint is to complete fully the online complaint form. When you open the online complaint form, you will be asked a series of questions that will take you to the particular section you need to complete.

If you are submitting a video tape, DVD, CD or other type of media with your complaint, please send it to the following address to avoid mail processing damage.

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
9300 East Hampton Drive
Capitol Heights, MD 20743.

For More Information

For more information regarding obscene, indecent, or profane broadcasts, visit the FCC's Enforcement Bureau website at www.fcc.gov/eb/oip/. For a list of the Commission's recent enforcement actions in this area, visit www.fcc.gov/eb/oip/Actions.html. Finally, for information about other telecommunications issues, visit the FCC's Consumer & Governmental Affairs Bureau website at www.fcc.gov/consumer-governmental-affairs-bureau, or contact the FCC using the information provided for filing a complaint.



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