



Kids Cases Consolidated in 6th Circuit

By John Eggerton -- Broadcasting & Cable, 11/17/2005 10:13:00 AM

The D.C. Appeals Court has decided to transfer Viacom and Disney's challenges to the FCC's children's television rules to the Sixth Circuit in Cincinnati, according to Media Access Project's Andy Schwartzman.

Schwartzman is co-counsel for the Children Now coalition and the United Church of Christ, which filed their own challenge to the rules in the Sixth Circuit saying they were not tough enough.

Although Disney or Viacom are free to ask for the case to be moved back to Washington, the decision established initial jurisdiction and means that, presumptively, the various cases will be heard in the Sixth Circuit, said Schwartzman.

Disney and Viacom challenged the new rules, issued last fall as a roadmap for DTV kids rules, as unconstitutional, unworkable, and a threat to the economics of producing children's programming. They sought review from the deregulatory-minded D. C. circuit.

By contrast, the United Church of Christ had earlier taken the rules to court because they did not go far enough, including the lack of a total ban on interactive advertising and issues with the preemptions of kids programming that the rules allow.

Children's TV activists had expressed concerns that the networks would follow through on threats to go to court and try to strike down all the rules. The church sought review in the Sixth Circuit, whose jurisdiction includes Ohio, where the church has its headquarters.

Schwartzman says he was pleased with the decision, calling the D.C. challenges "a needless and wasteful diversion of attention."

ABC Spokeswoman Julie Hoover responded: "The decision by the D.C. court transferring the case to the Sixth Circuit has nothing to do with the merits of our challenge to these harmful and unnecessary new rules. We are confident that whichever court considers the case on the merits will rule in our favor."

The kids rules, adopted in September 2004, were meant to establish the framework for children's programming obligations in the digital world, including how many hours per week of such programming would be carried on primary and digital multicast channels, limits on Web links featured in programming, and limits on those promos designated as non-educational.

Some of the rules apply to cable as well as broadcast--specifically those related to ad limits--and some are being applied to analog as well as digital broadcasts.

Saying that the rules are complex, need clarification, were a surprise, and suffer legal flaws, Viacom and the parents of NBC and ABC asked the commission to

delay implementation of the rules until 90 days after it had ruled on their various petitions to reconsider them.

Disney went further, asking the D.C. Court to force the commission to rule on various challenges to the rules before they are to take effect Jan. 1, 2006, or at least to stay enforcement until it did rule on the challenges.

The commission, in its response to the court, asked it to deny the Disney petition, saying it had only had less than seven months to review the complicated arguments, "far short of the unjustifiable delay" the court has held might warrant mandamus relief."

Plus, it said, the rules themselves are narrowly tailored to further the "well established interest in promoting and protecting the well-being of children."

It will now be up to the Sixth Circuit to decide whether the FCC will have to rule on the remaining rule challenges--Viacom and ABC withdrew theirs to go the court route--before it implements the rules Jan. 1.

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