

Product Review

Reference Room

Doug Lung on RF

Focus on Editing

ATSC Update

Inside Audio

Inside Broadband

Inside Production

Let There Be Lighting

Media Server Technology

Tuning In

Audio By Design

Digital TV

Count On IT

Net Soup

News Technology

Production Manager

Audio Notes

Digital Journal

Technology Corner

The Big Picture

The Masked Engineer

TVT News

Industry Jobs

Advertising Information

Subscribe to TVT

Site Map

News:

04.12.06

Dirty Words Cost

FCC levels sweeping indecency fines

by Deborah D. McAdams

WASHINGTON: Actors playing soldiers can swear, but bluesmen in a documentary cannot, or at least not without eliciting a fine from the FCC. Last month, the commission issued a \$15,000 Notice of Apparent Liability to PBS affiliate KCSM in San Mateo for airing "The Blues: Godfathers and Sons," a profanity-laced documentary about blues musicians. Similar vulgarities were allowed in the film, "Saving Private Ryan."

"For somebody trying to program a radio or television station, or trying to advise a programmer, the world is much less certain today," said Andrew Schwartzman, president and CEO of the Media Access Project in Washington. "The FCC purported to issue some decisions that would clarify these obligations. In fact, what the FCC put out is fraught with contradictions."

FCC Chairman Kevin Martin said the discrepancy regarding the language hinged on "an assessment of how integral it was to the show."

In "Ryan," the FCC determined that "deleting offensive words would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers."

The same was not true of "The Blues."

"While we recognize here that the documentary had an educational purpose, we believe that purpose could have been fulfilled and all viewpoints expressed without the repeated broadcast of expletives," the NAL stated.

The expletives in question are specific--the "F-word" and the "S-word," in FCC parlance.

To be deemed indecent, material must "describe or depict sexual or excretory organs or activities," according to the FCC, and "the broadcast must be patently offensive as measured by contemporary community standards for the broadcast medium."

Whether or not something is "patently offensive" depends on how explicit the verboten description or depiction; how long it goes on, and whether it appears to pander, titillate, or just plain shock. To be actionable, indecent material has to air between 6 a.m. and 10 p.m.--the so-called "safe harbor" when children are most likely to be watching TV.

ACHTUNG BABY

The F-word in "The Blues" was used as a sort of sobriquet in some instances and as a modifier in others. But in March 2004, the FCC determined that any use of the F-word described a sexual activity with its "Golden Globe Awards" decision. The commission originally dismissed the complaint over Bono's use of the F-word during the awards, but the decision was later reversed.

The final Golden Globe ruling was used as precedent for "The Blues," and for "The Pursuit of D.B. Cooper." Both programs were part of a \$4.5 million package of fines issued last month by the FCC.

A previously proposed fine of \$550,000 against CBS for the 2004 Super Bowl flashdance was unanimously upheld. The total represents individual fines of \$27,500 for each of the 20 CBS owned-and-operated stations. Affiliates got a pass because they couldn't possibly have anticipated Janet Jackson exposing her breast during the halftime show, but Jonathan Adelstein disagreed.

Among the four FCC commissioners who voted on the ruling, only Adelstein dissented, in part because he thought all the affiliates should have been fined; in the case of several other NALs, only those stations directly targeted by complaints were fined.

"I cannot find anywhere in the law that Congress told us to apply indecency regulations only to those stations against which a complaint was specifically lodged," Adelstein wrote in his comments. He went on to say that fining individual stations contradicted the FCC's \$1.2 million NAL two years ago against Fox stations for an episode of "Married By America."

"The commission simply inquired who aired the indecent broadcast and fined all of those stations that did so," he said.

The commission took a similar approach to an episode of the CBS crime drama, "Without a Trace," which depicted a teen sex orgy. The 111 CBS affiliates and O&Os in the Central and Mountain Time Zones that ran the show during safe harbor were each fined \$32,500. At least three stations contested the NAL because they were erroneously assumed to be in the offending time zones.

("Without a Trace" was more costly than the individual Super Bowl fines because the maximum allowable fines were raised after the Super Bowl aired.)

Another \$355,000 in fines were proposed for six other programs that drew complaints at specific stations. An episode of "The Surreal Life 2" depicting a porn star pool party drew a \$27,500 NAL for the Washington, D.C. WB affiliate. A racy sex scene in the film "Con El Coraz-n En La Mano" drew a proposed \$32,500 fine for KWHY, NBC's Telemundo station in Los Angeles.

WJAN, a station in Miami owned by Sherjan Broadcasting Co., received a \$32,500 NAL for an episode of the "Fernando Hidalgo Show" in which a woman shook her mostly naked breasts at the studio camera. A third Spanish-language program, "Video Musicales," aired on WSJU in San Juan, Puerto Rico, racked up a total of \$220,000 in proposed fines for 14 broadcasts of dirty music videos.

"The Pursuit of D.B. Cooper," about the legendary skyjacker, put KTVI in St. Louis down for a \$27,500 NAL based mostly on the use of several variations of a vulgarity for excrement.

Four shows were found "indecent and/or profane," but received no fines because the programs were aired before the Golden Globe decision. Several more complaints against episodes of various sitcoms, dramas, cartoons, news programs, a Vikings-Packers game and a couple of commercials were dismissed.

A court challenge over the fines is expected. CBS said it would "pursue all remedies to affirm our legal rights" NBC also reportedly said it would fight the fine drawn by its Telemundo station.

IT HITS THE FAN

Schwartzman said the legal arguments will more than likely involve the inconsistencies in the application of indecency laws rather than a challenge to the scarcity doctrine. The scarcity doctrine holds that broadcast content regulation is constitutional because public airwaves are scarce.

"The principle of judicial restraint is what we're talking about here," he said. "The courts do not decide constitutional question unless they have to."

First Amendment expert Floyd Abrams disagreed. "I would't be surprised if the ruling did

lead to another go at both the 'scarcity' and the 'pervasiveness' doctrines. Whatever the Supreme Court's slim majorities in the American Mini Theatres and Pacifica cases intended, it surely wasn't this."

In its response to the Super Bowl fine, CBS hinted at a scarcity battle, saying the FCC's "indecenty framework was unconstitutionally vague and overbroad, both on its face and as applied to the halftime show."

Several First Amendment attorneys, including Abrams, said the FCC's determinations about foul language were a bit shaky. In the D.B. Cooper movie, for example, the commission found the S-word equivalent of "blarney" to be indecent. In this instance as well, Commissioner Adelstein went with the opposition.

"The perilous course taken today is evident in the approach to the acclaimed Martin Scorsese documentary, 'The Blues: Godfathers and Sons.' It is clear from a common sense viewing of the program that coarse language is a part of the culture of the individuals being portrayed. To accurately reflect their viewpoint and emotions about blues music requires airing of certain material that, if prohibited, would undercut the ability of the filmmaker to convey the reality of the subject of the documentary. This contextual reasoning is consistent with our decisions in 'Saving Private Ryan' and 'Schindler's List.'"

Sponsored links:

- ▶ [Leitch Technology designs products for the professional television industry that streamline workflow of content production, processing, transmission, management, storage, test and measurement. Click here!](#)
- ▶ [RF Central - Total RF solutions manufacturer \(TV broadcast\): Full-Service 2GHz Relocation, COFDM, HDTV ENG components, complete links. Visit our NAB2006 Booth #C820! Click here!](#)

[BACK](#) | [home](#) | [industry resources](#) | [TV Technology](#) | [about IMAS](#) | [contact us](#)