



FCC REGULATION OF BROADCAST OBSCENITY, INDECENCY, AND PROFANITY

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The government restricts the broadcast of obscene, indecent and profane material to protect children from exposure to patently offensive descriptions of sexual or excretory activities or organs and to enable parents to decide what material their children will see or hear. The FCC takes these objectives very seriously and enforces its content regulations strictly. Emboldened by an overwhelming amount of support from Congress, the FCC will likely police broadcasts of obscenity, indecency, and profanity even more aggressively than it has in recent months.

In June 2006, Congress adopted, and the President is expected to sign into law, the Broadcast Decency Enforcement Act of 2005, which increased the fines for incidents of obscene, indecent, or profane material tenfold. As a result, instead of \$32,500, the FCC may now fine broadcasters \$325,000 for *each* utterance of profanity or display of indecent or obscene material in a particular broadcast, up to a total of \$3,000,000. The FCC also retains its authority to revoke a station's license, issue a warning for violations of its rules, or (although it has not done so to date) sanction an individual who appears on air and broadcasts obscene, indecent, or profane material..

In March 2006, the FCC issued several decisions resolving more than 300,000 complaints about the broadcast of indecent, profane, and/or obscene television programming. These decisions address complaints targeting nearly 50 television programs broadcast between February 2002 and March 2005.

Three important features distinguish the March 2006 decisions from prior FCC decisions in this area. First, the decisions mark the first occasions in which the FCC analyzed advertisements under its indecency standards. Second, the FCC found, for the first time, a PBS presentation (a documentary) to be indecent – as well as profane. Third, in almost all cases, the FCC proposed the highest possible statutory fines on broadcasters who allegedly aired indecent and profane material, rather than merely the traditional base fines.

On April 14 and 15, 2006, ABC, NBC, CBS and Fox, along with their network affiliate associations and Hearst-Argyle Television, filed notices of appeal of the FCC's March 2006 decisions in various federal courts. These appeals will test the constitutionality of the FCC's regulation of indecent and profane content. Other appeals before the FCC and courts are also pending or soon will be filed.

This memorandum reviews the FCC's decisions to provide guidance for addressing broadcasts that may be impermissible under the indecency and profanity standards. Although the principles to be drawn from the FCC's conclusions are far from clear, there are a number of lessons to be learned from the Commission's previous enforcement decisions. Determinations, however, remain difficult, and experienced communications counsel should be consulted about specific situations and circumstances.

Obscenity

Because the Supreme Court has determined that obscene speech is not entitled to First Amendment protection, radio and television stations may not broadcast obscene material at any time. Speech is determined to be obscene by applying a three-part test:

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

This test is designed to “isolate ‘hard core’ pornography from expression protected by the First Amendment.” Unfortunately, determining whether particular material is obscene or “merely” indecent can be extremely difficult, because these determinations are necessarily made on an individual, case-by-case basis and involve a number of subjective factors. In addition, determinations of obscenity must be based on local community standards, so group owners may find variations from market to market. Given these many variables, stations should avoid broadcasting any material that arguably could be deemed obscene.

Indecency

Because indecent speech is protected by the First Amendment, the government must identify a compelling interest when imposing regulations on speech and must use the least restrictive means necessary to further that interest. The Supreme Court has stated that the Commission’s authority to regulate indecent material is justified by the “uniquely pervasive presence [of broadcasts] in the lives of all Americans” and because “broadcasting is uniquely accessible to children, even those too young to read.”

The FCC has shown that there is a compelling governmental interest in protecting children from indecent material in broadcasts between the hours of 6 a.m. and 10 p.m. Federal courts have upheld the Commission’s authority to restrict broadcasts of indecent material at times when there is a reasonable risk that children will be in the audience. Consequently, broadcasts between the hours of 10 p.m. and 6 a.m. local time benefit from a “safe harbor” that limits liability for showing indecent programming during this time period. This rule places stations outside of the East Coast at the disadvantage because many of the shows that are broadcast during the 10 o’clock hour on the East Coast, and thus able to take advantage of the safe harbor, are broadcast during earlier slots in other time zones.

The standard for indecency is less strict than that for obscenity. Specifically, indecent matter:

- (1) Must describe or depict sexual or excretory activities or organs, *and*
- (2) Must be *patently offensive* as measured by contemporary community standards for the broadcast medium

To be considered indecent, material must satisfy both prongs of the analysis. Material that may “describe or depict sexual or excretory activities or organs” may not be “patently offensive.” For instance, a segment from *America’s Funniest Home Videos* where a naked baby falls on a pacifier that becomes wedged between his buttocks would have satisfied the first prong of the test because the scene depicted excretory activities or organs. The segment, however, did not satisfy the second prong of the analysis because it was not patently offensive as measured by contemporary community standards. This scene, therefore, was not found indecent because both prongs of the test were not satisfied.

Prong One—Describe or Depict Sexual or Excretory Activities or Organs: Under the first prong of the FCC’s indecency analysis, the Commission determines whether the complained-of material falls within the scope of the definition of indecency. That means the material must describe or depict sexual or excretory activities or organs. A number of different types of material have satisfied this first prong (although some of these examples have not satisfied the second prong, as discussed in the next section).

- Super Bowl XXXVIII halftime show exposure of Janet Jackson’s breast, which was bare except for jewelry covering her nipple
- Partially exposed breasts on a Spanish-language variety show
- Full-frontal nudity during a TV morning show broadcast
- News video of a man pulled from flood waters that included an image of his unclad lower body, including his penis
- Group sex scene showed sexual activity, even though the participants were covered by clothes/underwear
- Episode that included 20 porn stars at a pool party with pixelated nudity, touching of sexual organs, and extensive dialog about sex
- Party-goers licking food off strippers bodies in a sexually suggestive manner and a man on all fours in his underwear as two strippers spanked him, despite the nudity being electronically obscured
- Rape of a woman in a public restroom
- A scene showing a male and female character in bed, kissing, caressing, and rubbing against each other, but not showing sexual organs
- Music video showing lap dances and simulated oral sex
- Video clip at the 2005 *Academy Awards* that superimposed the image of a woman eating a sausage in front of a semi-clothed man alluded to oral sex
- *America’s Funnies Home Videos* clip of a naked baby who fell onto a pacifier that became wedged between his buttocks
- Spanish-language music video lyrics about the singer’s state of arousal
- Spanish-language music video about a young boy masturbating
- Bono’s “this is really, really, fucking brilliant” response to winning an award at the 2003 *Golden Globe Awards*
- “Fuck Cops!” graffiti on a public bus in a reality show episode
- A PBS documentary’s use of the words “shit” and “fuck”
- Morning show interview where a reality show contestant described another as a “bullshitter”
- Use of the words “penis,” “sucked,” and “ass”
- Use of the words “dick,” “dickhead,” or “sucked” as insults

- Discussion on *The Oprah Winfrey Show* of teen sex terminology such as “tossed salad,” “rainbow parties,” and “high five”
- Political campaign commercial that mentioned rape and sodomy of children in criticizing a rival’s competency

A broadcast will not be found to meet the definition of indecent where the material does not refer to sexual or excretory organs or activity. This often is the case for words that, while potentially offensive, do not reference sexual acts. Examples of material that did not satisfy the first prong are as follows:

- Violent, but not sexual, programming
- The words “hell,” “bitch,” “slutty,” and “damn”
- Use of “Jesus,” “Jesus Christ,” and “God damn” and its variations
- Scene where a man pulled a gun from his pants and shot his wife in a therapist’s office

Prong Two—Patently Offensive: The second prong of the FCC’s indecency standard is whether the complained-of material is “patently offensive.” For indecency, the FCC uses a national (rather than local) standard for judging whether questionable material is consistent with the “contemporary community standards” of the average broadcast viewer, and not the standards of an individual complainant. In evaluating whether material is explicit, the FCC will translate foreign language programming and will consider local and regional connotations of foreign terms. Even in these sorts of cases, the FCC still will apply a national standard for determining indecency (as opposed to a standard based on a particular ethnic group).

The FCC generally looks at the following three factors when determining whether material is patently offensive when taken in its full context:

- A. The explicitness or graphic nature of the description;
- B. Whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; and
- C. Whether the material panders to, titillates, or shocks the audience.

The FCC balances these factors on a case-by-case basis to determine if the broadcast material is patently offensive. Material is measured by contemporary community standards for the broadcast medium. In order to be patently offensive, the material *need not satisfy all of the factors*. Instead, one or two of the factors viewed in context may weigh heavily in favor of finding the material patently offensive and therefore indecent. For example, although Janet Jackson revealed her breast for only a split second during the Super Bowl halftime show (therefore not satisfying the second factor), the FCC nonetheless concluded that factors one and three weighed in favor of finding the material indecent.

In determining whether material is patently offensive, “the *full context* in which the material appeared is critically important.” An educational or informational program may well be precluded from a finding of indecency because of the manner and purpose of the presentation. Although the explicitness of a program may weigh in favor of an indecency finding, the purpose of the program may distinguish it from material that panders to, titillates, or shocks the audience. For example, an *Oprah Winfrey Show* segment discussing teen sex terminology was found to be explicit or graphic in

nature. Because of informational and educational context of the show, however, the FCC concluded that the segment did not pander, titillate, or shock the audience.

Determining whether and to what extent these factors are present in particular material is a subjective exercise that depends on the context in which a station presents the material, especially when the material involves innuendo or double entendre. Recent decisions indicate that even mere references to sexual or excretory matters, where the sexual meaning is unmistakable, may be sufficient to bring material within the Commission's definition of indecency.

In addition, the presence of one of these factors does not necessarily mean that the FCC will determine that particular material is indecent. Instead, the FCC will look at all the factors together in context. **As a result, there are no clear-cut, easily applied standards by which to judge potentially indecent material in the abstract.**

(1) ***Explicitness or Graphic Nature.*** FCC decisions suggest that explicit reference to the following subjects should be avoided:

- Masturbation
- Ejaculation
- Breast size
- Penis size
- Sexual intercourse
- Nudity
- Urination
- Oral-genital contact
- Erections
- Sodomy
- Bestiality
- Menstruation
- Testicles
- Sexual touching and acts, even while clothed, where it is clear that the scene is highly sexually charged
- Pixilated sexual organs, where engaging in sexual activity or discussing sexual organs
- Teen sex terminology, including "tossed salad," "rainbow parties," and "high five"

If sexual or excretory organs are mentioned on-air, it is best to avoid descriptions that involve touching of such organs. Although pixilation is an important technique for removing explicit material from programming, the pixilation must not be done in a way such that a child could easily discern the sexual nature of the material. If the sexual nature is unquestionable, the material is graphic despite a lack of nudity.

In addition, innuendo or double entendre can support an indecency finding where sexual or excretory meaning is inescapable due to context. Innuendo or double entendre in song lyrics can be especially challenging. In instance in which the sexual connotation, while not explicit, is nonetheless readily apparent to a listener, the FCC will find the lyrics to be actionable. Radio stations, therefore, have been found to have violated the indecency standards by broadcasting song lyrics containing coded sexual references.

In a recent television case involving certain non-explicit scenes, Telemundo argued that a "scene where the woman disappears underwater and the man smiles contains sexual innuendo and is not patently offensive under any community standard." In this case, the FCC considered the scene to be indecent because "[b]efore the woman disappears underwater, she is shown licking the man's chest and then winking as she says that she is looking for her contact lens underwater. That, coupled

with the man's reaction as she goes underwater, renders the material clearly sexual in nature." Moreover, descriptions that are too difficult to hear or understand may be considered explicit if at least some of the material is recognizable or understandable. The FCC is especially likely to find this sort of material indecent if it involves children.

The FCC considers "fuck" and "shit," and all their variations, to have an inherently sexual connotation and therefore fall within the indecency definition. As these words invoke coarse sexual images, use of these words is patently offensive and will likely result in a fine from the FCC. The Commission, however, has analyzed use of these words in their context under the third factor and have determined that use is allowed when the material is neither gratuitous nor used in any way intended or used to pander, titillate, or shock. The following "seven dirty words" singled out under former FCC indecency policies, and all their variations, should be avoided:

- Fuck
- Shit
- Piss
- Mother fucker
- Cocksucker
- Cunt
- Tit

Inclusion of these words in programming should serve as a "red flag" that further review is necessary to ensure that the broadcast does not involve indecent material.

On the other hand, the FCC has found use of the following explicit language to be permissible:

- Use of "dick," "dickhead," or "sucked" as insults
- Single, momentary use of the words "penis," "testicle," "vaginal," "ass," "bastard," "orgasm," "breast," "nipples," "can," and "crap"
- Use of "ass," "pissed-off," and "up yours" as slang

The following situations, however, were not (according to the FCC) explicit or graphic enough to satisfy the first element of the "patently offensive" criteria:

- Scenes where partially nude characters lying in bed together (with bedclothes, household objects, or pixilation covering their sexual and excretory organs) were not depicted as engaging in sexual activity
- Scenes where characters were kissing and straddling one another while fully clothed
- Vague references or innuendo to sexual organs or activity
- Mere suggestion that people were having sex
- Partial nudity of a cartoon image
- News video that showed a semi-clothed man's penis as he was rescued from flood waters
- Video clip at the *Academy Awards* that superimposed the image of a woman eating a sausage in front of a semi-clothed man alluded to oral sex

(2) Dwells on or Repeats at Length. Repetition or focus on sexual or excretory material makes it more likely that the FCC will consider material offensive. Thus, it is more likely that fleeting or isolated references to sexual material will not be found indecent. On the other hand, the FCC may find even fleeting references indecent where material is explicit or is presented for its

shock value. For example, the FCC has found an explicit joke about sexual activities with children to be indecent, despite the fact that the joke was isolated. Likewise, the FCC has found that fleeting uses of expletives in the *Golden Globes* and PBS documentary cases to be indecent.

The FCC has found the following segments to satisfy the second factors:

- Repeated simulated sex scenes
- Six minute segment prominently featuring strippers attempting to lure participants into sexual activities
- Twenty views of pixilated nudity and repeated sexual discussions within a 10 minute segment
- Fifteen minute segment that focuses on a talk show guest's naked breasts
- Two scenes where a man is shown in bed with showgirls, but there is not sexual organs or activity shown
- Discussion for an entire segment on the *Oprah Winfrey Show* about teen sex terminology
- Series of segments with ongoing unmistakable sexual references
- Numerous and repeated use of the words "fuck" or "shit"
- Single use of the word "fuck" or "shit"

The FCC has found the following examples to be fleeting references to sexual organs or activities:

- Short time that Janet Jackson's breast was exposed
- Lifting up a woman's clothed breasts to improve her appearance before a date
- Female doctor's off-camera exam of a male's scrotum that was not repeated
- Off-camera scene where a woman grabbed a man's genitals to help him hit a high note while he sang the national anthem
- Single reference to rape and sodomy in a political advertisement
- Brief glimpse of a man's penis in a rescue effort
- Single clip of a naked baby who fell onto a pacifier that became wedged between his buttocks
- Single image of the graffiti "Fuck Cops!" that appears on a bus
- Single momentary use of the words "penis," "ass," "orgasm," "breast," "nipples," "can," "crap," "dick," "dickhead," "sucked," "pissed off"

(3) Presented in a Pandering or Titillating Manner or for Shock Value. Under the third factor of the "patently offensive" inquiry, the FCC considers the purpose and manner of a presentation. The style, tone, or presentation of programming may aggravate the patent offensiveness of the material, thus transforming merely offensive material into indecent material. For example, while a clinical discussion of sexual activity generally is acceptable, mentions of the same activity would not be acceptable if included as part of an extended pandering or titillating discussion—even if the station intends the discussions to be humorous.

The use of explicit material cannot go beyond what the story line could reasonably require for character development. Scenes that involve children or minors engaged in sexual activities are considered by the FCC to be more shocking than sexual material involving adults.

The FCC has found the following to have been presented in a pandering or titillating manner or for shock value:

- Exposure of Janet Jackson's breast following a program of sexually-suggestive lyrics and choreography
- Prolonged appearance of strippers attempting to sexually arouse party goers
- Teenage characters having group sex in a *Without a Trace* episode
- A music video's persistent focus on female buttocks and "I will give it to you through the ass" lyrics
- Segment where a woman gives a serious lecture on the art of pleasuring women, when coupled with a display of different phallic symbols and sexual devices, and the woman is carried off at the end of the segment by two male models
- Use of "shit" and "fuck" where children were expected to be in the audience

In certain cases, the purpose and manner of a presentation may prevent the FCC from finding even explicit or graphic material to be indecent. For example, the FCC ruled that full-frontal nudity in the film "Schindler's List" was not indecent because of the manner in which the nudity was presented. Also, dialogue with explicit language, taken in its context, may be found to be neither gratuitous nor in any way intended to pander, titillate, or shock. For instance, a broadcast of *Saving Private Ryan* that used "fuck," "hell," "ass," "asshole," "crap," "son of a bitch," "bastard," "shit," "prick," and "pee" repeatedly was not intended to pander, titillate, or shock because of the film's objective to convey the horrors of the Normandy Invasion. The FCC has found the following additional examples not to have been presented in a pandering or titillating manner or for shock value:

- Use of certain explicit words recorded on a wiretap and aired on National Public Radio where the language was an integral part of a bona-fide news story about organized crime
- Informational and educational context of the *Oprah Winfrey Show* discussion of teen sex terminology
- Reference to rape and sodomy of children in a political advertisement
- Segment on talk shows on "how to make romantic relations with your mate better" and "unlocking the great mysteries of sex"

In these cases, the FCC has found that some uses of explicit material are not gratuitous and that the deletion of the nudity or vulgar language may materially alter the effectiveness of the broadcast.

Warnings that accompany a broadcast may influence the FCC's determination of purpose or manner. For instance, when ABC broadcast "Saving Private Ryan" in November 2004, it ran repeated advisories that the material in the movie was not suitable for children. Because parents were warned that the film contained material that unsuitable for all ages, parents had the necessary information to decide whether or not their children should be watching the program. Presence of warning that material might not be suitable for children was not enough, however, in a "Puppetry of the Penis" segment on KRON-TV's morning news program, because, the FCC found, the overall point of the segment was to pander, titillate, or shock.

Technological advances have made it possible for broadcasters to block offensive material by pixelating explicit material or “bleeping” out uses of explicit words. The FCC assumes that broadcasters have the ability to delay broadcast for a sufficient time period to assure that all offending uses will be blocked.

Profanity

In 2004, the FCC found that Bono’s utterance of the word “fucking” at the *Golden Globe Awards* was profane. The unanimous decision by the Commissioners reversed an earlier decision by the FCC’s Enforcement Bureau that the language used by Bono was not indecent, as it was used as an “intensifier” that did not describe sexual or excretory organs or activities, and it was fleeting and isolated. This was the first time the FCC had ever applied the separate prohibition against profanity under U.S. law to material that was not blasphemous. To date nothing has been found profane that was not also found indecent. Nonetheless, a separate profanity restriction potentially broadens the scope of concern, as it might be possible for certain words to be profane even if they are not indecent.

According to the *Golden Globe* and PBS documentary decisions, the FCC believes that the words “fuck” and “shit” are the most vulgar, graphic and explicit descriptions of sexual activity in the English language. Profanity has been defined as:

- Denoting certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance

Profane language, for FCC purposes, is limited to words that are sexual or excretory in nature or are derived from such terms. The Commission has recognized that some words, such as racial or religious epithets, are considered offensive to most people. The FCC’s profanity analysis, however, does not reach these words because of the First Amendment implications.

Use of profane language such as “fuck” and “shit” are not *per se* violations of indecency law. These words are presumptively profane, and the FCC may not find them not to be profane in certain contexts. Use of presumptively profane language must be accompanied by a demonstrable need to use the words as an essential part of an artistic or educational piece.

The *Golden Globe* decision has ushered in a number of complaints against the use of profanity in the broadcast media. Broadcasters should tread carefully with regard to the inadvertent use of certain words and images on air. The FCC believes that delay and “bleep” technological advances are readily available and easily used, thereby lessening the possibility that a broadcaster could argue that use of the word was inadvertent or a mistake.

FCC decisions have found the F-word and the S-word to be actionable in awards shows presentations and in a PBS documentary on blues singers. In contrast, FCC decisions have concluded that the following expressions were not profane:

- “Hell,” “damn,” “penis,” “pissed,” “testicle,” vaginal,” “ass,” “bastard,” “bitch,” “orgasm,” “breast,” “nipples,” “can,” and “crap”

- Barely visible written “Fuck Cops!” graffiti in the background of a reality show episode
- Use of “fuck,” “hell,” “ass,” “asshole,” “crap,” “son of a bitch,” “bastard,” “shit,” “prick,” and “pee” repeatedly through a broadcast of *Saving Private Ryan*

Enforcement

The FCC aggressively enforces its rules and policies against obscenity and indecency. The broadcast of obscene material is a federal crime and may be prosecuted by the Department of Justice.

Under U.S. law, any person who willfully or repeatedly failed to comply with the indecency provisions may be liable for a forfeiture penalty. A willful violation is “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate the law.” The FCC has determined that the conscious and deliberate broadcast of any indecent episode suffices to trigger liability. A repeated action is done more than once or lasts more than a day.

Additionally, although the FCC has traditionally viewed all the utterances in a program to be a single utterance, the Commission has recently stated that it does not have to do so. Instead, the FCC maintains that different segments or conversations within the same program can be considered separate violations. Thus, the FCC can impose extremely large fines on a broadcaster for a single program that contains a number of violations.

The FCC’s rules provide a “base” or typical forfeiture of \$7,000 for a single broadcast of obscene or indecent material, which may be adjusted upward or downward based on various criteria. Specifically, the criteria that the FCC may consider include “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” As mentioned previously, recent legislation increased the per-violation penalty to \$325,000. As a result, the FCC may fine broadcasters \$325,000 for *each* violation of the FCC’s indecency and profanity statutes, up to a maximum of \$3,000,000.

Prior to 2004, the FCC had applied the base forfeiture amount in indecency decisions. Since January 2004, the FCC has nearly uniformly levied the maximum penalties for indecency violations available at the time of the violation.

The FCC recently has declined to apply the maximum forfeiture amount in some cases where the station was licensee’s only station and where there had not been prior indecency findings. The FCC also has declined to assess the maximum forfeiture penalty against a public broadcasting station who had a good-faith belief that that the program served a legitimate educational purpose. The FCC fined Fox \$7,000 per licensee for its broadcast of sexually explicit scenes from *Married by America*; however, the FCC failed to explain why it was not assessing the then-maximum forfeiture.

Affiliate Liability for Network Programming. Broadcast stations are presumed to be aware of the FCC’s content restrictions as well as the nature of the broadcasts, even if the material originated with a network or syndicator. In previous cases, the FCC fined only stations owned and operated by the network broadcasting the material. In the Janet Jackson case, the FCC determined

that “the licensee of each station could not have reasonably anticipated that the CBS Network production of a prestigious event such as the Super Bowl would contain material that included the on-camera exposure of Ms. Jackson’s breast,” especially considering the fact that it was a live broadcast. The FCC levied the then-maximum statutory fine against the stations owned and operated by CBS’s parent company Viacom.

In its most recent round of decisions, the FCC applied forfeiture penalties only to stations broadcasting material that were subject to complaints from their viewing area. The FCC believes that stations who broadcast prerecorded programs from a network or syndicator have the option of editing or declining to air a broadcast that could be indecent. Therefore, the FCC may sanction affiliates that broadcast indecent material where a complaint has been received. Stations that air indecent programming but are not mentioned in a specific complaint may not be subject to forfeiture for the violation under the FCC’s latest approach.

Liability for song lyrics and third party statements. Keep in mind that a licensee is *strictly* liable for what it broadcasts and is responsible for indecency material that result from a wayward announcer or guest. The FCC has held stations liable for explicit or graphic descriptions uttered by people who are not employees of the station, including singers of songs played on radio stations. Failure to edit statements by guests can also create liability for a station, especially when a guest is known to make explicitly sexual references. Furthermore, explicit statements made by callers can create liability if a station promotes the airing of explicit statements. Moreover, remedial action taken after the airing of indecent material (such as firing the involved employees) will not reduce the applicable fine.

Song lyrics are subject to the same indecency prohibition as other types of broadcast material. Indeed, the FCC has imposed fines for the one-time airing of songs with lyrics that the agency determined to be indecent. Thus, radio stations should take sufficient care to make sure that they play only edited versions of songs that are otherwise indecent.

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Given the difficulty of determinations concerning obscenity and indecency, stations committed to full compliance with the law and the FCC’s requirements should avoid broadcasting material that raises any question about compliance with these standards. In particular, a prudent station should avoid broadcasting sensational, pandering, or titillating references to or descriptions of sexual or excretory organs or activity, as well as concentrated and repeated use of vulgar, offensive, and shocking language.

The foregoing discussion necessarily is general in nature. We welcome specific questions about the application of these requirements to a particular program or station.