

# OBSCENE OR INDECENT PROGRAMMING ON TV

## I. Obscene programming

OBSCENE PROGRAMMING is prohibited on ALL television channels (broadcast, cable & satellite) twenty-four hours a day. **[To be obscene (shorthand definition), programming must depict “hardcore” sexual conduct in a patently offensive manner and, when taken as a whole, must appeal to the prurient interest and lack serious artistic, literary, political and scientific value.]**

### A. Cable & satellite TV

- a. Obscene programming is found primarily on pay TV pornography channels. Some cable TV leased and public access channels have also aired obscene programming.
- b. In the 1980s, most cable systems did not offer pay TV porn channels. Because obscenity laws are not enforced, most cable systems now provided pay TV porn.
- c. Hardcore pornographers often make two versions of their films. One version depicts sexual conduct in graphic detail (*nothing* left to the imagination). The so-called “cable version” is somewhat less explicit. In the 1980s, graphic versions could usually be obtained only through the mail and in “adult businesses.” Because obscenity laws are not enforced, graphic versions now air on many if not most pay TV porn channels.

### B. What’s to be done?

- a. Ask your local cable franchise authority to insist on a clause in the franchise agreement to prohibit carriage of obscene programming [47 USC 544(d)(1)].
- b. Ask federal and state prosecutors to investigate your cable operator for possible violations of federal [18 USC 1468] and state obscenity laws.
- c. Exert moral persuasion (includes shaming) and economic pressure (by dropping the service) on cable/satellite TV operators (and their parent companies) that distribute hardcore pornography. Form a committee in your church or other community group and educate others about the harms that pornography causes. Collaborate with others.

## II. Indecent programming

INDECENT PROGRAMMING is regulated only on broadcast TV (18 U.S.C. 1464) and, to some extent, on cable TV access channels. **[To be “indecent, broadcast programming must, in context, depict or describe, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs.]**

### A. The Supreme Court set forth two rationales for regulating indecency in broadcasting

- a. “First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans...[I]ndecent material presented over the airwaves confronts the citizen...in the privacy of the home...Because the broadcast audience is constantly tuning in and out, prior warnings cannot completely protect the listener or viewer....”
- b. “Second, broadcasting is uniquely accessible to children, even those too young to read.” [*FCC v. Pacifica Foundation*, 438 U.S. 726, at 748-749 (1978)]

### B. Problems with FCC enforcement (in general)

- a. The FCC enforces the broadcast indecency law only between 6 am and 10 pm.
- b. The FCC does not now have regulatory authority over indecency on basic cable.
- c. At present, there are two federal court cases challenging the FCC’s enforcement of the broadcast indecency law and the law itself. Until one or both of the two court cases are finally decided, the FCC may be hesitant to enforce the law in some circumstances.

- C. Making complaints to the FCC about broadcast indecency
  - a. *When possible, tape the program or advertisement.* Parents Television Council [(800) TV-COUNTS; [www.parentstv.org](http://www.parentstv.org)] or the American Family Association [(601) 844-5036; [www.afa.org](http://www.afa.org)] may be able to provide a tape or transcript. If you didn't tape the program or ad, write down *in as much detail as possible* what you saw or heard.
  - b. **Your complaint should include** the program name (or product advertised); a tape, transcript or detailed description of the offensive content (vulgarity, sex talk or action); the time of day it aired; and the station's call letters.
  - c. **E-mail your complaint to:** [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov) **Make an online complaint** at the [www.fcc.gov](http://www.fcc.gov) website (click to "Enforcement Bureau" then to "Broadcast of Indecent Material" then to "How to File an Indecency Complaint" then to *FCC Form 475B*)
  - d. **Mail your complaint to:** FCC, Consumer Complaints, 445 12<sup>th</sup> St., SW, Wash., D.C. 20554 *If possible, send a copy of your complaint* (and the response, if any, from the FCC) to Morality in Media, 475 Riverside Drive, New York, NY 10115.
- D. Cable television leased and public access channels
  - a. Cable operators have authority to regulate indecent programming on leased access channels [47 U.S.C. 532(c)(2)].
  - b. Franchising authorities have authority to regulate indecency on public access channels [see *Denver Area Consortium*, 518 U.S. 727 (1996)].

### III. Television sponsors (advertisers)

- A. Advertisers are not bound by the First Amendment and can, therefore, avoid programming that is morally offensive for any reason. The content does not have to be obscene or indecent.
- B. Most mainstream advertisers are responsive to complaints. On occasion, even a single complaint brings results. Boycotts can be effective if enough people participate.
- C. Two organizations that are leading the effort to put pressure on advertisers:
  - a. American Family Association [(601) 844-5036; [www.afa.org](http://www.afa.org)]
  - b. Parents Television Council [(800) TV-COUNTS; [www.parentstv.org](http://www.parentstv.org)]

### IV. "Pressure points" to curb offensive programming

- A. Needed action from government
  - a. U.S. Attorneys must enforce laws against obscene TV programming
  - b. The FCC must enforce the broadcast indecency law
  - c. Congress should extend the prohibition on broadcast indecency to basic cable and extend the indecency ban to 12 midnights (current ban is 6 am to 10 pm).
- B. Needed action from television industry
  - a. Revitalize network standards departments.
  - b. Adopt a *sound* industry-wide programming code and stick to it.
- C. Needed action from television sponsors
  - a. Refuse to sponsor indecent and other irresponsible programming.
  - b. Encourage development of programming suitable for individuals of all ages.
- D. Needed action from television viewers
  - a. Tune in what is good; tune out what is bad; supervise children's TV watching
  - b. When appropriate, make complaints to the FCC, TV sponsors and TV industry.

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