Indecent or not? TV, radio walk fuzzy line

By Paul Davidson, USA TODAY

Radio shock jock Eric “Mancow” Muller hasn’t exactly turned into a choirboy. But the irreverent host has toned down his notoriously risqué morning show on Q101 in Chicago, a program that used to be laced with sexual banter.

"We really have to wag our finger and read (guests) the riot act," Muller, 35, says in his strident, rat-a-tat voice. "If they go into a blue area, they're off."

PBS, meanwhile, cut a scene in the documentary *Emma Goldman* that showed cleavage, as well as a four-letter word used by Vice President Cheney in a film about the 1994 Rwandan genocide.

Sixteen months after the exposure of Janet Jackson’s breast during the Super Bowl touched off a government-led crusade against indecency, broadcasters — from the bawdy to the buttoned-down — say it's still exerting a chilling effect. (*Quick Question: Do you think decency standards need to be tightened on cable television?*)

Many radio stations have dropped or edited songs such as the Rolling Stones' *Bitch.* Some TV networks are covering cleavage and blurring the posteriors of cartoon characters. And even some cable channels, though free from indecency constraints, are reviewing programs more closely to try to stave off regulation. (*Related chart: Largest indecency fines by FCC, 1999-2004*)

Though some broadcasters say the line delineating indecent content has gotten a bit clearer, leading them to consider riskier...
Indecency fines

Fines proposed by the FCC for indecent radio and television programming:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1999</td>
<td>$49,000</td>
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<tr>
<td>2000</td>
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<td>2003</td>
<td>$440,000</td>
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<td>2004</td>
<td>$7.9 million</td>
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Source: Federal Communications Commission

Kevin Martin, the new FCC chairman, is expected to be even tougher on indecency breaches than his predecessor, Michael Powell. But Martin's ability to push his agenda will be shaped largely by the views of the two new appointees who are likely to fill vacancies on the five-member commission this year.

In Congress, a bill the House passed would boost indecency fines more than tenfold, to $500,000 per incident, and subject performers to the same penalties.

"Some want to use the taxpayers' airwaves to cross the lines, and we're just saying, 'No!' " says Rep. Fred Upton, R-Mich., who introduced the bill.

In a statement, NBC argues that the bill "will indiscriminately threaten a wide variety of programming."

Add Muller: "One show can destroy you forever. It's insanity."

Similar legislation has stalled in the Senate amid a debate about whether indecency curbs should be extended from broadcast media to cable and satellite TV services. The bill died last year when House-Senate negotiators failed to agree.

Differing perspectives

One reason consensus is so hard: The indecency debate doesn't divide neatly along political lines. It has united conservative lawmakers such as Upton with liberals such as Rep. Ed Markey, D-Mass. And it has split conservatives such as Brent Bozell, head of the Parents Television Council, from others such as anti-tax crusader Grover Norquist, who opposes government intrusion in personal lives.

The Janet Jackson episode, which occurred during a venerable family TV ritual, fueled a storm in Congress and at the FCC about the coarsening of the airwaves.

Broadcasters are still reeling from the indecency crackdown. Shock jock Howard Stern plans to leave the broadcast airwaves next year for satellite radio, which isn't bound by indecency curbs. The TV networks have added delays to live shows and strengthened their standards-and-practices departments.
Many radio stations have dropped or edited a long list of songs, including Lou Reed's *Walk on the Wild Side* and Steve Miller's *Jet Airliner*. Sixty-six ABC affiliates chose not to air the network's broadcast of *Saving Private Ryan* last Veteran's Day. The reason? The World War II film's profanity.

More recently, Fox felt compelled to blur the bare rear end of a baby in a 4-year-old episode of *Family Guy*. And PBS offered its stations an edited version of *A Company of Soldiers*, a profanity-laced documentary about troops in Iraq.

Some local TV stations are pulling punches, too. WPRI, a Fox affiliate in Providence, plans to use a five-second delay on its broadcast of the July 4th parade this year. Its fear: Tipsy attendees might say something off-color.

Says CBS Executive Vice President Martin Franks: "We could use some clarification of what the rules are."

The networks plan to use three FCC rulings to argue that the agency enforces "vague" indecency standards inconsistently and that the rules are obsolete. NBC is challenging the FCC's rebuke of Bono's use of the F-word during the 2003 Golden Globes. NBC says the FCC previously ruled that a fleeting use of the expletive was OK.

Viacom is appealing a $550,000 fine for the Janet Jackson incident. Fox is challenging a $1.2 million fine for a *Married by America* episode with an underwear-clad man being spanked by two strippers that blurred the nudity. Fox notes what it considers a more blatantly sexual *Will & Grace* episode showing two clothed women simulating sex was exonerated by the FCC.

Broadcasters complain that a 27-year-old Supreme Court ruling that upheld indecency rules, based on the "pervasiveness" of the big TV networks, is now irrelevant in a world of 300-channel cable TV. "The decision as to what people watch in the privacy of their homes ought to be their decision," says NBC General Counsel Richard Cotton.

They argue that new technologies, such as the V-chip, can screen programs "in a less restrictive" way without trampling the First Amendment.

But for months, the FCC has neither responded to the appeals nor imposed the fines, so the networks haven't been able to challenge the rulings in court.

**Responding to complaints**

Meanwhile, the commission, in an apparent effort to set clearer parameters, has turned aside dozens of complaints about such programs as *Arrested Development* and the *Ryan* broadcast. The FCC said the film's expletives were not "gratuitous" or intended to "pander, titillate or shock" because they realistically depicted World War II combat conditions.

PBS programming chief Jacoba Atlas says that decision eased her concerns. "We
were very gratified to see the FCC would look at the context," she says. Now, she adds, PBS likely would release programs such as A Company of Soldiers unedited.

But Fox Senior Vice President Maureen O'Connell complains that the agency's standards seem subjective. "What if the movie is not award-winning and not patriotic?" she asks.

Says Martin: "When the (FCC) enforces indecency rules, context matters."

Proposed legislation, meantime, would extend the government's reach. A bill by Sens. John Rockefeller, D-W.Va., and Kay Bailey Hutchison, R-Texas, which, like the House bill, would boost fines to $500,000, would regulate violence on TV for the first time. And it would order the FCC to consider extending indecency rules to cable channels, which include such saucy offerings as Comedy Central's South Park and FX's The Shield.

Many lawmakers say it makes little sense to treat pay-TV services differently now that they reach 85% of U.S. homes. "There has to be a level playing field," says Sen. Ted Stevens, R-Alaska, chairman of the Senate Commerce Committee. "It's obvious we have to do something."

Broadcasters fear that so long as they face tighter restraints, edgier shows will continue to migrate to cable networks. Still, most of the big TV networks, which also own cable stations such as MTV and USA Network, oppose moves to clamp down on pay TV. The exception: ABC's parent, Walt Disney, whose cable offerings — such as ABC Family, the Disney Channel and ESPN — are less likely to feel the brunt of indecency rules.

On the cable front

Many in Congress fear an extension of indecency rules to cable would face resistance from cable operators, who say such a move would violate their free-speech rights. The Supreme Court has backed that view.

"Cable is a subscription service, and people make a choice to bring it into their homes," says David Cohen, executive vice president of Comcast, the No. 1 cable service.

As a result, some less-restrictive proposals are gaining momentum.

A bill pushed by Sen. Ron Wyden, D-Ore., would require cable companies to offer a child-friendly tier of channels that consumers could choose. It could include Discovery, Nickelodeon, CNN and other channels. "I think this is sort of a middle ground," Wyden says. Cable operators say that deciding which channels should be included would be a subjective, hair-splitting exercise. "Should USA Network be in the family tier?" Cohen says. "When they run a golf tournament, that's appropriate, but on the other hand, it runs (Law & Order: SVU) and Monk, which are borderline."

To stave off legislation, the TV industry is sponsoring campaigns to tell parents how to control what their kids watch (related story, right).

Meanwhile, some cable networks are treading lightly. Court TV is more closely examining ratings of its primetime shows to ensure they're appropriate, says spokeswoman Jennifer Geisser.

Stevens, though, says he still wants the industry to voluntarily add a family tier or devise simpler channel-blocking. Meanwhile, some broadcasters, such as Muller, have come to terms with the more constrained environment. Noting he turned down a $500,000 raise to move to satellite, Muller chides Stern for ditching broadcast radio. "I couldn't sit and talk about free speech and then have people pay for me," he says. "I'm staying and fighting."
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