



NEWS

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STATEMENT OF FCC CHAIRMAN KEVIN MARTIN ON 2ND CIRCUIT COURT OF APPEALS INDECENCY DECISION

Reaction

Today, the Second Circuit Court of Appeals in New York said the use of the words “fuck” and “shit” by Cher and Nicole Richie was not indecent.

I completely disagree with the Court’s ruling and am disappointed for American families. I find it hard to believe that the New York court would tell American families that “shit” and “fuck” are fine to say on broadcast television during the hours when children are most likely to be in the audience.

The court even says the Commission is “divorced from reality.” It is the New York court, not the Commission, that is divorced from reality in concluding that the word “fuck” does not invoke a sexual connotation.

These words were used in prime time, when children were watching. Ironically, the court implies that the existence of blocking technologies is one reason the FCC shouldn’t be so concerned. But even a vigilant parent using current blocking technologies such as the V-Chip couldn’t have avoided this language, because they rely on the program’s rating, and in this case the programs were rated appropriate for family viewing.

If ever there was an appropriate time for Commission action, this was it. If we can’t restrict the use of the words “fuck” and “shit” during prime time, Hollywood will be able to say anything they want, whenever they want.

The Court Decision

As part of its March 15, 2006 Omnibus Indecency Order, the FCC determined that the 2002 and 2003 Billboard Music Awards broadcasts were indecent and profane.

During the 2002 Billboard Music Awards, the entertainer Cher made the following comment:

“I’ve had unbelievable support in my life, and I’ve worked really hard. I’ve had great people to work with. Oh, yeah, you know what? I’ve also had critics for the last 40 years saying that I was on my way out every year. Right. So fuck ‘em. I still have a job and they don’t.”

During the 2003 Billboard Music Awards, Paris Hilton and Nicole Richie took part in the following exchange:

Paris Hilton: “Now, Nicole, remember, this is a live show, watch the bad language.”

Nicole Richie: “Okay, God.”

Paris Hilton: “It feels so good to be standing here tonight.”

Nicole Richie: “Yeah, instead of standing in mud and [audio blocked]. Why do they even call it ‘The Simple Life?’ Have you ever tried to get cow shit out of a Prada purse? It’s not so fucking simple.”

Fundamentally, the Commission acted in accordance with its Congressional mandate to prohibit indecency and profanity on the airwaves, and in keeping with previous court decisions regarding indecency.

In the 1978 *Pacifica* case, the Supreme Court affirmed the Commission’s finding that the broadcast of comedian George Carlin’s monologue about the “seven dirty words you can’t say on TV and radio” was indecent. In the case before the court today, the Commission was restricting only the use of two of those seven words. But as a result of this ruling, the New York court may have prohibited the Commission from enforcing any restrictions on language.

Potential Solution

Today’s decision by the Court increases the importance of Congress considering content-neutral solutions to give parents more tools and consumers generally more control and choice over programming coming into their homes. By allowing them to choose the channels that come into their homes, Congress could deliver real power to American families.

Permitting parents to have more choice in the channels they receive may prove to be the best solution to content concerns. All of the potential versions of a la carte would avoid government regulation of content while enabling consumers, including parents, to receive only the programming they want and believe to be appropriate for their families. Providing consumers more choice would avoid the First Amendment concerns of content regulation, while providing real options for Americans.

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