

Sex vs. the FCC

by **Alan Forrester**

Although America is the most open and rational society in the world, occasionally things happen to remind us that there is still a long way to go. For example, a radio station in Detroit has been fined and may lose its broadcasting license for **talking about sex**:

The Federal Communications Commission proposed fining Infinity's 97.1 WKRK-FM station \$27,500 (17,500 pounds) for the January 9, 2002 "Deminski & Doyle Show" broadcast between 4:30 p.m. and 5:00 p.m., during which the on-air personalities asked listeners to call in to talk about strange sex techniques.

"The station presented graphic descriptions of violent sexual acts against women as entertainment at a time when children likely composed a significant portion of the audience," FCC Commissioner Michael Copps said on Thursday.

The agency warned the broadcast station that additional similar incidents by Infinity could lead to an FCC proceeding to revoke its broadcast licences, a move Copps said should have been initiated immediately.

The FCC said the company, a unit of media conglomerate Viacom, did not deny airing the material but argued that the agency's definition of indecency was unconstitutional.

The FCC defines as indecent speech that depicts or describes sexual organs or activities, and a broadcast must be "patently offensive as measured by contemporary community standards for the broadcast medium."

"The broadcast included explicit and graphic sexual references, including references to anal and oral sex, as well as explicit and graphic references to sexual practices that involve excretory activities," the FCC said.

The on-air cast members did warn children and women not to listen to the segment, but the law bars the airing of indecent material between 6 a.m. and 10p.m.

Revoking broadcasting licences because of the content of a programme, *prima facie*, violates freedom of speech. But the material, they say, is "patently offensive as measured by contemporary community standards for the broadcast medium." What does this even mean? Presumably that some sections of the community found the broadcast offensive. Presumably including the boring prudes of the FCC. Other sections of the community find boring prudery offensive, but unfortunately the boring prude section happens to have some clout and is ramming its agenda down everyone else's throats. Metaphor intended.

Next is the strange definition of "violent" sexual acts. The quote from the FCC about the nature of the acts described on the programme doesn't mention rape or anything else non-consensual. Some of the activities mentioned sound unpleasant and perhaps even unsanitary but the idea that they are *violent* seems to be part of the distressing tendency in our culture to introduce wilful fantasy into a political debate as if it were uncontroversial fact.

But should descriptions of even non-consensual sex be banned? Non-consensual sex, like other crime, is a staple of great literature. A description of a rape on a crime programme may lead to more victims of a rapist coming forward to help the police catch him. The very definition of 'non-consensual' changes over time (for instance, until quite recently, husbands could legally rape wives because the wives were deemed to have consented through their marriage vows), and such changes depend on public discussion of the issues. And so on.

Lastly there is the all-purpose argument about taking away the licence because children might listen to the show. So what? If they are not interested they'll change the channel or ignore it and if they are interested then they'll learn something. The relevant part of the show came with a warning. It did not advocate crime. Children are people. Case closed.

In general, sex gets a very bad rap in our society, which is a shame because it's fun. It would be good to see more open, positive discussion of sex, and less of the kind of the twisted, guilt-ridden pseudo-righteousness exhibited by the FCC and its ilk.

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