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THE Hollywood REPORTER

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Butts, Balls and the C-Word: What You Can and Can't Say on TV

A bare behind costs \$1.4 million and the F- and S- words are off-limits (but only sometimes): welcome to the confusing world of FCC regulations.

8:00 AM PDT 7/19/2012 by Matthew Heller

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Illustration: Rami Niemi

This story first appeared in the July 27 issue of [The Hollywood Reporter](#) (<http://www.hollywoodreporter.com>) magazine.

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George Carlin would have had a field day with the U.S. Supreme Court's recent decision on television indecency. The late comic's famous "Seven Filthy Words" monologue prompted the Court's 1978 ruling that regulation of indecent speech on publicly owned TV and radio airwaves was OK under the First Amendment.

PHOTOS: PTC vs. TV: 10 Television Show Controversies

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But despite a media landscape radically reshaped by cable TV and the Internet, the court on June 21 refused to alter its 34-year precedent, finding only that the FCC failed to give adequate notice to broadcasters of rules tweaks that resulted in sanctions

Parents Television Council Slams Howard Stern, Urges Advertisers to Drop 'America's Got Talent' »

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ABC's 'Apt 23' Draws Parents Television Council's Ire »

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for airing **Charlotte Ross'** naked rear on ABC's *NYPD Blue* in 2003 and swear words by **Cher** and **Nicole Richie** during awards shows on Fox in 2002 and 2003.

So now the agency, which polices naughty content only after someone objects and issues fines at its discretion, faces a backlog of about 1.4 million complaints that have accumulated during the nine years the Fox case was pending. And because the Supreme Court and FCC have refused to articulate a clear indecency framework, attorneys say Hollywood still doesn't have a clear idea of what broadcasters can and can't show before 10 p.m. (the rules don't apply to

cable or late-night). "It's going to be difficult, and it's going to be confusing," says **John Stephens**, an L.A. media lawyer. Still, using precedent and the court's recent ruling, *THR* can break down where the lines are being drawn.

Profanity

The FCC has declared "f--" and "shit" presumptively indecent, even if uttered as "fleeting expletives" rather than, as Carlin chose to do, repeatedly. "F-- inherently has a sexual connotation and thus falls within the scope of our indecency definition," said the commission in a 2006 order.

STORY: ABC's 'Apt 23' Draws Parents Television Council's Ire

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Broadcasters, though, say the FCC has not been a model of consistency with regard to language. In fining a San Mateo, Calif., public TV station for airing profanities during a broadcast of **Martin Scorsese's** PBS documentary series *The Blues*, the commission said the two words were "likely to shock the viewer and disturb the peace and quiet of the home." But it allowed nearly all of Carlin's dirty words to be used during unedited broadcasts of the Oscar-winning war epic *Saving Private Ryan*. Deleting offensive words "would have altered the nature of the artistic work and diminished the power, realism and immediacy of the film experience for viewers," said the commission.

Sex Talk

Fortunately for CBS' *2 Broke Girls*, references to anatomical terms such as "penis," "vagina" and "testicles" are not indecent. The FCC also denied a complaint over the use of "dick" and "dickhead" in an episode of *NYPD Blue*, finding they "do not have the same level of offensiveness as the 'F-word' or 'S-word.' "

But FCC decisions suggest explicit explorations of sexual anatomy are not permissible. In 2004, it fined Clear Channel over *Bubba the Love Sponge's* radio show, on which the host discussed the large size of his "balls" as a singer and chorus sang about them.

STORY: FCC Fines Comcast for Violation of NBCUniversal Deal Condition

<http://www.hollywoodreporter.com/comcast-fcc-fine-broadband-nbcuniversal-13353>

Sex Acts

Howard Stern racked up about \$2.5 million in fines from 1990 to 2004. Suggesting anal sex with a castmember's wife during a 2003 broadcast landed the shock jock in trouble. "[I]t is clear that the material was designed to shock and pander," concluded the FCC in fining the program.

Other sexual behaviors likewise have met with commission disapproval, including sex in public places, a teen orgy depicted on CBS' *Without a Trace*, masturbation and kissing a bare breast. Fox was fined \$1.18 million for a 2003 episode of its reality series *Married by America* that featured strippers and castmembers engaging in sexual conduct.

The FCC, though, approved a sexually suggestive scene on NBC's *Will & Grace* in which Will adjusts Grace's breasts in her dress. And it ruled in a 2006 "omnibus" order that an explicit discussion of teen-sex practices on *The Oprah Winfrey Show* was "designed to inform

viewers about an important topic."

Nudity

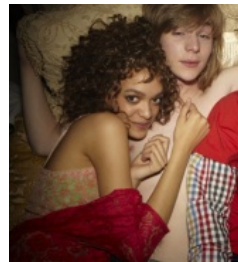
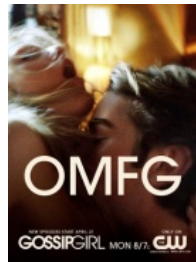
Frontal or rear nudity (male or female) still is prohibited on broadcast TV, as the flap over **Janet Jackson's** 2004 Super Bowl halftime-show "wardrobe malfunction" evidenced. The *NYPD Blue* depiction of Ross' naked rear "is titillating and shocking," said the FCC in imposing a \$1.4 million fine against ABC.

[STORY: Howard Stern Responds to Parents Television Council's 'America's Got Talent' Boycott: 'Tune In and See What I Do'](http://www.hollywoodreporter.com/live-feed/howard-stern-americas-got-talent-parents-television-council-322998) (<http://www.hollywoodreporter.com/live-feed/howard-stern-americas-got-talent-parents-television-council-322998>)

Violence

Oddly, violent material falls outside the FCC's indecency regulation. So the line on what's too graphic for a *CSI* murder isn't clear. But, notes **Dennis Wharton**, spokesman for the National Association of Broadcasters, "Policing mechanisms are in place by networks and broadcasters." *The Sopranos* reruns on A&E, for example, were edited to remove graphic violence. And Tim Winter, president of the Parents Television Council, says his group pressured CBS to drop reruns of Showtime's *Dexter* during the 2007-08 writers strike. In the end, he says, "The way to success is talking to advertisers."

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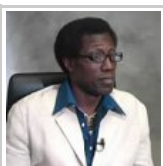
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- 'Dark Knight Rises' Shooting Rattles Hollywood** (http://www.huffingtonpost.com/2012/07/20/dark-knight-rises-shooting-aurora-hollywood_n_1690011.html)
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