

House Approves Stiffer Indecency Fines

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WASHINGTON -- Chafing over racy broadcasts like Janet Jackson's infamous "wardrobe malfunction" at the 2004 Super Bowl, the House overwhelmingly passed a bill Wednesday authorizing unprecedented fines for indecency.

Rejecting criticism the penalties will stifle free speech and homogenize radio and TV broadcasts, bill supporters said stiff fines were needed to give deep-pocketed broadcasters more incentive to clean up their programs and to help assure parents that their children won't be exposed to inappropriate material.

The measure, which passed 389-38, boosts the maximum fine from \$32,500 to \$500,000 for a company and from \$11,000 to \$500,000 for an individual entertainer.

The bill enjoyed broad bipartisan support from lawmakers upset about incidents like Jackson's breast-baring "wardrobe malfunction" at the 2004 Super Bowl halftime show.

"This is a penalty that makes broadcasters sit up and take notice," said Rep. Joe Barton, R-Texas, chairman of the Energy and Commerce Committee that sent the bill to the full House. "This legislation makes great strides in making it safe for families to come back into their living room."

The White House, in a statement, said it strongly supports the legislation that "will make broadcast television and radio more suitable for family viewing."

The Senate is considering a similar bill. Any differences in the two will have to be worked out before it goes to President Bush for a signature. Last year the two chambers were unable to reach a compromise.

Opponents said they were concerned stiffer fines by the Federal Communications Commission

would lead to more self-censorship by broadcasters and entertainers unclear about the definition of "indecent."

They cited the example of several ABC affiliates that last year did not air the World War II drama "Saving Private Ryan" because of worries that violence and profanity would lead to fines, even though the movie already had aired on network TV.

"We would put Big Brother in charge of deciding what is art and what is free speech," said Rep. Jan **Schakowsky**, D-Ill., who opposed the bill. "We would see self- and actual-censorship rise to new and undesirable heights."

Parents -- not the government -- are the best judges of what their children should see and hear, said Rep. Henry Waxman, D-Calif.

"No one knows when one person's creative work will become another person's definition of a violation of indecency," Waxman said.

The FCC has stepped up enforcement of the indecency statute, perhaps most notably with a \$550,000 fine against CBS for Jackson's "wardrobe malfunction." Radio personality Howard Stern also has been a frequent target.

Fines for indecent programming exceeded \$7.7 million last year. Four years ago, FCC fines totaled just \$48,000.

The FCC has wide latitude to impose fines. It can fine an individual company, groups of stations owned by a company and individual entertainers. In the case of CBS, it imposed a fine of \$27,500 against each of 20 stations owned by the network.

All five members of the FCC -- three Republicans and two Democrats -- favor greatly increasing the fines.

The House bill allows the FCC to fine an individual entertainer, such as a disc jockey, without first issuing a warning, which is the case now. The FCC has never before issued such a fine.

"By significantly increasing fines, they are going to be at a level where they can no longer be ignored," said Rep. Fred Upton, R-Mich., who introduced the bill. "Parents can rest easy."

Under FCC rules and federal law, radio stations and over-the-air television channels cannot air obscene material at any time, and cannot air indecent material between 6 a.m. and 10 p.m. The FCC defines obscene material as describing sexual conduct "in a patently offensive way" and lacking "serious literary, artistic, political or scientific value." Indecent material is not as offensive but still contains references to sex or excretions.

The House bill gives affiliates protection from fines in instances in which they carry network programming that later is deemed indecent. It also requires the FCC to hold a license revocation hearing after a third offense by a broadcaster, and to respond to an indecency

complaint from a viewer or listener within six months.

The Senate bill calls for raising the maximum fine on broadcasters to \$325,000, with a cap of \$3 million for one day. The House bill does not include a cap.

The bill is [H.R. 310](#) .