

House Panel Signs Off on Decency Bill

March 04, 2004

By Brooks Boliek - Hollywood Reporter

WASHINGTON -- Broadcasters and performers could face a \$500,000 fine for smut broadcast on the airwaves under legislation a powerful House committee approved Wednesday with only one dissenting vote.

Under the Broadcast Decency Enforcement Act approved by the House Commerce Committee, the maximum indecency fine would rise from \$27,500 to \$500,000 for each incident aired on radio and TV. The bill puts the same responsibility on individuals who utter profane remarks or make indecent gestures as they would face the same fines as the corporations that hold the broadcast licenses. Language in the bill sets no maximum fine, meaning a network would be liable for every indecent action broadcast on all of its stations, and an individual performer could face a fine for every curse word, image or gesture deemed to be indecent or obscene.

Both Republican and Democratic supporters said the legislation is necessary to clean up the airwaves, which have become havens for raunchy fare like the Super Bowl halftime show.

"We're not going to accept that kind of indecent material on the airwaves," said Rep. Joe Barton, R-Texas, who took over as chairman of the House Commerce Committee this week. "This bill is a great bipartisan statement that enough is enough."

Rep. Janice D. Schakowsky, D-Ill., was the lone voice opposing the legislation. She said the provision that allows individuals to face these extreme fines is unconstitutional. An amendment she pushed to strike that section was defeated on a voice vote.

"Increasing the fines levied against individuals will do more harm to the First Amendment than it will to clean up the airwaves," she said. "Raising the fines against individuals will raise another form of censorship."

But Barton disagreed. There already exists a provision that allows the FCC to fine an individual

\$10,000 for violating a commission rule, but it has never been used in an indecency case.

"There is not a First Amendment, freedom of speech issue in this bill," he said. "If we're going to raise the fines on an institution, we should give the FCC discretion to fine performers."

That view is an incorrect one, said Tom Carpenter, AFTRA national director of news and broadcasting.

"To some extent, going after performers based on content raises First Amendment concerns," he said. "If a program is produced and runs afoul of the indecency laws, then it's up to the licensee to decide when to air it."

While Schakowsky voted against the bill, she was not the only lawmaker concerned about the codicil directed at the individual. Both Rep. Ed Markey, D-Mass., and Rep. John Shadegg, R-Ariz., also expressed concern but voted for the bill, saying they hoped there were enough protections built in. They also pointed out the "severability" clause built into the legislation that would allow the provision to be stricken in the courts.

In addition to the fine-increase language, the bill also includes provisions that would require regulators to consider revoking the licenses of those with three indecency offenses, require quicker action on indecency complaints and protect affiliates from fines for live shows or shows they have not been able to review.

While the legislation is expected to hit the House floor next week with a vote Tuesday in the Senate Commerce Committee, some industry opposition is growing.

The National Association of Broadcasters is now opposing the bill, saying voluntary industry initiatives are a better way to attack the problem.

"NAB does not support the bill as written, but we hear the call of legislators and are committed to taking voluntary action to address this issue," NAB president and CEO Edward Fritts said.

Other industry executives don't think there is any way to derail the bill.

"It's become such a freight train, I don't think there's any way to stop it," one industry source said. "But as long as it has adequate safeguards in it, we could live with it."

Those safeguards include guarantees that any indecency case would go to the federal district court for trial, that the violation count would reset to zero once a license was renewed and that a violation at one station wouldn't count against a whole group, an industry official said.

"Any appeal of an FCC indecency decision would have to go to district court for trial and start from scratch," the executive said. "I don't think the country wants an administrative agency deciding what is and what is not indecent. That should be a job for the courts."

Senate Commerce Committee industry sources said it is unlikely the legislation will be watered

down and that the committee would probably approve a bill as close to the House panel's in order to avoid having it sent to a conference committee.

Sen. Sam Brownback, R-Kan., the author of the Senate version of the bill, is showing no signs of backing off. Brownback, a long-term critic of the entertainment industry, challenged Viacom president and chief operating officer Mel Karmazin to hew to its zero-tolerance indecency policy. In a letter mailed earlier this week to Karmazin, he complained that "The Howard Stern Show" that aired Feb. 24 appeared to violate that new policy. The show prompted rival radio group Clear Channel Communications to yank "Stern" from the group's six stations carrying the show.

"In light of (Viacom-owned) Infinity's new indecency policy and the supposed use of a substantial time delay, I do not understand how such a broadcast could be aired using an Infinity broadcast license," Brownback wrote. "I would appreciate a response from you detailing Infinity's new indecency policy. In addition, please explain how, in light of the 'Stern' broadcast, that policy failed to prevent such patently indecent material from being broadcast over the public's airwaves."

Viacom officials could not be reached for comment late Wednesday.