

NPR POLICY ON USE OF POTENTIALLY OFFENSIVE LANGUAGE

As a responsible broadcaster, NPR has always set a high bar on use of language that may be offensive to our audience. Use of such language on the air has been strictly limited to situations where it is absolutely integral to the meaning and spirit of the story being told. For NPR produced news programs, those instances have been few and far between and, in all cases, required the approval of a Managing Editor or the Vice President of News as well as consultation with the General Counsel. In the case of other programming, including entertainment programs and programs NPR acquires and distributes, NPR's Vice President for Programming along with the General Counsel's office assess the propriety of including particular language or other material in the final program.

We follow these practices out of respect for the listener. But it is also the case that the stakes have been raised by regulators who have taken a much more aggressive line on what they regard as indecent or profane content since the infamous Janet Jackson Super Bowl incident. The FCC has asserted its authority to assess fines for each instance of indecency or profanity within a broadcast, rather than one fine for the entire broadcast. It has imposed a fine for each station in a network that broadcast syndicated programming containing indecent or profane matter. These developments are significant because Congress has increased the size of the fines the FCC may levy, and the FCC has also sought to fine even "fleeting" or inadvertent utterances of indecent or profane language. Finally, advocacy groups, with the aid of the Internet, have facilitated the filing of indecency and profanity complaints with the FCC.

The purpose of this document is to provide guidance on these language issues given the new environment in which we and other broadcasters are operating.

There are two considerations in these decisions – the editorial and the legal.

First, the legal, starting with indecency and profanity:

Because our stations are subject to the rules of the FCC, we must also abide by that agency's rules against broadcasting of "indecent" or "profane" language in programming we provide for them to air. The FCC prohibits station licensees from broadcasting indecent or profane language between 6:00 a.m. and 10:00 p.m. The relevant terms are defined as follows:

Indecency – In general, the FCC has said that language is indecent if it depicts or describes sexual or excretory organs or activities in terms that are offensive as measured by contemporary community standards for the broadcast medium.

Profanity – Language is profane if it "denote[s] certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance." Profanity includes sexual or excretory terms even when used in non-sexual or -excretory contexts. Profanity does not include religious or racial epithets, such as the word "nigger."

Application of these rules is complicated. The FCC has in some instances observed that language that might normally be considered indecent or profane when standing alone may be acceptable depending on the context in which it is used. On the other hand, it has also held that certain words are indecent and profane except in rare circumstances. Specifically, the FCC has now identified the words "fuck," "shit," and any variation of those words as almost always indecent and profane. In recent decisions, for instance, the FCC specifically cited the words "motherfucker," "motherfuckin'," "fucker," "bullshit," "horseshit," "owl shit," and "holy shit" as both indecent and profane, even though they were used in contexts that previously may have justified their use. It also does not matter whether the use was inadvertent, fleeting, or relatively unobtrusive, such as in the case of a song lyric.

It is NPR's policy to use its best efforts to assure that our programming complies with the FCC rules on indecency and profanity. This policy extends to non-news programming and program elements, including music. The presumption should be that language that depicts or describes sexual or excretory activities or organs is indecent or profane unless (1) there are specific news or other programmatic reasons for including the language, such as a news actuality involving a public figure, or (2) the programming must air after 10:00 p.m. and before 6:00 a.m.

There is no room for guessing. If program material depicts or describes sexual or excretory activities or organs or other potentially objectionable language, the producer must seek guidance as to its suitability. If the matter is urgent, please contact the News Duty Manager (202-513-4444) who is available 24/7. He/she will consult with the Office of the General Counsel (OGC) and/or escalate as appropriate. In all other non-urgent instances, please work through the normal editorial process, which for these matters, should involve consultation with OGC. While all decisions on content are ultimately reserved to the editorial decision making process in the News and Programming Divisions, it would be the extremely rare case that NPR journalists would not abide by the advice of NPR legal counsel as to the use of language that may be regarded as indecent or profane.

In the case of programs under the ultimate direction of the Vice President for Programming, including all acquired programs, producers shall consult NPR's Vice President for Programming and/or his designee (enzum@npr.org and/or ismith@npr.org) as soon as possible, but in any event before the program is delivered to NPR for distribution to stations. The Vice President for Programming will confer with NPR's General Counsel so that NPR can assess the suitability of the program. In the course of this assessment, NPR will confer as warranted with the producer responsible for the program.

Obscenity

The FCC also prohibits the broadcasting of obscenity. Obscenity is not the same as indecency. It refers to material that rises to a higher, more offensive echelon, and is

not protected by the First Amendment. In general, content is obscene if (1) the average person applying his or her community's standards would find that as a whole the content appeals to the prurient interest, (2) the content depicts in a patently offensive way sexual conduct specifically defined by applicable law, and (3) the content as a whole lacks serious literary, artistic, political or scientific value. Material that is obscene may not be broadcast at any time of the day, and accordingly NPR also does not include obscene material in its programming.

Editorial considerations

There are rare instances where we will permit use of profane or indecent languages for news or programmatic reasons. Such an instance is when the use of such language is so vital to the essence of the story that to excise or bleep it would be to distort it or blunt its power and meaning. The discussion below addresses examples of potentially profane or indecent program matter in news and information programming and in entertainment and music programming.

News and Information Programming

One example of a story where we permitted profanity was in this passage of an Eric Westervelt piece during the war in Iraq when the Army battalion with which he was traveling came under fire:

WESTERVELT: The message implores the hard-core fighters across the bridge to come out with their hands up. Ten minutes later, the US forces get the Iraqi answer to the surrender plea in the form of rocket-propelled grenades and a heavy barrage of mortar fire. This is the sound of an RPG whizzing overhead before the tape goes blank as this reporter dives behind a Humvee.

SOUNDBITE OF ROCKET-PROPELLED GRENADE FIRING

WESTERVELT: There is confusion as these ground troops scramble to take cover near the cement wall.

Unidentified Man #3: Where's the rest of my guys?

Unidentified Man #4: ...Get the fuck under the truck or get against the building here.

Unidentified Man #5: That was the RPG.

The use of profanity here is editorially justifiable. It probably would also stand the legal test although its use increases the risk of someone filing a complaint at the FCC that triggers a potentially costly investigation.

The piece was preceded by a language advisory in the intro read by the host, in addition to the DACS notices in advance to stations. NPR policy is to do both in all such instances for both legal and editorial reasons

The following is an instance where the show producer was told to bleep a profane word in a feature about the obsession of some teens with clothes:

STEVE: White folk ain't putting their kids in Giobacchi(ph) or Jean-Paul Gaultier. They ain't puttin' that in them. They're putting money in their bank accounts, you know, so when they graduate, they can get and afford that stuff. But, meanwhile, we want to dress our kids in all this Avirex, you know--You know what I'm saying?--all of that at two, when they're going to outgrow this **(bleeped)**. And we ain't got no college, we ain't got nothing to save, got no IRAs, we got nothing set up for us.

In this case, airing the actual profanity was not crucial to the meaning or spirit of the story, or the truth of the scene. The word was bleeped and listeners got the idea.

Entertainment and Music Programming

A few FCC indecency cases provide examples of programming that involved sexual matter but that, in context, were deemed not to be indecent by the FCC. One such case involved the song "Your Revolution" by Sarah Jones, reprinted below.

"Your Revolution"

Your revolution will not happen between these thighs
Your revolution will not happen between these thighs
Your revolution will not happen between these thighs
Will not happen between these thighs
Will not happen between these thighs
The real revolution ain't about bootie size
The Versaces you buys
Or the Lexus you drives
And though we've lost Biggie Smalls
Maybe your notorious revolution
Will never allow you to lace no lyrical douche in my bush
Your revolution will not be you killing me softly with fujees

Your revolution ain't gonna knock me up without no ring
And produce little future M.C.'s
Because that revolution will not happen between these thighs
Your revolution will not find me in the back seat of a jeep
With L.L. hard as hell, you know
Doing it and doing and doing it well, you know
Doing it and doing it and doing it well

4 Your revolution will not be you smacking it up, flipping it or rubbing it down
Nor will it take you downtown, or humping around
Because that revolution will not happen between these thighs
Your revolution will not have me singing
Ain't no nigger like the one I got
Your revolution will not be you sending me for no drip drip V.D. shot
Your revolution will not involve me or feeling your nature rise
Or having you fantasize
Because that revolution will not happen between these thighs
No no not between these thighs
Uh-uh
My Jamaican brother
Your revolution will not make you feel bombastic, and really fantastic
And have you groping in the dark for that rubber wrapped in plastic
Uh-uh
You will not be touching your lips to my triple dip of French vanilla, butter pecan, chocolate deluxe
Or having Akinyele's dream, um hum

A six foot blow job machine, um hum
You wanna subjugate your Queen, uh-huh
Think I'm gonna put it in my mouth just because you
Made a few bucks,
Please brother please
Your revolution will not be me tossing my weave
And making me believe I'm some caviar eating ghetto
Mafia clown
Or me giving up my behind
Just so I can get signed
And maybe have somebody else write my rhymes
I'm Sarah Jones
Not Foxy Brown
You know I'm Sarah Jones
Not Foxy Brown
Your revolution makes me wonder
Where could we go
If we could drop the empty pursuit of props and the ego
We'd revolt back to our roots

Use a little common sense on a quest to make love
De la soul, no pretense, but
Your revolution will not be you flexing your little sex
and status
To express what you feel
Your revolution will not happen between these thighs
Will not happen between these thighs
Will not be you shaking
And me, [sigh] faking between these thighs
Because the real revolution
That's right, I said the real revolution
You know, I'm talking about the revolution
When it comes,
It's gonna be real
It's gonna be real
It's gonna be real
When it finally comes
It's gonna be real

After first finding that the song lyrics were indecent, the FCC Enforcement Bureau ruled on reconsideration that

While this is a very close case, we now conclude that the broadcast was not indecent because, on balance and in context, the sexual descriptions in the song are not sufficiently graphic to warrant sanction. For example, the most graphic phrase ("six foot blow job machine") was not repeated. Moreover, we take cognizance of the fact presented in this record that Ms. Jones has been asked to perform this song at high school assemblies.

It is important to note that, while the FCC has decided that its profanity policy does not prohibit the use of racial or religious epithets, editorial considerations must separately bear on whether to use terms that may be offensive to segments of the public. Accordingly, NPR's position is that use of racial or religious epithets should be avoided unless the use is essential to the piece, the piece has significant news or other value, and the appropriate internal NPR consultation has taken place.

Other examples of programming that involved offensive language include the films "Schindler's List," which included frontal nudity, and "Saving Private Ryan," which included multiple uses of the words "shit" and "fuck." In affirming the FCC staff's decision dismissing an indecency complaint against the former, the FCC stated as follows:

The staff concluded that although this airing of *Schindler's List* did contain incidental frontal nudity, the material broadcast depicted a historical view of World War II and wartime atrocities which, viewed in that context, was not presented in a pandering, titillating or vulgar manner or in any way that would be considered patently offensive and, therefore, actionably indecent.

The use of material depicting or describing sexual activities or organs in these cases was deemed to be legally and editorially justifiable.

By contrast, the FCC more recently has ruled that certain words, including the words "fuck," "shit," and any variation of those words is almost always indecent, profane, and therefore prohibited. For instance, the FCC has ruled that a program ("Godfathers and Sons") in the Martin Scorsese/PBS documentary series, "The Blues," was both indecent and profane, largely because it used variations of the words "fuck" and "shit." In contrast to the decision permitting the use of those words in the movie "Saving Private Ryan," the FCC found that the station broadcasting "The Blues" program had not demonstrated that the use of the offending language was essential to the nature of an artistic or educational work or essential to informing viewers on a matter of public importance or that the substitution of other language would have materially altered the nature of the work. The FCC also noted that the offending language was uttered not by the blues artists featured in the documentary but by the former owner of a blues music label and record producer.

As the FCC attempts to draw distinctions between programming such as "Saving Private Ryan" and "The Blues", there will be other cases. In every instance, therefore, show producers must consult with designated NPR management regarding the potentially problematic programming. Even if a particular program ultimately stands the legal and editorial tests, its broadcast creates a risk of a potentially expensive FCC complaint and investigation. In addition, programs that contain potentially objectionable matter must include clear listener advisories and advance DACS notices to stations. NPR policy is to do both in all such instances for both legal and editorial reasons

The following is an instance where an NPR producer bleeped sections of a Creators at Carnegie program to avoid certain language in a performance by Randy Newman

Pretty little baby,	My head heats up like a furnace,
How come you never come around?	My heart grows colder than a stone.
Pretty little baby,	So what's the good of all this money I got, girl?
How come you never come around?	If every night, I'm left here all alone?
I send you all them pretty flowers,	It's a gun that I need.
Now you're nowhere to be found.	Shame, shame, shame, shame, shame.
I call you up at midnight sometimes, I must admit,	I ain't shame of nothing.
when I find you're not at home.	Shame, shame, shame, shame, shame.

I don't know what you talking about.

All right, let's talk a little business.

You know what I'm saying?

A man of my experience of life,

don't expect a beautiful young woman like yourself

to come on over here everyday.

Have some old dude [bangin] **(BLEEPED)** on her

like a gypsy on a tambourine.

That's not what I'm talkin about.

That's not what I'm talkin about.

That's not what I'm talkin about.

But I will say this.

I've been all over the world.

I've seen some wonderful things.

I haven't been well lately,

I have no one to share my plans,

my dreams, my hopes, my schemes,

Shame, shame, shame, shame, shame.

could be right.

I've sunk pretty low this time.

Shame, shame, shame, shame, shame.

These are truly desperate times.

Saw your little sandals, baby,

out behind the wishing well.

Down here in the cool depths of the Quarter,

where the rich folk dwell.

They picture you in diamonds,

satins and pearls.

Come on back to Daddy!

Daddy miss his baby girl.

Now, my father, he was an angry man.

You cross him; he made you pay.

I, myself, am no longer an angry man.

Don't make me beg you, don't make me beg.

You know what it feels like,

wake up in the mornin'?

Have every joint in your body aching, goddamit.

You know what it feels like,

have to get up in the middle of the night?

Sit down, to take a [piss] **(BLEEPED)**?

You do know? So you say.

I have my doubts missy.

Do you know what it feels like,

to have to beg a little bum like you for love?

Goddamn you, you little[bitch]! **(BLEEPED)**

I'd kill you, if I didn't love you so much!

Shame, shame, shame, shameâ€¦

SHUT UP!

Oh, forgive me.	I'm trying to talk to someone.
my unfocused words.	Shame.
I was flyin blind, I, I lost my mind.	Thank you.
If ya find it in your heart, if you got one,	You know, I have a Lexus now.
to forgive me. Be ever so grateful.	I don't get out much.
Shame, shame, shame.	You know what I'm saying.
Would you stop that please?	Come on home.
Shame, shame, shame.	
Would you stop that please?	

In this case, airing the actual language was not crucial to the performance.

Other kinds of potentially offensive material

There are instances where material is neither indecent nor profane, but nevertheless likely to shock or possibly offend some segment of the audience. In deciding whether to include potentially objectionable material in NPR content, editorial decision makers should consider the following issues:

- Is the material needed to establish the type, intensity, scope and difficulty of the environment surrounding the story?
- Is the material the best way to convey the substance of the story subject?
- Is the material likely to distract the listener from the story itself rather than add to its understanding?
- Is there an alternative way to present the story element that just as effectively gets the point across?

As in the case of potentially indecent or profane material, NPR journalists or producers should consult with the News Duty Manager, in the case of NPR news programming, or NPR's Vice President for Programming, in other cases, including all acquired programming, so that NPR can make an assessment of the potentially offensive language or other material. If the material is deemed suitable for distribution, listener and station advisories will still be required. This enables listeners who may object to the language to avoid hearing it, or provide a station with the option of covering over the potentially objectionable portion of the material.