

**IS PARIS BURNING? ANALYSIS OF 2004 INDECENCY COMPLAINTS  
ABOUT BROADCAST ADVERTISING DENIED BY THE FCC**

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**ABSTRACT**

Amid record numbers of recent indecency complaints to the Federal Communications Commission (FCC), there is little information available on the complaints themselves, and no discussion of complaints focused on advertisements. This descriptive study analyzes a 1,030-page database of 254 denied indecency complaints from 2004 of which 35 addressed product advertisements and promotional spots. Analysis was done by type of media, geographical origin, complaint topic, and denial grounds. More than half of the complaints were denied as “not sufficiently graphic” (19), and about one-third for insufficient information (10). The authors discuss common elements of the complaints, and suggest reasons for these commonalities and areas for future research.

**INTRODUCTION**

At the FCC, we used to receive indecency complaints by the hundreds; now they come in the hundreds of thousands. Clearly, consumers—and particularly parents—are concerned and increasingly frustrated Martin (2005).

On February 1, 2004, entertainers Janet Jackson and Justin Timberlake flashed America into indecency watch overdrive during the Super Bowl halftime show. When Timberlake tore Jackson’s outfit to reveal her nipple, the moment became the most replayed in TiVo history (CNN.com, 2004). The FCC was deluged with an average of thirteen complaints per minute in the aftermath of the “wardrobe malfunction” (Shiver, 2005), totaling more than a half million complaints (Shannon, 2005).

The complaints about Jackson’s “wardrobe malfunction” were among more than 1,405,419 complaints logged by the FCC in 2004 from broadcast consumers upset about indecency on the airwaves. These complaints were about 314 programs, resulting in the issuance of twelve Notices of Apparent Liability amounting to \$7,928,000 (FCC, 2005c). The full extent of viewers’ outrage can be seen when the number of indecency complaints received in 2004 is compared to the number received in 2002 (13,922) and 2003 (166,683) (FCC, 2005c).

Perhaps the most graphic illustration of the public concern over indecency was demonstrated in the election-year-passage of the Broadcast Decency Enforcement Act of 2005, which President Bush signed into law on June 15, 2006 (Associated Press [AP], 2006). This legislation increases tenfold the maximum penalty the FCC can impose on a broadcaster for indecency, from \$32,500 per violation to \$325,000. The 1.1 million-member activist group, Parents Television Council (PTC), one of the most aggressive critics of broadcast indecency, praised Congress for listening to Americans “fed up with the sexually raunchy and gratuitously violent content that’s broadcast over the public airwaves (AP, 2006).

Judging from content on the PTC Web site, many Americans are equally upset about a perceived increase of highly suggestive, overt sexual and inappropriate content in broadcast advertising, and programming (Parents Television Council [PTC], 2005), culminating with the June 2005 Carl Jr.’s “Spicy Burger” ad featuring a scantily-clad Paris Hilton “lathering herself up and posing in a sexual manner” (PTC, 2005).

When word leaked that the ad was “too hot” for television and the PTC was protesting it, the server for a site hosting a 60-second version of the spot crashed from heavy traffic (Media Post, 2005). The PTC, which refers to itself as the “nation’s most influential advocacy organization protecting children against sex, violence and profanity in entertainment,” called the commercial “nothing but a sleazy attempt on Carl Jr.’s part to make money selling burgers with pornography” (PTC, 2005).

PTC did not file a complaint with the FCC because the content of the ad “does not appear to meet the legal standards for indecency as defined by the Congress and as interpreted by the FCC”; however, PTC was quick to say it was not discouraging the public from filing such a complaint (PTC, 2005). Indecency complaints for 2005 are not included in this study.

More recently, the PTC is focusing members’ attention on television commercials aired during sporting events, which they maintain contain violence and unsafe behavior (PTC, 2006). Tamburro, Gordon, Apolito, Howard (2004) cite a recent study showing that 14% of advertisements aired during sporting events displayed unsafe behavior and 6% depicted violence.

PTC is also pressuring advertisers not for the content of their commercials, but for the programming they sponsor. Tactics include listing the Ten Best and Ten Worst Advertisers on its Web site, and having PTC members appear at shareholders meetings for companies such as Clorox, Microsoft, Wal-Mart, and J.C. Penney to read a statement urging the company to drop ads on non-family-friendly shows (PTC, 2006).

## **PURPOSE OF THIS STUDY**

The purpose of this descriptive study is to gain understanding about the number and the nature of indecency complaints about broadcast advertising that was denied by the FCC in 2004. The year 2004 is an excellent year for examination, not only because the Jackson/Timberlake Super Bowl incident resulted in almost a ten-fold increase in indecency complaints from the year before (FCC, 2005c), but also because in 2004 former FCC chair Michael Powell went to great lengths to punish indecency (Brown & Candeub, 2006).

Although the Federal Trade Commission (FTC) is the most widely empowered government agency regulating advertising, the FCC is responsible for prohibiting indecency, obscenity, fraud, and lotteries in radio and television advertising through its power to fine broadcasters and/or revoke or deny a broadcaster's license. It could be said that the FCC is empowered to act against the media carrying the advertising, while the FTC is empowered to act against the advertiser and/or the advertising agency.

## **LITERATURE REVIEW**

This work is not the first examination of FCC complaints. Rivera-Sanchez (1997) examined 31 complaints against radio indecency between 1989 and 1995 and found that the FCC was consistent in the application of its rules against expletives, but less so regarding descriptions of sexual or excretory activities. Her conclusion was that it is difficult to predict with any degree of certainty how the FCC will rule on an indecency claim.

Rivera-Sanchez and Ballard (1998) then examined all indecency fines assessed by the FCC between 1987 and 1997 to determine how consistently the fines were applied. They found that between 1989 and 1992, fines of \$2,000 per incident were leveled in 14 cases; however, after 1992, the fines rose. They suggest that the very nature of indecent programs and their variations in theme, offensiveness, and explicitness require the FCC to be flexible, thus, accounting for at least some of the seeming arbitrariness in the fines.

While these two articles examine actual FCC indecency complaints and fines in a systematic way, other authors offer their perspectives on indecency regulation in the 21st century. Several focus on legislation introduced in the aftermath of the Super Bowl incident. Chidester (2004) describes legislative initiatives and suggests that the FCC must revamp its penalties so broadcasters do not simply regard fines as the cost of doing business. Reinhart (2005) examines some of this same legislation and, based on her analysis of current case law and First Amendment jurisprudence, determines that the proposed Clean Airwaves Act, which would punish eight specific profane words and phrases in any context, is unconstitutional. Timmer (2005) addresses the Broadcast Decency Enforcement Act, which would increase penalties for broadcasting obscene, indecent, or profane content to \$275,000 for the first violation (ten times the current maximum fine), with subsequent violations receiving higher fines. Timmer notes that an amendment to this bill extending penalties to cable and satellite providers would likely be found unconstitutional.

Calvert (2005) distills eight important lessons about free speech and public policy from the events of 2004, one of which is a concern that vocal minorities (such as the Parents Television Council) can skew public perception about how widespread indecency concerns are, giving disproportionate weight to its perspectives.

Several authors offer suggestions to the FCC and to Congress on how indecency should be regulated, including two former FCC chairs. Richard Wiley (1970 to 1977) suggests that the FCC should reestablish the importance of context in its determinations of indecency and should exercise appropriate restraint in findings of indecency (Wiley & Secret, 2005). Reed Hundt (1993 to 1997) adds to the call for restraint, suggesting that the FCC's current crackdown on

indecenty threatens to enforce political restraints on free speech and restrict consumers' freedom of viewing/listening choice (Hundt, 2005).

Other authors suggest that the marketplace, not the government, should determine what programming is acceptable; rather than charging the FCC with determining what is indecent and what is not, it could be charged with requiring disclosure of advertising sponsorship for all programming, which would let consumers put pressure on advertisers to withdraw from objectionable programming (Brown & Candeub, 2006). Holohan (2005) proposes that technological advances have made current indecenty law obsolete and calls for the FCC's enforcement procedures to be revisited in light of current communications technology.

## **THE COMPLAINT PROCESS**

The FCC does not act on its own to seek out indecent broadcasting, but relies on consumer complaints to launch investigations. The Enforcement Bureau was established in 1999 to handle consumer indecenty complaints (among other duties). In October 2005, the FCC revamped its broadcast indecenty Website to include a flowchart to show how complaints move through the process (FCC, 2005b).

According to this flowchart, when a consumer files a complaint, it is logged and its allegations analyzed. Additional information may be requested, and once all information is in, appropriate action is determined, either denying the complaint or issuing a Notice of Apparent Liability for Forfeiture to the offending media owner. Any decision can be petitioned for reconsideration. Any response is analyzed, and a final determination is made to either deny the complaint or issue a Forfeiture Order granting the complaint. Complainants may also petition for reconsideration of a denied complaint.

The Enforcement Bureau denied all of the complaints discussed in this paper. The record does not show whether a complainant requested reconsideration of the denial by the full FCC.

## **HOW THE FCC DETERMINES INDECENCY**

Indecency in broadcasting is prohibited by Title 18 of the United States Code, Section 1464. This statute prohibits the utterance of "any obscene, indecent or profane language by means of radio communication" and permits both a fine and possible jail time.

In a 1978 case, *FCC v. Pacifica Foundation*, the Supreme Court of the United States upheld the application of Section 1464 during afternoon hours. The case concerned a radio monologue by comic George Carlin, which discusses seven profane words. The Court said that broadcasts need not be determined to be obscene to be regulated, and that the factors to be considered in regulating indecent broadcast speech include the time of day in which the speech was broadcast, the context in which the indecent speech occurs, and the likely audience for the speech. In accordance with that holding, the FCC mandates that indecent speech may be broadcast during "safe harbor" hours, 10:00 p.m. to 6:00 a.m., when children are less likely to be in the audience.

The FCC developed its own guidelines to determine what material qualifies as indecent. On its Web site, the FCC defines indecenty as "language or material that, in context, depicts or

describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities” (FCC, 2005d). The FCC also uses several other criteria, focused primarily on the context of the broadcast, to determine whether broadcast content qualifies as indecent.

In our assessment of whether material is “patently offensive,” context is critical. The FCC looks at three primary factors when analyzing broadcast material: (1) whether the description or depiction is explicit or graphic; (2) whether the material dwells on or repeats at length descriptions or depictions of sexual or excretory organs; and (3) whether the material appears to pander or is used to titillate or shock. No single factor is determinative. The FCC weighs and balances these factors because each case presents its own mix of these, and possibly other, factors (FCC, 2005a).

Thus, it is unlikely that a sexual situation occurring within the broadcast of a Shakespeare play would be deemed indecent, although a morning radio show’s description of sexual foreplay, intended to shock the audience (and perhaps increase the show’s market share), might well be considered indecent.

As noted above, the FCC exercises considerable discretion in determining whether a broadcast is indecent. For example, an expletive such as the “F-word” might be considered indecent, depending on the context. As seen below, the FCC appears unwilling to label programming indecent without an examination of the context in which the alleged indecency occurred, and many complaints were denied because complainants did not provide sufficient context for the FCC to make a determination of indecency.

## **METHOD**

To determine what broadcast advertising generated consumer complaints to the FCC, the authors filed a Freedom of Information Act (FOIA) request with the FCC, requesting all denied complaints from 2004. Over one thousand pages of complaint information were received, including original complaints and the FCC’s responses, in electronic form. Of the 254 complaints in the FCC files, thirty-five addressed advertising.

The number examined is far smaller than the 1.4 million complaints received because most of those complaints were generated by activist groups (Media Week, 2004) and addressed the Super Bowl incident and other high-profile indecency cases where the FCC found the broadcaster liable. This database included all other denied complaints.

While the sample in the database is not large, it is important in that no such analysis of indecency complaints against advertising has been done before. The reason is that while the FCC makes such records available, few have been obtained and analyzed because of the enormous redaction cost incurred for eliminating the name and address of all complainants. The FCC made this database available to the authors at no cost because another party had already paid the redaction costs of approximately \$8,000.

## ANALYSIS

All but one of the complaints analyzed were from individuals; the one exception came from the PTC, and was lodged against a radio station in Kansas City, Missouri (this complaint will be discussed later). None of the complaints were form letters; however, six were filed using an online form (the source of the form was not apparent in the record). A few were handwritten on lined tablet paper and the language reflected a person of limited literacy. Many of the complaints centered on concern and/or embarrassment when the cited ads were seen or heard by children.

The FCC's denial letter to every complainant included an information sheet that discussed the law with respect to indecent and obscene broadcasts and the FCC's enforcement procedures. The letters closed with a sentence encouraging complainants to convey their concerns directly to station management "because this can be an effective method to influence a station's programming decisions."

Table I provides a breakdown of the complaints analyzed for this paper. For purposes of this analysis, the authors considered complaints about promotional announcements for shows or contests to be advertisements.

**TABLE I: SUMMARY OF COMPLAINTS RECEIVED BY THE FCC ALLEGING INDECENT ADVERTISING**

Media forms	Complaint topics	Reasons for denial
Radio: 10	Advertisements for	During "safe harbor" hours: 3
Television: 25	products: 18	Insufficient information to determine indecency: 10
	Promotions: 17	Not sufficiently graphic/sustained: 19
		Other: 3
		- TV station demonstrated lack of inappropriate nudity
		- No actionable "broadcast" took place
		- No FCC authority over indecency in satellite radio

Of the 35 denied indecency complaints about advertising that were logged during 2004, 25 were for television and 10 were for radio. Of the television complaints, about half (12) were for promos of upcoming network shows. The complaints were almost evenly divided between ads and promos: 18 complaints were logged for ads, and 17 complaints for promos. Of the 18 ad complaints, 13 were for television and 5 were for radio. Of the 17 promos, 11 were for television and 6 were for radio.

## ADVERTISING COMPLAINTS

Few complaints were for advertisements of nationally known products or services. As might be expected, many of the ad complaints were for sexual enhancement products (eight) or for the video series "Girls Gone Wild" (four). Four of the five radio ad complaints were for sexual enhancement products.

The eight ads for sexual enhancement products were evenly divided at four for television and four for radio. Several complainants pointed out that these ads were inappropriate for viewing or

listening outside “safe harbor” hours, particularly when they were included during newscasts or sporting events. One complainant pointed out that the radio ad for a sexual enhancement product, which discussed postponing of a climax and reliability dependent upon frequency of sex, aired at 2:00 p.m. when his/her 12-year-old daughter was in the car and was so embarrassed “she reached up and turned the station.”

Several mentioned specifically that teens were likely to be in the audience during sporting events. One complainant stated that “drug ads should be banned just as cigarette and liquor ads have been banned.” Two complainants quoted directly from radio ads, pointing out that one begins with the question, “How would you like to have better sex?” and the other with “Do you have trouble during sex postponing your climax?” These comments raise the question of whether sexual enhancement ads on radio tend to be more graphic than those on television.

The FCC denied most complaints for sexual enhancement products because of “in context not sufficiently graphic and/or sustained”; however, two complaints against radio ads were denied because of insufficient information.

Four complaints were received for television ads for the series “Girls Gone Wild,” which depicts young women supposedly on a spring break vacation. All complained of young women baring their breasts and pelvic areas. The FCC denied three of these because the broadcast was within the “safe harbor” period. One was denied because of “in context not sufficiently graphic and/or sustained,” pointing out that the visual images of breasts and pelvic areas were blurred by pixilation or similar technology. One denial letter included a paragraph referring to the limitations presented by the First Amendment and Section 326 of the Communications Act of 1934, which prohibits censorship.

A single complaint about the graphic nature of a television infomercial for the series “Celebrity Hotties” and “Celebrities Doing the Nasty” was denied as “in context not sufficiently graphic and/or sustained.”

The remaining six ads, five of which were for television and one for radio, were for various products or services. The complaint for radio stated that an ad for a local restaurant featured customers using the F-word, which was partially bleeped. The FCC denial letter pointed out that since the F-word was bleeped, material was “not sufficiently graphic and/or sustained.”

Of the five television ads, one for a nationally known furniture retailer was denied for insufficient information (nature of complaint was unclear). The complaint for a television commercial for brassieres, which featured “multiple images of near-naked breasts being pushed together to make cleavage” was denied as “not sufficiently graphic or explicit.” A complaint for an ad for a nationally known sandwich chain claimed the commercial depicted a man “suckling at the breast of a wolf.” The complaint was denied as “not sufficiently graphic and/or sustained.” A complaint against an insurance company commercial, which carried multiple signatures, alleged that the commercial showed a woman losing her bikini top while the camera focused on her breasts, and a neighbor who sees her loses control of a garden hose. The complaint states the ad is vulgar and inappropriate, degrades women, shows women as objects, is not family-friendly, and is harmful to children. The denial letter states the FCC is unable to determine whether the

material is actionable, as it was not alleged to be broadcast between 6:00 a.m. and 10:00 p.m. Finally, one complaint focused on an ad for a company identified only as “Serenity” with scantily clad women in sensual underwear which aired during “Wheel of Fortune.” This complaint was denied for insufficient information.

## **PROMOTIONAL ANNOUNCEMENTS**

Of the six radio promos receiving complaints, three were against the same station for the same contest. An FM station in Pittsburgh ran a Valentine’s Day contest called “Guys Gone Wild,” wherein the prize was an expense-paid trip for two to a legal brothel in Nevada. One complaint included the copy for the promo taken from the radio’s Web site, stating that the site also contained a link to the brothel Web site. The complaint pointed out that not only was the promotion obscene, but was a solicitation for prostitution, which is illegal in Pennsylvania. A second complaint asked, “When are you going to put a stop to this nonsense?” and pointed out that the complainant was writing to the sponsors for the show where the promo aired advising them s/he “has no intention of patronizing them or buying their products until they separate themselves from such trash.” The six sponsors were listed at the end of the complaint letter. Two of the complainants were extremely upset that teens or children could go to the station’s Web site and click on the link to the brothel. All complaints were denied, citing “not sufficient graphic and/or sustaining.”

Another complaint for radio concerned non-broadcast jingles and ads in San Francisco promoting British subscription satellite radio station FCUK-FM. The writer is concerned about the type of jingles s/he knows the station will employ such as “FCUK on the beach,” “lucky FCUK,” and “too drunk to FCUK.” The complainant states that “subjecting children to this type of foul humor on the airwaves” is unacceptable. This complaint was denied because “with respect to subscription services, such as satellite digital audio service, the Federal Communications Commission’s regulation of objectionable programming is limited to obscenity and does not include indecency or profanity.” The denial also points out that regardless of the standard applied, “you do not appear to complain against any material aired by FCUK-FM, but for ‘comments you KNOW they will make,’” and without a complaint regarding material that has actually been aired, the FCC has no basis on which to take action.

The one complaint from the Parents Television Council was against a radio station in Kansas City, MO, about an incident aired at 7:30 a.m. when one of the station’s on-air personalities stood on the side of Shawnee Mission Parkway nearly nude, covered with 100 Powerball (lottery) tickets. His exploits were described to listeners, who were encouraged to go to the location and remove the tickets from the personality’s body. At the time the personality was arrested at 7:40 a.m., only 15 tickets remained. The FCC’s denial states the material broadcast, in context, “was not sufficiently graphic or explicit to render it patently offensive.”

The final radio promotion complaint was from the parent of a 14-year-old high school freshman who won a DVD of the R-rated Eminem movie “8 Mile” as a promotional prize. The parent complained that it should not be legal for radio stations to hand out DVDs to children who are not of age to see the movie, further noting that the radio station was “adding to the degradation of society” and the “debasement of females in our society” by promoting this movie. The FCC’s

denial stated that it had no authority to sanction the station for an act that was neither a “broadcast” nor an “utterance” under applicable law.

Before discussing the complaints received about television promos, it should be noted that a number of the complaints not only cited the nature of the indecency, but objected to the fact that shows that may not be appropriate for children were promoted during shows that were family-friendly, such as “Home Improvement,” “American Idol” and “Jeopardy.” One complainant specifically suggests that ad content should match the rating of the show in which it airs.

While undoubtedly many complainants will hail the FCC’s current push for cable and satellite operators to offer “family-friendly tiers” for subscribers, it remains to be seen whether this strategy addresses complaints of indecent promos aired during family-oriented programming.

Of the eleven complaints received about television promos, three were for the show *Coupling*. Only one complaint was specific, citing the promos showed couples in bed. Two of the complaints were denied for insufficient information and one was denied as “not sufficiently graphic and/or sustained.”

One complaint was received for the show “Elimidate,” stating that the ad showed a man in a hot tub with a woman sucking his nipple, and was viewed by his/her five-year-old granddaughter. The complaint was denied as “not sufficiently graphic and/or sustained.”

Three other complaints were also denied as “not sufficiently graphic and/or sustained.” One complained about a commercial for “Last Comic Standing,” which aired during the show “Home Improvement” at 4:00 p.m., wherein a comedian made a joke about his girlfriend having “crabs.” Another complained about a commercial for “King of Queens” which aired during a 7:55 p.m. airing of “Jeopardy” and showed two characters discussing having sex in the kitchen. A third complaint was lodged against “Oprah” for showing a topless woman to promote a show on plastic surgery. A complaint lodged against Fox concerned a promo for “WWE Smackdown,” where the complainant claimed one man pulled down the pants of another, displaying the man’s bare bottom. The FCC sent a Letter of Inquiry to Fox television stations, and Fox responded by disputing the allegation and providing a video CD of the promo. Upon review, the FCC found the man’s shirt was pulled off, not his pants, and no inappropriate nudity was displayed; therefore, the complaint was denied as “not sufficiently graphic.”

Three additional complaints regarding promos for television shows were denied for insufficient information. One complained about “Will & Grace” promos that showed two gay characters in bed together. Another complained about a promo for Fox News with inappropriate content for children, which aired during “American Idol.” The third complaint cited three promos: one for “Smallville” that showed a female sitting on a male in bed; one for “Everwood” where a father asks his son whether he is having sex; and one for “The Surreal Life” that showed nudity.

## GEOGRAPHICAL DISTRIBUTION OF STATIONS RECEIVING COMPLAINTS

Intuitively, it could be suggested that stations in smaller or rural markets may receive more indecency complaints. That was not the case among the 35 complaints analyzed in this study (see Table II). Six complaints did not specify location of the station in question.

**TABLE II: ADVERTISING COMPLAINTS BY CITY AND GEOGRAPHIC REGION**

City	Geographic region	Number of complaints
Atlanta, GA	South	3
Baltimore, MD	South	1
Boston, MA	Northeast	2
Cheyenne, WY	Northwest	1
Chicago, IL	Midwest	4
Cleveland, OH	Midwest	1
Denver, CO	Southwest	1
Gulfport, MS	South	1
Harrisburg, PA	Northeast	1
Kansas City, KS	Midwest	1
Los Angeles, CA	West	1
Medford, OR	Northwest	1
Minneapolis, MN	Midwest	1
New Haven, CT	Northeast	1
New Orleans, LA	South	1
New York, NY	Northeast	2
Niagara Falls, NY	Northeast	1
Pittsburgh, PA	Northeast	3
San Francisco, CA	West	1
Youngstown, OH	Midwest	1
Unknown	--	6

Contrary to what might be expected, most of the complaints were from large metropolitan areas. The Northeast and Midwest had the most complaints, accounting for almost half the total. Thus, rather than seeing clusters in the South or in small or rural markets, we see the opposite trend.

## DISCUSSION

As parents and others continue their efforts to “clean up” the public airwaves, it would seem broadcast advertising possesses unique characteristics which may attract attention even if complaints regarding indecent programming begin to diminish.

First, viewers and listeners have no control over the environment in which advertising appears. A parent may be viewing a “family-friendly” show with children present, or listening to a particular musical format judged to be free of what s/he considers indecent with a child in the car, when an ad or promo may appear which contains material the parent deems indecent.

Complainants in this study were particularly outraged when these ads appeared outside “safe harbor” times. For example, an ad for a sexual enhancement product aired on a mid-sized market television station during the national news and on a large-market television station during a baseball game. Another complaint cited a promo for a network show containing suggestive sexual content which aired on a large-market television station during a popular nationally syndicated quiz show before 8:00 p.m., and another which contained an off-color joke promoting a comedy show which aired during reruns of a family-friendly sitcom seen at 4:00 p.m. in a medium-sized market. It was as if consumers felt they were “blindsided” with what they considered indecent material during a show or time period they considered safe for children in the audience.

Secondly, the complaints for network show promos also suggest that broadcasters may be pulling particularly titillating footage from a show to include in the show’s promos, with the assumption that a racy promo would in turn attract a larger audience for a show. One complainant suggested that the rating for the show being promoted should be the same as the rating for the show in which the promo appeared.

Lastly, with advertisers today facing unprecedented challenges to attracting consumers’ attention, advertising messages are becoming edgier. As advertisers face technology that either eliminates commercials or allows viewers to skip over them, and continuing fragmentation of media audiences, the pressure is on to do whatever it takes to attract attention. The fact is that advertisers’ messages cost more than ever to place, yet reach a smaller than ever audience. For these reasons, advertisers are producing edgier ads in an effort to separate their message from the on-air clutter.

An example of such “edgy” advertising is the Paris Hilton ad for Carl Jr.’s discussed in the introduction. This ad attracted national news coverage and a pronouncement from the Parents Television Council stating, “This commercial is basically soft-core porn. It’s inappropriate for television” (James, 2005). Another example is the advertising for e-tailer Bluefly, which runs television ads with nudity and sexual content so racy most traditional broadcasters won’t carry them, apparently fearing a fine by the FCC (Colker, 2006).

While it is impossible to ascertain why advertising and promotions received such a small percentage of the denied complaints in the database (only 35 out of 254), there are several possible areas for consideration. Research suggests that sexual explicitness in advertising continues to increase (Reichert, Lambiase, Morgan, Carstarphen, & Zavoina, 1999). However, although the public might not ignore the phenomenon altogether, it might be so accustomed to sex as an integral part of advertising that it takes more than mere nudity or sexual innuendo to result in a complaint.

It should also be noted that many of the advertisements and promos targeted by complainants were not focused on the method of advertising (e.g., using sex to sell jeans) but rather on products themselves, such as sexy videos like “Girls Gone Wild,” sexual performance enhancement products, and radio promotions with a prize trip to a brothel. Again, it may be that advertising that uses sex to sell everyday products like food or clothing is so pervasive in print

media that it takes a product or service that consumers deem outrageous or unacceptable, coupled with a sexually suggestive ad, to result in a complaint filed with the FCC.

## **FUTURE RESEARCH**

The authors' future research will consider several of the issues described above. An analysis of the entire database of 254 denied complaints received by the FCC in 2004 will place the advertising and promotions complaints in the larger context of all denied complaints. Additionally, the authors will monitor the progress of proposed legislation that will extend the provisions of the Broadcast Indecency Enforcement Act to cable and satellite broadcasts. The authors also intend to file another FOIA request with the FCC to obtain complaints from 2005 as a basis for comparison to those examined in this paper.

From FCC Chair Martin's recent remarks at the "Open Forum on Decency" noting that he shares public concerns about "coarse programming on television and radio today" and the implied threat that "something needs to be done," it appears that broadcast indecency concerns will remain high on the public and political agenda. This might be accompanied by additional research necessary to make sense of what the public deems intolerable and what the FCC will consider actionable in advertising and programming.

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