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Term Paper  
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November 8, 2004

Escapades and Overreactions

DESCRIPTION:

On the evening of February 1, 2004, families all over the country settled down to watch some wholesome American entertainment. Super Bowl XXXVIII kicked off in Houston with the Carolina Panthers playing the New England Patriots. But CBS, instead of reveling in the profits from the sporting event, was forced to fumble out an apology for the half-time show. Intelligently intrusting fellow Viacom-owned cable network MTV to produce the show, CBS and the Super Bowl got much more entertainment than they bargained for.

Janet Jackson and Justin Timberlake performed together in a rather raunchily choreographed dance routine. The dancing, while some may consider it tasteless, still did not violate any FCC regulations. However, after crooning "I'm gonna have you naked by the end of this song," Timberlake reached across Jackson, grabbed her costume on her right breast, and exposed a metal starburst—and Jackson's breast. Jackson rushed to regain her decency by covering her breast with her hand, but the damage was done.

The NFL issued an apology, claiming embarrassment following the incident. The NFL Commissioner Paul Tagliabue assured audiences that future half time shows would be free of such inappropriate content (Tagliabue, Paul). CBS also expressed regret over the event. The entertainment spokesman for the network, Chris Ender, commented, "It wasn't rehearsed. It wasn't discussed. It wasn't even hinted at. ... This is something we

would have never approved. We are angry and embarrassed” (“Janet Sorry Over Super Bowl Stunt”). In addition, Jackson and Timberlake also apologized for the event and claimed it was a mistake. The stunt was supposed to bare a red lace garment, not Jackson’s entire breast. (“Janet Sorry Over Super Bowl Stunt”).

#### ISSUES:

Following the incident, the Federal Communications Commission slapped 20 different CBS stations with the maximum fine for indecency—\$27,500 each. That puts the total fine for the network at \$550,000 (“CBS Fined for Janet”). Since then, Congress has attempted to pass two bills to raise indecency fines. The first, which was amended to a defense bill, was dropped from that bill. It was reintroduced, in almost an identical format, on the house floor the next day as its own bill. Many believe that the bill has strong bipartisan support and should be passed by both the House and the Senate (“Indecency Provision To Make Post-Election Return?”).

Additionally, the FCC seems to have gained momentum after fining CBS. The Fox network received a record \$1.2 million fine for alleged indecency in an episode of *Married by America*. The network received 169 separate fines of \$7000 each given to each Fox station airing the episode.

Some question whether or not the FCC is bordering on censorship with the birth of new legislation and larger fines for indecency. Others argue that the fines are not heavy enough to change the way networks broadcast. The question lies in defining where the line is between indecency in broadcasting and the restriction of first amendment rights.

## COMMENTARY:

Opinions on censorship are never in short supply, but it seems everyone is writing about Jackson's "escapade" on CBS. PepsiCo, a leading Super Bowl sponsor, threatened to end its sponsorship of the game in the future unless they are assured the expose' will not happen again (Oldenburg). CBS received a storm of angry phone calls following the broadcast. Most who called in were appalled at the content of the half time show and wanted to make sure CBS would have no misconceptions as to the public's opinion on the matter. The Federal Communications Commission also received thousands of complaints about the incident. In 2003, the American people filed 240,000 complaints on indecency with the FCC; in a four-day period following the broadcast, the government agency received at least 200,000 calls (Garvin).

The FCC's investigation has made all broadcast networks re-examine their practices for shows. NBC cut a scene from its drama *ER* because it showed a split-second side view of an elderly woman's breast. ABC instigated a five-second delay for its broadcast of the Academy Awards, and the NFL moved its pre-game Hawaiian show to half-time to replace the possibly risqué performance planned by singer JC Chasez. The networks have also contemplated delaying live news broadcasts, such as ABC's *Good Morning America* (de Moraes).

The media are taking action to change standards on television and in radio. The broadcast industry has met in Washington at least once to discuss recent events that have sparked heavy FCC fines. They are trying to determine the best way to handle indecency. The president of the Parents' Television Council, L. Brent Bozell, III said, "I

have never seen such broad consensus on an issue. People have just said, ‘Enough is enough. These are our airwaves. You are violating a trust and we have a right to knock you off for doing this’” (“Broadcasters Hold ‘Indecency Summit’”).

However, there are voices that think the FCC has gone too far. Howard Dean, a then-presidential hopeful, commented on the wardrobe malfunction, “Considering what’s on television these days, I think the FCC is being pretty silly about investigating this.” (Oldenberg). Even though only one Republican voted against the bill raising indecency fines, he feels very strongly against the changes taking place in the media. He is opposed to all infringements upon free speech, including those limiting “hate speech.” He feels that Congress has been a “poor steward of the First Amendment” and that recent actions will lead to censorship (Krim). Outspoken talk-radio personality, Rush Limbaugh has also commented on would-be censorship, “If we sit idly by and let the federal government start to define what is OK for somebody to say on radio and what isn't . . . what happens if a whole bunch of John Kerry-John Edwards-Bill Clinton-Terry McAuliffe types end up running this country someday again and decide that conservative opinion is indecent, decide that that causes violence, decide that that is somehow damaging to the culture?” (Krim).

As for the actions the networks have taken in fear of massive FCC fines, one producer is disgusted. The executive producer of *ER*, John Wells, commented on the changes to adult network dramas,

Adult viewing audiences at 10 p.m., who have been warned appropriately of a show's adult content, are more than capable of making the distinction and adjusting their viewing habits accordingly. These types of affiliate overreactions

have a chilling effect on the narrative integrity of adult dramas... this type of network behavior is one of the primary reasons that so many of today's producers and viewers are increasingly turning to HBO and other cable outlets that do not censor responsible story telling (de Moraes).

Wells is also executive producer for other shows, and assures journalists that the issue of censorship will surface in the content other network dramas.

The networks seem to be banning together in an effort to self-police and comply with FCC standards. They have made no public dissent on Congress's actions, and they are being careful to avoid fines at this time.

#### CONCLUSION:

Janet Jackson and Justin Timberlake pulled off a remarkable stunt at the 2004 Super Bowl. Whether the incident was planned to unfold like it did or it was an honest mistake, no one argues that the "wardrobe malfunction" caused an uproar. The FCC's fines and subsequent legislation introduced by Congress have some spitting out the word "censorship" from bitter, confined lips.

But is fining the network for nudity really censorship? Does punishing CBS for broadcasting indecency during a widely viewed sporting event during prime time take government control over free speech too far? As the networks scramble to change programming to avoid fines, are their shifts in paradigm really a bad thing?

Networks are actually *choosing* to monitor what they broadcast. They are taking the initiative to clean up television, and I do not think that is a bad thing. The FCC has not revoked any broadcast licenses and probably will not be able to. In my view, the increase in fines only safeguards television for children.

That said, I also believe that the actions of the networks are a bit extreme. In a business known for broadcasting drama as entertainment, the networks are creating drama of their own. Delaying all live programming for editing possibilities seems a bit excessive. When even news shows are delayed, maybe the networks are trying to make a statement about their opinion of the fines without incriminating themselves to the Commission.

As a First Amendment right, free speech is one liberty Americans value most highly. With our governmental system of checks and balances, and with the Constitution in place, the Federal Communications Commission—or any other government entity, for that matter—will not be able to jeopardize free speech. The new legislation offered by Congress is simply a tool to encourage networks to clean up their acts a little bit. After all, everyone would like to see something change on network television. Why not start with content?

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