

July 13, 2007

To the Members of the Pacifica National Board:

Since our meeting last April, the Programming Committee has focused on two issues.

In response to a request from the PNB, we reported back to the PNB (Attachment 1) concerning the policy that has been developed by management in response to the Federal Communications Commission's regulations and policy pertaining to Obscenity, Indecency and Profanity. Briefly, the committee plans to propose specific changes in the policy to the PNB, in the meantime, the existing policy remains in effect. The committee is also developing programming proposals related to the FCC's overweening regulations and Pacifica's free speech traditions, that will be forwarded to management. It should also be noted that while the committee received comments from unpaid staff (attachment 2), not a single comment was received from a paid staff member. An analysis of the policy is attached (attachment 3).

Secondly, the committee is attempting to assess management's efforts to implement the Programming Policy that was adopted by the PNB in October, 2006. On April 18, we requested the Executive Director to survey program evaluation procedures at each of the five stations and report back to us (see attachment 4). We are still awaiting a response from management.

The state of programming at Pacifica mirrors that of technology. As a network, we do not build on strengths, nor eradicate our weaknesses. We resist replicating our successes throughout the network, with the result that we fail to institutionalize our best practices.

Some stations invest adequately in the staff and material resources required to produce mission-driven programming, but many do not. Some stations operate world-class apprenticeship and volunteer training programs, others do little for volunteers. The network has yet to establish goals for audience growth and development and the local stations likewise do not set quantifiable program goals and use objective measures to assess their performance. Although *Democracy Now!*, the last national program produced by the network, continues to grow in national notoriety and earns

millions of dollars, annually, the local stations cannot agree to develop additional national programming that would enable them to sustain and grow broad-based audiences. Our ability to produce news and informational programming continues to erode. Since 2004, most of our stations have experienced shrinking audiences, shrinking growth in revenues and expansion in expenditures. It is time to put parochial preoccupations aside and work together as a network to develop programming strategies to address these problems.

Respectfully submitted,

Rob Robinson
Chair, PNB Programming Committee

Attachments

Attachment 1

**Programming Committee Report to the PNB
On the Current Policy Pertaining to
The FCC's Regulations on Obscenity, Indecency and Profanity**

In reviewing Pacifica's current policy regarding the FCC's regulations on Obscenity, Indecency and Profanity, the Programming Committee of the Pacifica National board agrees that protecting our broadcast licenses should be the highest priority. We urge local station Program Directors to make this policy available to programmers and inform them that, by signing-off on this document, they acknowledge that this policy is in effect. This committee will look into holding conversations with the FCC and associating ourselves with legal actions against these regulations. We plan to solicit more detailed input from Program Directors and programmers on the impact this policy has on programming. The Programming Committee is in the process of making recommendations on how to update the policy to the PNB.

Motion by Dan Logan, passed 05.28.07

Rob Robinson
Programming Committee Chair

Attachment 2

Date: Tue 17 Apr 17:00:48 EDT 2007
From: "more_cerene" <more_cerene@yahoo.com> [Add To Address Book](#) | [This is Spam](#)
Subject: [PNB-ProgrammingCommittee] WBAI's Unpaid Staff re Current FCC Policy
To: PNB-ProgrammingCommittee@yahoogroups.com

To: PNB
From: WBAI Unpaid Staff Organizing Committee Shop Stewards
Date: April 6, 2007
Re: New Pacifica Policy on Obscenity, Profanity and Indecency

As Stewards of WBAI's Unpaid Staff Organizing Committee (USOC), we are very concerned about the new Pacifica policy with regard to prohibited words under FCC regulations. On the one hand, what is put forth is an escalating scale of punishments towards Staff, but on the other hand, educational efforts to alert the staff about these new measures and what is likely to constitute an FCC violation are almost an afterthought.

Further, the disciplinary measures apply to the shows themselves and not the staff who may have made a mistake, & are apparently extended to those hours when the FCC regulations themselves do not apply.

We want to emphasize that the most important thing is to prevent FCC violations, not punish after the fact producers who have not been educated on the "obvious" prohibitions, or trained to comprehend or anticipate subtle variations that might constitute offensive language.

This is particularly the case since there is no formal policy or determined method for mitigation, should there be an inadvertent occurrence. Further, we understand that punishment of staff is not considered a deterrent to FCC levying fines. The objective, therefore, should be prevention.

Our particular problems with the policy:

1. The disciplinary action to be taken for an alleged infraction of Pacific policy mandating a minimum suspension of two weeks for all program personnel rather than the alleged offending party contradicts and abrogates the clause on progressive discipline in our contract. Our contract requires that a first offense yield a letter of warning and education to assure that the breach is not repeated. Further, collective guilt should not be accessed against all the participants in the program, but only individual liability should attach against the offending party.

Target remedies to offending individuals, rather than suspending entire show. Distinguish penalties for inadvertent offenses.

Remedies for infractions should include warnings, errors of omission and inadvertent statements.

2. Further, the penalties that ensue based upon whatever policy is instituted cannot be applied arbitrarily or selectively. Recently, language allegedly violative of Pacifica policy was uttered by a national program, albeit mistakenly, as is generally the case, but no disciplinary action appears to be considered in that instance.

Apply penalties fairly.

3. There are ambiguities in the memo. In point #1 (which refers to the airing of "obscene material"), it is not clear whether Pacifica's intent is to abolish the "safe harbor" (10 p.m.-6 a.m.) for words that might be considered to violate FCC and/or Pacifica policy as it is proposed. We strenuously object to any prohibition on the use of the 7 words during the safe harbor hours, if that is the intention, since it extends beyond the FCC regulations and belies our claim to be free speech radio. (The FCC's own website says clearly, "Indecent or profane speech that is broadcast between the hours of 10 p.m. and 6 a.m. is not actionable.") Also, any further unnecessary prohibition of speech than is absolutely required within the narrowest framework of FCC guidelines capitulates to censorship and the most biased and conservative interpretation of what constitutes indecent speech.

Articulate "safe harbor" guidelines.

4. In fact, we should be seriously discussing whether we should join in the fight against censorship by joining current lawsuits contesting these regulations rather than voluntarily self-censoring ourselves when it is not required by law. This is not in any way meant to suggest that we should place Pacifica in jeopardy by violating the law.

Commit Foundation to fighting regulations that do violence to traditions of Free Speech.

5. As to the issue of "bleeping," the memo is ambiguous ("it is not sufficient to bleep words"). Is bleeping prohibited, or is it being suggested that all trace of the "offensive word" be obliterated, regardless of the cadence of and or aesthetic of the piece? We hold that there really should be some indication that the piece was censored so the bleep serves a purpose.

Codify on-air procedures to remove "offensive" words.

6. There is also the need for guidelines if a mistake occurs on the air. For instance, if a guest or a caller says a prohibited word and the delay device does not function, there should be a standard response that the host or engineer recites.

"Woops!" protocols. If we are to advise on-air guests and interviewees, a brief, formal statement must be prepared informing them of provisions against indecency, obscenity and profanity.

7. The memo mentioned education and training almost as an afterthought. We believe that education, not punishment as thus far has been imposed at WBAI, should be the centerpiece of Pacifica policy. Educational materials pertaining to Pacifica policy should be drafted, distributed to all Staff on a frequent basis, and posted prominently in the station to demonstrate the institution's commitment to the policy.

We should provide regular training, with "Best Practices" guidelines; codify with case-studies; provide for annual conference calls to treat special cases & etc. Then update best practices periodically.

Codifying infractions and providing written guidelines pertaining to these regulations will enable on-air staff to make decisions without having to call FCC Counsel whenever there is a question.

In sum, this policy needs a thorough re-examination, this time with a full opportunity for staff review and input. We hope the PNB will address this as soon as possible.

Unpaid Staff Organizing Committee (USOC) Stewards

Margareth Dominique, Ken Nash, Marquez Osson, Louis Reyes Rivera, Cerene Roberts

Also:

Programmers who air music should be aware of profanities.

Stations should maintain archives of programming to document their editing of indecent, obscene and profane material.

Obscenity, Profanity and Indecency Policy

Managers of the Pacifica Foundation have studied and discussed how to address FCC

standards concerning obscenity, profanity, and indecency. Airing obscene material not only makes a station vulnerable to substantial fines (a); on air talent can be personally fined for indecent speech. The Communications Act permits personal liability for a violation of the law after the individual has received prior notice. Proposed legislation would remove the requirement of a warning.

No distinction is made between commercial and non-commercial stations. The same standards apply, although the FCC may exercise discretion and impose a lesser fine on a noncommercial station. There is also no distinction made between the broadcast of live and recorded material. Even fleeting usages are considered indecent.

Local community values do not determine whether a broadcast is indecent. The standard is national, and intended to reflect the values of the average listener or viewer, not the sensibilities of any individual listener or community. Indecent material need not be pornographic; the standard is based on "contemporary standards for the broadcast industry."

In consideration of these realities, the following are Pacifica's policies for all on-air personnel regarding obscenity and profanity:

- 1) Stations will not allow the broadcast of obscene material at any time (b). There is no "safe harbor" (10 p.m. to 6 a.m.) period for obscenity, and it is not protected by the First Amendment. Failure to observe this policy will result in suspension of staff or termination of the program on which the obscene material was broadcast.
- 2) Recorded content such as music, interviews, or speeches must be screened for expletives and other FCC language issues before it is aired (c). If necessary, it must be edited. It is not sufficient to bleep words or flip them to change the sound. Obscene words and phrases must be omitted completely (d).
- 3) Programmers, producers of programs, and board operators are responsible for any content that is broadcast. When producers cover live events or programmers have live guests, guests must be informed about the language restrictions before they go on the air.
- 4) If an incident of profanity, indecency or obscenity occurs on the air, the station is not required by law to report it to the FCC, but the General Manager or Program Director must forward notification to the Network Programming Coordinator within 24 hours of becoming aware of the incident. In addition, management must investigate each violation and provide the Network Programming Coordinator with a copy of a sensitive language report. If you have any questions about whether your material might violate this policy, discuss it with the station Program Director before you air it.
- 5) All Pacifica stations should use profanity delays at all times. Local management is responsible for the training of Board Operators, Producers, and Programmers in the proper use of profanity delays. Guidelines should be provided to all programmers, and be

posted in all "on air" studios. Qualified operators should be on hand during all live national programming.

6) Station management will determine the appropriate discipline in a timely manner, consistent with Pacifica personnel policies. Distribution of this policy constitutes written notification that violations carry the risk of suspension, probation, or termination of the program. The discipline measures, subject to local and mitigating conditions, are at a minimum, two week suspension of program; up to two month suspension of program; and/or loss of program.

7) With the support of the national office and FCC counsel, each station will provide education about indecency, profanity and obscenity standards and procedures for all staff, paid and unpaid, at least once a year.

Notes:

(a) If one program contains six different "indecent utterances," the FCC reserves the discretion to consider fining the station for six violations. The Broadcast Decency Enforcement Act has increased by ten times the financial penalty that the FCC can impose on broadcasters violating their decency standards - from \$32,500 per offense to \$325,000.

(b) Profanity and indecency are not the same. There is overlap, but the FCC insists that they are distinct. Indecency depends on three factors: 1) explicitness or graphic nature of the material; 2) whether the material dwells on or repeats sexual or excretory matters at length; and 3) whether the material panders, titillates, or is used for shock value. The material need not satisfy all three factors, however, and material that is not indecent may nonetheless be profane. The Commission has defined profanity as language that denotes "personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the people who actually hear it as to amount to a nuisance."

Some words are presumptively profane regardless of their content. On the other hand, some words, such as "poop," "penis," "kiss my ass," "bastard," "bitch," "dickhead," "pissed-off," and "booty," are not indecent as long as a reference is fleeting. The seven dirty words used in George Carlin's 1970s monologue are still considered indecent. Although indecency is no longer limited to Carlin's list, the idea of inherently "bad" words is making a comeback in the guise of profanity.

(c) Words that cannot be understood by the average listener may be indecent. The relevant law is not limited to obscene, profane, or indecent material broadcast in English. Indecency counts even if it broadcast by mistake. The accidental nature of a broadcast may affect the amount of a fine, but not the fact that indecent material was broadcast.

Song titles, classic songs, and great literary works are not exempt. Artistic merit is considered as a factor, but is not an absolute defense to an indecency complaint. Neither

does the FCC exempt news events or documentaries. Indecency law does recognize the importance of context, but grants no absolute exemptions for news or news-worthy material. However, racial epithets and blasphemous religious slurs are not considered profane. Such language has been excluded from the definition.

(d) Exclamations by people on live call-in shows, like "Holy shit! I won," are not excused. But the fact that a broadcast is live could affect the amount of the fine.

A station can be fined even if it bleeps indecent material. An edited program may be found indecent if a sexual meaning can be inferred. The issue may devolve into a question of proof. If a station cannot provide satisfactory evidence of the broadcast of edited versions of music, the FCC could find that unedited indecent material was broadcast.

Date: Wed 18 Apr 22:44:04 EDT 2007

From: Terry Goodman <tgoodman@ispwest.com> [Add To Address Book](#) | [This is Spam](#)

Subject: Re: Obscenity, Profanity and Indecency Policy

To: robrobin@erols.com

Cc: dadelson@ucla.edu, agudino@kpfk.org, bdesazor@pacificaradioarchives.org, pd@kpft.org

The policy passed by the Pacifica Operations Committee on 01/25/07 included the following item.

- > 2) Recorded content such as music, interviews, or speeches must be
- > screened for expletives and other FCC language issues before it is aired (c). If
- > necessary, it must be edited. It is not sufficient to bleep words or
- > flip them to change the sound. Obscene words and phrases must be omitted
- > completely (d).

Footnotes (c) and (d) do not adequately justify the policy proposed in this item. That "Words that cannot be understood by the average listener may be indecent" and that "The relevant law is not limited to obscene, profane, or indecent material broadcast in English" does not explain the insufficiency of a bleep or flip, as the result in these instances is no longer a word at all. The enormous benefit of flipping from an academic, archival, artistic, and historical viewpoint is that the damage to the source material is reversible, so that a censored segment may be restored for examination and use in nonbroadcast contexts, foreign broadcast contexts, or wherever current FCC regulatory interpretations do not apply. If a flip is not sufficient masking of a profanity, many items currently available from the Pacifica Radio Archives will require auditing before broadcast, because decades of previous policy strictly required box label warning only for profanity that was unflipped.

Pacifica must not allow kowtowing to the current perverse limits being applied to broadcast speech to permanently damage the integrity of its continuously growing archives of audio actualities, speeches, fiction, poetry, and music. If important material is to be bleeped or edited beyond the discretion of the original producer, policy should be in place to protect the integrity of the source material for future generations.

With respect to the situation that "If a station cannot provide satisfactory evidence of the broadcast of edited versions of music, the FCC could find that unedited indecent material was broadcast," this simply requires maintaining an uninterrupted archive of what has been broadcast. Any other interpretation means that the FCC could hold a station responsible for everything not broadcast as well as everything broadcast. While I'm sure there is legal precedent for this absurdity, complete audio logging is adequate protection. Pacifica's programming policy, therefore, should require complete audio logging and storage.

--Terry Goodman, KPFK Delegate

Date: Sat 5 May 16:04:23 EDT 2007

From: Scooter <radio4houston@yahoo.com> [Add To Address Book](#) | [This is Spam](#)

Subject: Scooter feedback on National Indecency Policy

To: robrobin@erols.com, lsb@kpft.org, pnb@pacifica.org, poc-whole@pacifica.org

On the subject of BLEEPING:

>2) (snip) It is not sufficient to bleep words or flip them to change the sound. Obscene words and phrases must be omitted completely (d).

This is unclear, omitting the word completely means leaving silence instead of a bleep, or is it required to close the gap, what does this mean?

I recently aired a promo on KPFT where I used what is called 'unnecessary censorship' for comic effect. I bleeped out several words that were not profane, this is one minute 60 secs <http://acksisofevil.org/audio/HueyPromo.mp3>

Obviously this was okay, as it was approved by management for regular rotation, and no one knows what was really behind those bleeps, it could have been really awful.

Does this mean that it is not acceptable to play ANY music that has one curse word, even if bleeped?

I see enormous shades of difference here:

1. The bad bleep:

" I used to blow it bad when I was too fff (bleep) ked up"

2. The whole bleep:

" I used to blow it bad when I was too (bleep) up." Which could be anything, ie 'messed', 'drunked', 'drugged', etc etc.

3. Common Sense no-no: 'I just put her legs behind my ears and (bleep) her all night."

These are obviously distinct gradations of this prohibition:

>It is not sufficient to bleep

>words or flip them to change the sound. Obscene words and phrases must

>be omitted completely (d).

I hesitate to adopt FCC language directives into policy, simply because the directives are intentionally unclear, and are designed to promote self-censorship in the fearful.

I also can state an historical KPFT reason against self-censorship.

In 1992, the Republican Convention was in Houston. The programmer for a show called, 'The Funhouse', a post punk program, had someone fill in for him.

This substitute, chose to play a song, after midnight, called "I want to Fuck George Bush's Corpse." It was not sexually explicit, it was the standard punk faire of the times, simply bombastic and noisy. This song was repeated over and over throughout the night, for the simple reason that THE RUPUBLICAN NATIONAL CONVENTION was in Houston.

A so-called 'notable pundit', from KPFA was in town to cover this non-event, whose recently retired name I will not mention, and complained to the GM.

The KPFT GM took this opportunity to fire the substitute programmer, and cancel 'The Funhouse' program, all people associated with that program, which fit neatly into a plan to run the riff raff, and volunteers from the station, and replace them with 'Sound of Texas' paid music DJ's.

This agenda was quite successful, and over time, anything remotely resembling 'The Funhouse', raging punk, rap music, hip hop, and of course....public affairs, and eventually, Democracy Now, was driven from the airwaves.

It was inevitable, as this was the plan since the union busting and dumbing down and mass firings that started -----fill in the blank-----, I'd suggest that the banning of Maria Gilardin from all five stations should have been a red flag, in the early nineties, but this was before the Internet, and we did not communicate between stations.

What is ironic is that the very same pundit from KPFA, who got really upset about 'I want to Fuck George Bush's Corpse', in '92, got even more upset when the very same GM was flown into Berkeley and shut down KPFA, ten years later.

This is what happens when you self censor, and have your way, for a little while, until they get around to YOU.

The most offensive and obscene radio program I ever did was about Bestiality, which was a mix I drew from Hannity and Colmes, and Dr. Laura. It is truly obscene, and all comes from prime time Fox TV and radio.

Thanks to Tracey James and Slave Revolt Radio for the clips.

Listen to this, and tell me how it fits. Is it okay to play this under the new policy in safe harbor. If so, WHY???

This is an exercise in obscenity, and all drawn from mainstream, commercial media played in the daytime.

<http://acksisofevil.org/audio/inner50.mp3>

I suggest being careful, I don't have problems with any current management at KPFT or elsewhere, but adopting unclear policy, out of fear from the gov't, is ill advised, and another invitation to get creamed by the next concerted effort to to shut us up.

If you think I'm paranoid, call Lyn Gerry, the keeper of radio4all.net, whenever we post PNB meetings, and LSB meetings, the first hits are from Langely VA and washington DC.

They pay close attention to this stuff, and the joke is, these spooks have to listen to all this crap, and endless deliberations on our constant battles, and these tedious endless meetings.

But it's not so funny,

These assholes are laughing all the way to the Reichstag as we voluntarily give up our freedom of speech, and line up like good Germans.

We should keep on doing what we do, and if we get creamed by the FCC, we do have some friends, here and there, who will bail us out on principle.

I say trust our luck. it's worked for almost 60 years, and we don't need to enter the new era of self-censorship. If I can't play 'Fuck George Bush's Corpse' all night, in safe harbor, when the Republicans are in town, then why am I here?

Fuck them.

If it were me, in '92, I would have chosen far more clever ways to insult channel surfers from the RNC, because "Fuck George Bush's Corpse" is not exactly my style, I prefer far more evil and seditious attacks, the full frontal assault is not as effective, but I fully support the playing of "Fuck George Bush's Corpse" repeatedly in safe harbor during the RNC in Houston, and still revile the white liberal dipshits from Berkeley and the damage they did to us..

We've already felt the wrath of censorship from Pacifica from liberal PC jerks, so perhaps yall should just use your common sense, keep your opinions on what is acceptable on Pacifica to your own stations, and leave us alone.

-s

Attachment 3

Dear Sarv:

This is to provide you with an analysis of some of the structural problems of this policy.

1. By not requiring GMs and PDs to get signatures from on-air staff, and to report on who has/hasn't signed it, they suggest that knowledge of and compliance with this policy by programmers is optional, since few stations have any formal agreements with on-air staff to begin with.
2. This IS a repressive policy; but then, in paragraph #6 it leaves it up to stations to promulgate disciplinary actions or "schedules of penalties". We know that disciplinary actions will only be fair if they are the same for all stations and if there is the expectation that violations will be certainly and fairly enforced. It does not appear that any stations have formulated a schedule of disciplinary actions.
3. Proposing remedies that remove "shows" rather than the individuals who violate FCC regs seems tough, but in reality masks the problem. While offending words may creep in inadvertently, or because a producer failed to edit a song or actuality, compliance needs to focus on the individuals who violate the regs, as much as the show itself. Any individual who offends more than once may represent a real liability.
4. This policy places reporting and compliance responsibility not with GMs and PDs -- where it belongs -- but with the Network Programming Coordinator. This (1) is not the job of the NPC; and, (2) relieves the GM and PD of accountability. Each local station should provide detailed reports, monthly or quarterly, on all violations that occur, whether they are inadvertent, the result of a mistake in previewing, editing and production, deliberate or unavoidable. If they don't have to go to the trouble to report this, we cannot expect that they will undertake the unpleasant business of disciplining their staff.
5. If we were committed to enforcing this policy at the local station level, all stations would have audiologgging and storage capability, as well as the 7-second delay equipment in place. This is not the case.
6. The Foundation has needs to get our FCC counsel to help us codify guidelines and regulations that provide on-air staff with "case studies" that enable them to make informed decisions in situations that may put our licenses, our 501 (c) (3) status at risk, or that may pose other threats to the Foundation.

Attachment 4

Date: Wed 4 Jul 12:17:59 EDT 2007
From: <rob robin@rcn.com> [Add To Address Book](#) | [This is Spam](#)
Subject: Fwd: InventoryofProgramEvaluation
To: mavmedia@aol.com

Greg:

Can you, please, update me on your progress in assessing the state of program evaluation?

For example, I am aware that KPFA began an evaluation in 2004, but my understanding earlier this year was that only a portion of the programs had been evaluated.

The programming policy doesn't set a template for program evaluations. However, before stations embark on a course just to be in compliance it might be useful to get a sense of where the sticking points in the process are. For example, if they permit programmer self-evaluations, how do they use those? What do they listen for in evaluating particular shows?

I would like to speak with you and Nathan about this, so that the Program Evaluation process is part of a series of management decisions dealing with sustainability, listener feedback and mission fulfillment.

Rob
202.387.5956

Attachment: [Message 384 \(2k bytes\)](#) (Click to open)

Date: Wed, 18 Apr 2007 12:41:52 -0400 (EDT)
From: <rob robin@rcn.com>
Subject: InventoryofProgramEvaluation
To: mavmedia@aol.com, nathan@pacifica.org, dadelson@ucla.edu
Cc: sbgluck@csulb.edu

Dear Greg:

Last Sunday, April 15 the PNB Programming Committee passed (11-2 in favor, with 2 abstentions) the following resolution:

"In order to begin implementing the recently approved National Program Policy, the National Program Committee asks the ED to request that each GM inform him by June 19, 2007 of the status of their station's program evaluation process, including the progress of collecting information from individual programmers on the ways that their program fulfills the Mission (see 8.0 below). We request that the ED forward this information to the National Program Committee immediately on receipt."

Let me emphasize that we want to know if our stations conduct a formal (a formal process can be documented, an informal one cannot) program

evaluation process, and, if so, what stage they are in in the process,
and, whether that involves self-evaluation by individual programmers.

Feel free to contact me if you have any questions concerning this
request.

Sincerely,

/ s /

Rob Robinson
202.387.5956