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Janet Jackson's breast: The Nipplegate case

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The incident

Among several other acts, Janet Jackson and Justin Timberlake performed a medley/duet of their songs "Rhythm Nation" (Jackson) and "Rock Your Body" (Timberlake) during the halftime show. The performance featured many suggestive dance moves by both singers, and as the song reached the final line, "I'm gonna have you naked by the end of this song," Timberlake pulled off a part of Jackson's costume, revealing her right breast (adorned with a large, sun-shaped nipple shield, a piece of jewelry worn to accentuate the appearance of a nipple piercing).

In the immediate aftermath, the CBS broadcast cut to an aerial view of the stadium, but was unable to do so before the picture was sent to thousands of viewers' televisions. Many considered this indecent exposure, as a record-breaking 200,000 Americans contacted the Federal Communications Commission to complain, saying it was inappropriate in the context of a football game.

The halftime show was produced by MTV and aired on the CBS television network. At the time, both MTV and CBS were owned by the media group Viacom (as of January 2006, the companies have been split into separate entities, CBS became self-owned, however MTV became part of the new Viacom group spun off from the old Viacom, now known as CBS Corporation. Both companies are still owned by National Amusements). The controversy prompted tighter control of live television and radio broadcasts in the United States by station owners in fear of high fines that could be levied by the Federal Communications Commission. Following the incident, the NFL announced that MTV, who also produced the halftime show for Super Bowl XXXV, would never be involved in another halftime show.

Besides Jackson's exposure, the show featured numerous dancers, alongside rappers Sean "Diddy" Combs (who was nicknamed "P. Diddy" at the time) and Nelly, who were grabbing their crotches, along with other participants in costumes, such as Kid Rock wearing an American flag with holes for the sleeves and collar, which some viewers felt was offensive due to the "difficult times of war" going on.

Public reaction

In the United States, the exposure of Jackson's breast led to much controversy and headlines, being the fifth-ranked story on MSNBC's Countdown with Keith Olbermann on the day after the Super Bowl. Conservative media watchdog group Parents Television Council issued a statement that same day condemning the halftime show, announcing that their members would file indecency complaints with the Federal Communications Commission and the council supported the FCC's decision to investigate the halftime show immediately. Therefore, the PTC created a section in their web site where its members and other visitors could complain about the show. In addition, the **Federal Communications Commission received nearly 540,000 complaints from Americans**, with about 65,000 of them coming from the PTC. Many parents also expressed their disappointment towards the Super Bowl, claiming that they expected it to be a family-friendly event but instead had to be subjected to the sexually charged content. **However, an Associated Press poll found that only 18% of Americans supported the FCC's investigation.** Justin Timberlake told KCBS-TV a few days following the Super Bowl that his own family was offended by the Super Bowl mishap.

In Canada, where the show was broadcast by Global Television Network, the incident passed largely without controversy: only about 50 Canadians complained about the incident to the Canadian Broadcast Standards Council (CBSC). CBSC received roughly twice as many complaints about other aspects of the Super Bowl broadcast, including

music and advertising issues.

In Europe public reaction was widely affected by incomprehension – to the indignation of the American media and audience and not in terms to the bare breast of Janet Jackson. A Time magazine poll in 2005 revealed that 66% of Americans believed that the FCC "overreacted" to the halftime show.

Legal action

On February 4, Terri Carlin, a banker residing in Knoxville, Tennessee, launched a class action lawsuit against Jackson and Timberlake on behalf of "all American citizens who watched the outrageous conduct." The lawsuit alleged that the halftime show contained "sexually explicit acts solely designed to garner publicity and, ultimately, to increase profits for themselves." The lawsuit sought "maximum" punitive and compensatory damages from the performers. Ms. Carlin later dropped the lawsuit. Three months later, Eric Stephenson, a lawyer from Farmington, Utah, filed a \$5,000 lawsuit in small-claims court against Viacom for "false advertising" of the Super Bowl halftime show, as he, the father of three young children, claimed that pre-game advertising led him to believe that the halftime show would consist of marching bands, balloons, and a patriotic celebration. The lawsuit was rejected because Stephenson should have filed a federal lawsuit or complain to the FCC, which was already investigating the halftime show.

The incident triggered a rash of fines that the Federal Communications Commission levied soon after the Super Bowl. The FCC alleged that the context of the "wardrobe malfunction" was intended "to pander, titillate and shock those watching" because it happened within the lyrics within Timberlake's performance of Rock Your Body: "Hurry up 'cause you're taking too long. . . better have you naked by the end of this song." In addition, the FCC cited a news article on the website of MTV claiming that the halftime show would promise "shocking moments" and that "officials of both CBS and MTV were well aware of the overall sexual nature of the Jackson/Timberlake segment, and fully sanctioned it—indeed, touted it as 'shocking' to attract potential viewers." CBS, however, argued that the exposure was unplanned, although in later statements CBS asserted that while the exposure unplanned by CBS, it was deliberately planned by Jackson and Timberlake "independently and clandestinely".[1] On September 22, 2004, the FCC fined Viacom the maximum \$27,500 (US) penalty for each of the twenty CBS-owned television stations (including satellites of WFRV in Green Bay, WCCO in Minneapolis, and KUTV in Salt Lake City; current CBS owned-and-operated station KOVR in Sacramento at the time was owned by Sinclair Broadcast Group) for a total \$550,000 fine, the largest ever against a television broadcaster at that time. However, the Parents Television Council and even some of the FCC commissioners criticized the FCC for fining only twenty CBS stations, not all of them, for the halftime show.

The United States House of Representatives passed a bill, soon after the Super Bowl, to raise the maximum FCC fine penalty from said \$27,500 to \$500,000 per violation. The United States Senate voted to decrease it to \$275,000 per incident, with a cap of \$3 million per day. The two houses reconciled the differences in fine levels, settling for a fine of \$325,000 (US) per violation in the Broadcast Decency Enforcement Act of 2005.

Many entertainment companies were forced to modify themselves due to the public outrage. Clear Channel Communications removed "talk-radio host" Howard Stern from several of its large-market radio stations within a month of the incident, citing the raunchy content of Stern's show. The FCC fined Clear Channel after a Florida-based radio show featuring Bubba the Love Sponge was charged with indecency.

In November 2004, Viacom paid out \$3.5 million to settle outstanding indecency complaints, but still refused that it was challenging the \$550,000 penalty related to the incident. As a result of the incident, some networks established regulations requiring time delays of as much as five minutes for live broadcasts such as awards shows and sporting events.[30] When the game telecast from CBS aired February 1, 2007 on NFL Network, the entire halftime show was passed over, cutting after a commercial break directly to the second half, and another incident. (See The Streaker below)

Indecency Penalty Against CBS Is Rejected June 22, 2008

By ELIZABETH JENSEN, New York Times

http://www.nytimes.com/2008/07/22/business/media/22cbs.html?_r=1&oref=slogin

A federal appeals court threw out on Monday a \$550,000 fine that the Federal Communications Commission imposed on CBS for a "wardrobe malfunction" at its 2004 Super Bowl halftime show that briefly exposed the singer Janet Jackson's breast.

The United States Court of Appeals for the Third Circuit in Philadelphia said that the F.C.C. had the right to change its policies, including those involving the fleeting display of nudity, without “judicial second-guessing,” but it had to give broadcasters advance notice and had failed to do in this case.

The court also ruled that the F.C.C. had been wrong to hold CBS responsible for the actions of Ms. Jackson and her performing partner, Justin Timberlake, who sang “gonna have you naked by the end of this song,” before ripping away her bustier, exposing the breast for what the three-judge panel noted was “nine-sixteenths of one second.”

The judges called the performers “independent contractors hired for the limited purposes of the halftime show,” which was seen by 90 million people.

The Supreme Court is about to hear the F.C.C.’s appeal of a June 2007 ruling from another federal appeals court that struck down a commission policy imposing fines for the broadcast of “fleeting expletives” blurted out by newsmakers or performers.

While the two cases are not related, network executives said that Monday’s ruling could bolster their arguments in the Supreme Court case, which involved profanities uttered by Cher and Nicole Richie on Fox. Briefs on behalf of network broadcasters in that case are due Aug. 1, and oral arguments are expected to be scheduled for November.

Andrew J. Schwartzman, whose Media Access Project filed a brief supporting CBS in the Super Bowl case, called Monday’s ruling “one more decision critical of the F.C.C. and suggesting that the F.C.C. decision-making is sloppy.”

In a statement, the commission’s chairman, Kevin J. Martin, said, “I am surprised by today’s decision and disappointed for families and parents.” He did not say whether the ruling would also be appealed to the Supreme Court, but many expect it will be, given the importance that the F.C.C. has placed on the case.

“I continue to believe that this incident was inappropriate, and this only highlights the importance of the Supreme Court’s consideration of our indecency rules this fall,” his statement said. The chairman was at a hearing in Pittsburgh and unavailable for further comment, the FCC said. Asked about a possible Supreme Court appeal, spokesman Robert Kenny said: “We’re closely reviewing the decision and haven’t determined our next steps at this time.”

The commission received what it said was a record 542,000 public complaints about the Super Bowl incident, generated by groups like the Parents Television Council. In Monday’s ruling, the court said the actual number was unclear, noting CBS’s argument that some of the complaints were duplicates and form letters.

After the Super Bowl incident, Congress passed legislation that increased the maximum fines in indecency cases tenfold to \$325,000 a station. The F.C.C. pursued numerous other cases, imposing fines on CBS for its program “Without a Trace” and on a PBS station for fleeting profanity in a documentary, “The Blues.”

But public outrage has waned, to the point where Justin Timberlake, who hosted Sunday night’s ESPN ESPY awards program, poked fun at the Super Bowl incident in a musical routine. In 2004, he apologized for the incident.

Tim Winter, president of the Parents Television Council, said he was angry “over what we see as a hijacking not only of the public will but Congressional intent.” He urged the F.C.C. to appeal and Congress to approve legislation that would bolster the commission’s policies. “Congress, especially during an election year, understands how the public feels about this issue,” he said.

In a statement, CBS praised Monday’s ruling, saying it was “gratified by the court’s decision, which we hope will lead the F.C.C. to return to the policy of restrained indecency enforcement it followed for decades.” Fox Broadcasting also issued a statement praising the ruling.

Mr. Schwartzman, of the Media Access Project, called the “willfulness question” the most important part of Monday’s ruling. The F.C.C.’s insistence that CBS should have known that Ms. Jackson and Mr. Timberlake were planning the

brief nudity stunt — even though it never took place in rehearsals — has “caused considerable anxiety among broadcasters carrying live events,” Mr. Schwartzman said, adding: “That will make a lot of broadcasters breathe a lot easier.”

The National Federation of Community Broadcasters also was heartened by the ruling, although it represents public radio stations, not television. Ginny Berson, the federation’s vice president, said the commission’s current enforcement of indecency policies was arbitrary, adding: “If you’re going to have a policy, everybody has to know what it is and it has to be consistent and it has to be defined.”



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