

High Court to Consider FCC's Indecency Rules

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The significance of the Supreme Court's recent violent video game decision in *Brown v. Entertainment Merchants Association, Inc.* (discussed here) could be felt as early as the Court's next term, which begins in October. It is then that the Court has agreed to hear arguments in an appeal of *Fox Television Stations, Inc. v. FCC*, the long-litigated "fleeting expletives" case involving Fox's 2002 and 2003 broadcasts of the Billboard Music Awards in which Cher and Nicole Richie respectively uttered the "f-word." At the same time, the Court will consider issues raised in *ABC, Inc. v. FCC*, a case involving seven seconds of partial nudity contained in an episode of "NYPD Blue." At issue in both *Fox* and *ABC* is the Federal Communications Commission's (FCC) broadcast indecency rules. Those rules prohibit broadcasters from airing "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities." While *Brown* appears to resolve—at least in passing—the constitutionality of regulating obscene speech on the one hand, and the related constitutional limits of regulating violent speech on the other, these cases will test to what extent the First Amendment protects another category of speech—indecent speech.

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