

REFERENCE AND RESEARCH BUREAU
LEGISLATIVE RESEARCH SERVICE

**THE TELEVISION CODE OF ETHICS IN THE
OBSERVANCE OF DECENCY AND PROPER DECORUM
IN PROGRAMS; LAWS ON OFFENSES AGAINST
DECENCY AND GOOD CUSTOMS; AND CONSTITUTIONAL
PROVISION ON FREEDOM OF EXPRESSION**

I. INTRODUCTION

This research presents the guidelines for the broadcast of television programs promulgated by the Kapisanan ng mga Brodkaster sa Pilipinas in the observance of decency and proper decorum of those appearing in shows, whether as stars or talents, and the corresponding penalties imposed on television stations. It also includes the authority of the Movie and Television Review and Classification Board to approve or disapprove television programs which are objectionable for being immoral, indecent, contrary to law or good customs with the penalties imposed on violators.

Laws penalizing grave scandal, obscene and indecent shows and decided cases and commentaries are also made part of this report.

Finally, this report discusses the constitutional provision on the freedom of expression and its applicability to television and broadcast media in the protection of public morals and decency.

II. TELEVISION CODE OF THE KAPISANAN NG MGA BRODKASTER SA PILIPINAS (KBP), 1993 REVISED EDITION (ANNEX A)

A. Observance of Decency and Proper Decorum in Programs

1. General Program Standards¹

- 1.1 Programs shall not use dialogues, actions and other similar manifestations which are obscene, blasphemous, profane, derogatory, or vulgar.
- 1.2 Penalties imposed:²
 - a) For the first offense, a fine of P7,000.00/or written reprimand to individual employee/blocktimer/announcer, and censure for the station;
 - b) For the second offense, a fine of P10,000.00 and/or twelve (12) months suspension of individual employee/ blocktimer/announcer, and twelve (12) months suspension of privileges for the station;
 - c) For the third offense, a fine of P20,000.00 and/or twenty four (24) months suspension of individual employee/ blocktimer/announcer, and twenty-four months suspension of privileges for the station; and
 - d) For the fourth offense, cancellation or revocation of accreditation of individual employee/blocktimer/announcer, and recommendation for expulsion from KBP membership and recommendation to the National Telecommunications Commissions (NTC) for the cancellation of the permit to operate the station.

2. Contests, Public Participation Programs and Promotions³

- 2.1 Performers in programs shall always observe decency and proper decorum.

¹ P. 1, Annex A.

² P.2, *ibid.*

³ P. 11-12, *ibid.*

2.2 Penalties imposed:

- a) For the first offense, a fine of P3,000.00 and/or written reprimand to individual employee/blocktimer/ announcer, and censure for the station;
- b) For the second offense, a fine of P5,000.00 and/or three (3) months suspension of individual employee/ blocktimer/announcer, and three (3) months suspension of privileges for the station; and
- c) For the third offense, a fine of P10,000.00 and/or six (6) months suspension of individual employee/blocktimer/announcer, and six (6) months suspension of privileges for the station; and
- d) For the fourth offense, cancellation or revocation of accreditation of individual employee/blocktimer/ announcer, and recommendation for expulsion from KBP membership and recommendation to the NTC for the cancellation of the permit to operate the station.

3. Musical, Variety, Sitcom, Game and Special Show⁴

3.1 Dance sequence/skits

Good taste shall prevail in the presentation of skits and dance numbers. Utmost care shall be taken that dancers or performers are properly attired.

3.2 Attire and Decorum

All hosts/emcees/casts/regular on-air personalities shall be properly dressed for their program, taking into account not only what is fashionable but also what is decent and proper for the medium.

Performers in the programs shall always observe decency and proper decorum and shall not be allowed to perform while under the influence of drugs or liquor.

⁴ P. 15, *ibid.*

III. POWER AND FUNCTION OF THE MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB) AND THE IMPLEMENTING RULES AND REGULATIONS (IRR) WITH REGARD TO TELEVISION PROGRAMS

1. Power of the MTRCB to approve/disapprove television programs and to prosecute violators of this decree⁵

- 1.1 Section 3, par. c, states the authority of the MTRCB to approve/disapprove television programs that are objectionable for being immoral, indecent, contrary to law/good customs, applying contemporary Filipino cultural values as standard.
- 1.2 Section 3, par. i, states the authority of the MTRCB, to cause the prosecution, on behalf of the People of the Philippines, of violators of this Act, of anti-trust, obscenity, censorship and other laws pertinent to the movie and television industry.
- 1.3 Section 11, states that any person who violates the provisions of this decree and/or IRR issued by the Board shall upon conviction be punished by a mandatory penalty of three (3) months and one day to one (1) year imprisonment plus a fine of not less than fifty thousand pesos but not more than one hundred thousand pesos. The penalty shall apply whether the person shall have committed the violation either as principal, accomplice or accessory. The license to operate the television station shall also be revoked. Should the offense be committed by a juridical person, the chairman, the president, secretary, treasurer, or the partner responsible therefor, shall be the person penalized.

2. IRR⁶ of P.D. No. 1986, requiring television programs and talk shows to superimpose the phrase “parental guidance” on screen throughout the show

- 2.1 Section 13, par (b) requires live television talk shows and other live television programs such as noontime variety shows to superimpose the phrase “parental guidance” on screen throughout the showing to continuously remind parents to be on the alert because such programs may contain materials that they may deem inappropriate for their children.

⁵ Presidential Decree (P.D.) No. 1986, October 5, 1975 (Annex B).

⁶ Promulgated on July 20, 1998 (Annex B).

Officers/owners of television networks and production companies shall be held responsible for any breach or violation of pertinent laws arising from or by reason of the telecast of all their television programs.

The Board shall not hesitate to impose penalties and fines, cancel permits and licenses, and cause the prosecution of all those found guilty of violating said pertinent laws.

3. IRR of P.D. No. 1986 with regard to the scope of authority of the MTRCB

3.1 Section 1 states that all motion pictures, television programs, and related publicity materials intended for public exhibition in theaters and television, whether imported or produced in the Philippines, in any case for local viewing or for export, shall be subject to review for classification by the Board before they are exported, imported, copied, distributed, sold, leased and exhibited.

No motion picture, television program, or publicity material intended for such exhibition shall be disapproved by reasons of its topic, theme, or subject matter, subject to Section 201, "Offenses Against Decency and Good Customs," of the Revised Penal Code.

IV. THE REVISED PENAL CODE, ART. 200 – GRAVE SCANDAL AND ART. 201 – IMMORAL DOCTRINES, OBSCENE PUBLICATIONS AND EXHIBITIONS AND INDECENT SHOWS

1. Article 200. Grave Scandal

1.1 Provision of Law

The penalties of arresto mayor and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this code.

1.2 Discussion

1.2.1 Grave Scandal, defined⁷

Grave scandal “consists of acts which are offensive to decency and good customs which, having been committed publicly, have given rise to public scandal to persons who have accidentally witnessed the same.”

1.2.2 Decency or good customs defined⁸

Decency means propriety of conduct; proper observance of the requirements of modesty, good taste.

Custom means established usage, social convention carried on by tradition and enforced by social disapproval of any violation.

1.2.3 Elements of Grave Scandal⁹

- a. The offender performs an act or acts;
- b. Such act or acts be highly scandalous as offending against decency or good customs;
- c. The highly scandalous conduct is not expressly falling within any other article of this Code; and
- d. The act or acts complained of be committed in a public place or within the public knowledge or view.¹⁰

⁷ Reyes, L.: The Revised Penal Code, Book II, 1993 ed., pp. 304-305, People vs. Dumlao, C.A. 38O.G. 3715 (Annex C).

⁸ Palattao, R.: The Revised Penal Code Made Easy, Book II (2000 ed.), pp. 168-169) (Annex D).

⁹ See note 7.

¹⁰ U.S. vs. Samaniego, 16 Phil. 663.

2. Art. 201. Immoral doctrines, obscene publications and exhibitions and indecent shows

2.1 Provision of Law

The penalty of prison mayor or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon.

- 1) Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
- 2) (a) The authors of obscene literature, published with their knowledge in any form; and the editors publishing such literature; and the owners/operators of the establishment selling the same;

(b) Those who, in theaters, fairs, cinematographs or any place, exhibit indecent or immoral plays, scenes, act or shows whether live or in film, which are prescribed by virtue hereof, shall include those which (1) glorify criminals or condone crime; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts; and
- 3) Those who shall sell, give away or exhibit, films, prints, engravings, sculptures or literature which are offensive to morals (as amended by P.D. Nos. 960 and 969).

2.2 Discussion

2.2.1 Test of Obscenity¹¹

- a) Whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences, be they cultured or not as the purpose of the law is to protect public morals.¹² The word obscene means something offensive to chastity, decency or good taste, good behavior and a just delicacy. The Philippine

¹¹ Gregorio A.: Fundamentals of Criminal Law Review (1997 ed.), pp. 555-556 (Annex E)

¹² People vs. Aparici, 54 O.G. 249.

statute does not attempt to define obscene or indecent. But the words “obscene or indecent” are themselves descriptive. They are in common use and every person of average intelligence understand their meaning.¹³

- b) Sexual indulgence is not in itself immoral if done within the bounds of privacy and performed normally. The moment the parties carry their private rights and privileges to public view, they expose themselves to public scrutiny. In such a situation, the law will intervene and will subject the act to the standards provided by law.¹⁴
- c) The reaction of the public during the performance of a dance by one who had nothing to cover herself with, except nylon patches over her breasts and too abbreviated pair of nylon panties to interrupt her stark nakedness should be made the gauge in the determination of whether the dance or exhibition was indecent or immoral.¹⁵

IV. CONSTITUTIONAL PROVISION ON FREEDOM OF EXPRESSION FOUND IN ARTICLE III, SECTION 4

1. Article III, Section 4

1.1 Constitutional Provision

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

1.2 Discussion

1.2.1 Meaning of Freedom of Speech, of Expression, and of the Press¹⁶

It implies the right to freely utter or publish one’s beliefs, ideas, or opinions without prior restraint, and to be protected against any subsequent responsibility for so

¹³ U.S. vs. Kottinger, 45 Phil. 352.

¹⁴ People vs. Sarte III, 55 O.G. 7034.

¹⁵ See note 12.

¹⁶ De Leon, H.: Philippine Constitutional Law, Principles & Cases, Vol. I (1999 ed.), p. 478 (Annex F).

doing, except so far as such publication, from their blaspheming, obscenity, or scandalous character, may be a public offense, or as by their falsehood and malice they may injuriously affect the standing reputation or pecuniary interests of individuals.

1.2.2 Purposes of Protecting the Freedom of Speech, of Expression and of the Press¹⁷

- a) To protect and preserve the right of the people to information on matters of public concern;
- b) To enable every citizen to bring the government and any person in authority to the bar of public opinion; and
- c) To insure free and general discussion of public matters.

1.2.3 Freedom of Expression is Not Absolute¹⁸

The right of freedom of speech and of the press is essential to the preservation and operation of a sound constitutional democracy. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure the widest latitude to this constitutional guarantee. However, this right is not absolute at all times and under all circumstances. It does not confer unbridled license to speak or publish without responsibility for every possible use of language. There are other societal values that press for protection.

The right is always subject to some regulation of the State in order that it may not be injurious to the equal right of others or those of the community or society. This power may be exercised under the police power of State to promote or protect the public welfare, which may, in turn, be delegated to political subdivisions, which may enact ordinances for the purpose.

¹⁷ Ibid.

¹⁸ Ibid., p. 484.

1.2.4 Freedom of Television and Radio Broadcasting¹⁹

- a) The Freedom is lesser in scope than that accorded to print media

Broadcasting has to be licensed. Airways frequencies have to be allocated among qualified users. A broadcast corporation cannot simply appropriate a certain frequency without regard for government regulation or for the rights of others.

All forms of communication are entitled to the broad protection of the freedom of expression clause. Necessarily, however, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media.

- b) The Pervasive Influence of Broadcast Media

The broadcast media have also established a uniquely pervasive presence in the lives of all Filipinos. Newspapers and current books are found only in metropolitan areas and in poblaciones of municipalities accessible to fast and regular transportation. Even here, there are low-income masses that find the cost of books, newspapers and magazines beyond their humble means. Basic needs like food and shelter perforce enjoy high priorities.

On the other hand, the transistor radio is found everywhere. The television set is also becoming universal. The message may be simultaneously received by a national or regional audience of listeners including the indifferent or unwilling who happen to be within reach of a blaring radio or television set. The materials broadcast over the airwaves reach every person of every age, persons of varying susceptibilities to persuasion, persons of different I.Q.s and mental

¹⁹ Ibid., pp. 509-510.

capabilities, persons whose reactions to inflammatory or offensive speech would be difficult to monitor or predict. The impact of the vibrant speech is forceful and immediate. Unlike readers of printed work, the radio audience has lesser opportunity to cogitate, analyze, and reject the utterances.

1.2.5 United States Supreme Court Decisions on Regulation of the Broadcast Media

- a) Confronted with a patently offensive and indecent regular radio program, explained why radio broadcasting, more than other forms of communications, receives the most limited protection from the free expression clause. First, broadcast media have established a uniquely pervasive presence in the lives of all citizens. Material presented over the airwaves confronts the citizens, not only in public, but also in privacy of his home. Second, broadcasting is uniquely accessible to children. Bookstores and motion pictures theaters may be prohibited from making certain material available to children, but the same selectivity cannot be done in radio or television, where the listener or viewer is constantly tuning in and out.²⁰

- b) Due to the unique nature of electronic media and the present state of the art, there is no comparable right of everyone to broadcast on radio and television what one could speak, write or publish elsewhere. Frequencies presently available to broadcast are finite, and when some are given the privilege to use, others must be denied. No particular licensee has a first amendment right to broadcast and his existing privilege may be qualified through reasonable regulation. In general it may be said that the award of a broadcast license may be subjected to reasonable regulation with goals other than the suppression of ideas. Such regulation is permissible because it is the right of the listeners and viewers that is paramount, not the

²⁰ Federal Communications Commission vs. Pacifica Foundation, 438 U.S. 726.

right of the broadcasters. To develop the full potential of radio, and that the overriding interest to be served must be, “the interest of the listening public in the larger and more effective use of radio”. To further the public interest in use of this limited resource, government must allocate use of airways.²¹

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²¹ National Broadcasting Co., Inc. v. United States, 319 U.S. 190.