

Essay on explicit communication

[Education](#), [Discipline](#)



Introduction

Sexually explicit materials are common despite their negative impacts on the society especially in people with psychological problems and adolescent. One of the negative impacts of sexual explicit communication is that the people who view, read, or listen to the materials become law offenders. The federal government in attempts to protect the society has set some standards to regulate explicit communication (Federal Communications Commission, 2011). The laws protect the public from extra exposure to explicit materials which may derive them of their values and morals. The standards also protect the citizens from becoming oversexed as a result of listening, viewing, and reading the sexual explicit materials.

Regulation of the current obscenity laws

According to Federal Communications Commission (2011) the current regulation provides laws against profanity, obscenity, and indecency all with the aim of public protection. Airing of obscene programs at any time of the day is a breaking of federal laws. Indecent or profane programs should only be aired at certain hours of the day as allowed by the law. To enforce the obscenity law, Federal Communications Commission has been given the responsibility to regulate the broadcasts. The FCC (Federal Communications Commission) has the power to reject application renewals, license annulment, and issue financial policies to individuals who broadcast the programs against the obscenity law. As stated by the Federal Communications Commission (2011) the criminal violators of the law may

also be taken to district courts where after conviction the court may imprison them for up to two years or impose fines or both.

Description of the Miller Test

“ Miller test refers to the United States Supreme Court’s assessment, which determines the obscenity of an expression or speech (FCC, 2009).” An obscene expression according to the Millers test is not under the protection of the First Amendment to the United States constitution. The test is also referred to ‘ Three Prong Obscenity Test’.

The Millers test was established in 1973 in the Miller versus California case when the Chief Justice—Warren Burger—categorized obscene materials in three definitions. In his writing for the majority, the chief justice held that the first amendment does not protect any obscene material (Tom, 2011). One of the three definitions used by the chief justice stated that for a material to be obscene, an average person who applies modern standards of the community would find work taken as a whole to be appealing to the prurient interest. “ The second definition stated whether the work describes was in an offensive way or any sexual conducts defined by the applicable law in a specific way (Tom, 2011, p. 1).” The last definition stated whether the entire work has no literary, scientific, political, or artistic value. Therefore, any work is classified as obscene only if it fulfills the three conditions as defined.

Community standards

The first two definitions of the Miller test have their bases on community standards while the third definition refers to what is reasonable to the people in United States. Community standards used in the definitions refer to the

local norms or conducts accepted in a certain community or society. As Tom (2011) puts it, the community standards comprise of guidelines and values used in a community which are mostly informal. The Miller test allows the standards of the community to supersede the national standards which is an important issue in the test. Average people in two different communities may not find the same things to be offensive depending on the relevant community (Tom, 2011). The importance of the third prong is that it protects the other two points because different communities might have different views and consider a material to be obscene. The same material in the national level might not be considered as obscene based on the last definition.

Community standards as a way to determine obscenity

In the legal situation, community standards have been criticized in the legal situations because it has been used to resolve disputes that refer to obscene materials. The community standards have been the basis of wrong accusations and minorities such as interracial marriages and homosexuals have received wrong punishments. For most cases, the national standards should be used instead of the community standards because the judgment of an average person in New York cannot be compared to an average person in Mississippi (Tom, 2011). Community standards should only be used in the community level for the people from the same community because they have the same understanding.

How legislators use time, manner, and place restrictions to regulate the expression of obscene or erotic material

The first amendment in the United States constitution allows the citizens to have freedom of speech. As argued by Federal Communications Commission (2009), this means that individuals can freely express themselves without government interference. However, the freedom of speech is not absolute and the United States Supreme Court ruled that the government may impose limiting legislations on modus, time, and place for the convenience of the public. The government imposes regulations to low value speech such as obscenity and other speech that may harm the public.

The legislators use limitations of time to control how people are to express themselves. The government may prohibit or curtail speech at certain times of the day for the benefit of the society (Federal Communications Commission, 2009). The legislators use time restrictions to regulate the expression of obscene or erotic materials by defining specific times when certain materials may be broadcasted. There is no specific time of the day when obscene broadcasts are allowed because it is completely banned. It is banned at all times because lewd material is not protected by the First Amendment in the United States constitution.

Unlike the obscene materials, other erotic material such as indecent broadcast is under the protection of the First Amendment and that is why it cannot be entirely banned. The legislators impose time restrictions on the broadcast of such materials to regulate the audience. The times of the day are risky because the audience may be children (Federal Communications Commission, 2009). The federal indecency statute prohibits indecency

programs that fit under the definition in the televisions and on the radios to broadcast between 6: 00 a. m and 10: 00 p. m. Other erotic materials such as profane materials like the indecency materials are prohibited either on radio or television between 6. 00 a. m and 10. 00 p. m.

Place restrictions regulate where people are supposed to express themselves. Individuals are not allowed to express themselves in every place because the government imposes reasonable restrictions. “ The legislators use place restrictions to regulate the expression of obscene or erotic materials for the purpose of protecting the audience (Gould, & Gorseger, 1985, Pp. 165-166).” Obscene materials are not allowed at all in any place because they are banned. Other erotic materials are not allowed in public forums and they are also restricted in the traditional forums. This is to protect certain groups like children from exposure of such harmful materials.

Manner restrictions refer to regulation of expression mode from individuals. Symbolic expressions do not require the use of spoken or written words but it is only a matter of expression. The legislators use manner to regulate the expression of obscene or erotic materials for the sake of the public (Gould, & Gorseger, 1985, p. 165-166). Symbolic expressions of obscene behavior are not allowed together with expressions that symbolize erotic behavior.

How federal regulation attempt to control obscenity

The federal regulations attempt to control obscenity by regulating the speech based on community standards and the national standard. The federal regulation control obscenity by giving different regulations which constitutes obscenity materials (Cenite, 2004, p. 25-71). The federal

regulation allows prosecution of the people who violate the laws that are set by the federal government concerning the laws. The American law has made attempts to control obscene materials by drawing a line between the permitted materials and the materials that are not permitted. The federal regulation has also been able to distinguish the things that are not covered by the First Amendment in the United States constitution. The materials that are not protected by the First Amendment can easily be banned by the court. The federal regulation in control of the obscene materials has put restrictions on the time, place and manner in which other erotic materials can be exposed. This has helped to control the broadcast and the sale of such materials that harm the public for the benefit of some few people.

The federal regulation protects the minors and the society from obscene materials that may cause harm to the community and to the nation. It also helps in maintaining community values and the nation values concerning the wrong perception of sexual activities and sexual acts. Federal regulation is fully enforced through the enforcement procedures set by the Federal Communications Commissions. The Commission was formed and given the responsibilities to revoke license, issue monetary policies, and deny renewal applications in the attempt to control obscenity (Cenite, 2004, p. 25-71). The public is allowed to submit complaints on obscene materials to the Federal Communications Commission which later reviews the complaints to determine if evidence is enough to prove any violation of the obscene law. In case of violation, the investigations take off in the efforts to convict the violators of the law. The first step is to issue a ' Notice of Apparent Liability' that shows violation of the law.

Conclusion

Sexually explicit materials are against the federal law and the public is protected by the federal regulations. Obscenity materials have been defined in the Miller test that was established in 1973 by the then chief justice. The definition contains community standards and one national standard to balance the community standards. The legislators of the law use time, manner and place restrictions to regulate the expression of obscene materials in the efforts of protecting the public. This has helped in regulation of other erotic materials because there is time restriction of the times the broadcast can be aired. The federal regulations in attempt to control obscenity have allowed prosecution of the violators of obscene law.

References

- Cenite, M. (2004). Federalizing or Eliminating Online Obscenity Law As An Alternative To Contemporary Community Standards. *Communication Law & Policy*, 9(1), 25-71. Retrieved from EBSCOhost.
- Federal Communications Commission, (2009). Obscenity, Indecency and Profanity. [Online] Available from <http://www.fcc.gov/guides/obscenity-indecency-and-profanity>. Viewed on 1 September 2011.
- Federal Communications Commission, (2011). Regulation of Obscenity, Indecency and Profanity. [Online]. Available from <http://webcache.googleusercontent.com/search?q=cache:wUTzJ0xe69gj:www.fcc.gov/eb/oip/+regulation+of+current+obscenity+laws&cd=1&hl=sw&ct=clnk&gl=ke&client=firefox-a&source=www.google.co.ke>. Viewed on 1 September 2011.
- Gould, M., & Gorseger, R. (1985). *Obscenity & Pornography: The Law Under* <https://assignbuster.com/essay-on-explicit-communication/>

the First Amendment (Book). *Journal of Academic Librarianship*, 11(3), 165-166. Retrieved from EBSCOhost.

Tom, H. (2011). The Miller Test. [Online] Available from <http://civilliberty.about.com/od/freespeech/g/Miller-Test.htm>. Viewed on 1 September 2011.