

Supreme Court Upholds FCC's Ability to Prohibit the Digital Media and Data Privacy Law Blog

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In a question-begging 5-4 decision, a badly-fractured United States Supreme Court issued a ruling this morning in the Fox indecency case stemming from the isolated use of expletives (the “F-Word” and the “S-Word”) by Cher and Nicole Ritchie on live awards shows broadcast in prime time during 2002 and 2003. A half dozen opinions were filed by the nine Justices on the High Court.

The FCC had determined that the broadcasts at issue were indecent, and the Second Circuit Court of Appeals had reversed the FCC on the grounds that the FCC’s decision was “arbitrary and capricious” under the Administrative Procedure Act. Today’s U.S. Supreme Court decision holds that, under the Administrative Procedure Act, the FCC’s indecency ruling was not arbitrary or capricious and that it is within the FCC’s authority to determine that even “fleeting” expletives may be indecent.

The Supreme Court’s majority opinion refused to address the First Amendment arguments made by broadcasters in this case and remanded the case back to the Second Circuit for a determination of whether the FCC’s new “fleeting expletives” policy is constitutional. The Court’s decision means that this issue will continue to occupy broadcasters’ attention for the near future.