

ALERT

Second Circuit Vacates Indecency Fine Against ABC and Affiliates for NYPD Blue

January 4, 2011

On Tuesday, January 4, 2011, the U.S. Court of Appeals for the Second Circuit vacated the Federal Communications Commission's (FCC) 2008 fine against ABC and 44 of its affiliates for the 2003 broadcast of an episode of *NYPD Blue* that included a seconds-long shot of an adult woman's nude buttocks.

The Second Circuit's summary decision in *ABC v. FCC* marks one of the first applications of last summer's *Fox v. FCC* decision, in which the same court invalidated the FCC's indecency policy in its entirety. The Second Circuit made clear that its decision in *Fox* does not hinge on factual distinctions, such as the scripted nudity in *NYPD Blue* versus the fleeting expletives at issue in *Fox*, but rather prohibits the FCC from making content judgments pursuant to an indecency policy that the court has determined is unconstitutionally vague. Given the scope of the recent *Fox* decision, the court in *ABC* did not address the broadcasters' administrative and constitutional challenges to the *NYPD Blue* fine.

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