[US] Supreme Court Finds Section 505 of the Telecommunications Act of 1996 Unconstitutional

IRIS 2000-7:1/15

Carl Wolf Billek
Communications Media Center at the New York Law School

On 22 May 2000, the Supreme Court of the United States held that Section 505 of the Telecommunications Act of 1996 ("1996 Act") was not the least restrictive means available to block access to sexually-oriented cable television programming and, as such, violated the First Amendment of the Constitution. The Supreme Court's decision affirms an earlier decision from the United States District Court for the District of Delaware.

Section 505 required cable television operators providing channels primarily dedicated to sexually-oriented programming either to fully scramble or block those channels or limit their transmission to the period between 10 p.m. and 6 a.m. Rather than risk having the sexually-oriented programming viewable through imperfect signal scrambling technology (a phenomenon known as "signal bleed"), approximately 70% of cable operators limited such programming to the permissible safe harbour period.

In reviewing the constitutionality of Section 505, the Supreme Court determined that the statute was content-based and therefore, could only stand if it satisfied the legal standard known as "strict scrutiny." Under strict scrutiny, a statute must be narrowly tailored to promote a compelling government interest, and if a less restrictive alternative would serve the government's purpose, the legislature must use that alternative.

While the Supreme Court stated that protecting children from viewing sexually-oriented programming is a compelling government interest, it also concluded that restricting the affected programming to the safe harbour period deprived programmers of 30 to 50% of their audience. As such, the statute was not "narrowly tailored" to promote the government's interest. Furthermore, the Supreme Court held that Section 504 of the 1996 Act, which requires a cable operator to block or scramble cable programming upon the request of individual subscribers, was a less restrictive alternative that would equally serve the government's purpose.

United States, et al. v. Playboy Entertainment Group, Inc., 2000 WL 646196(U.S.); No. 98-1682 (May 22, 2000).

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026