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Oscars 2022: Lights, Cameras and Censors

By Jose Garcia-Bonilla and Jessie Lewis

The 94th annual Academy Awards ceremony held this past Sunday was undoubtedly a pop-culture event to be remembered, with a return of hosts, a return to the Dolby Theatre and a return to in-person festivities. Sunday's ceremony is estimated to have reached 15.36 million viewers, based on the Nielson company's preliminary numbers released by ABC on Monday - a significant jump from last year's all-time low of 9.85 million viewers. Nonetheless, it was still considered to be the second-least watched Oscars ever.

In case you missed it, during the presentation of the Oscar for Best Documentary Feature, comedian Chris Rock reportedly ad-libbed a joke about Jada Pinkett-Smith starring in a potential *G.I. Jane* sequel. The original *G.I. Jane* film, released in 1997, starred Demi Moore with her head shaved as the lead. Rock's poorly-made quip, poking fun at Pinkett-Smith, who was diagnosed with alopecia in 2018, resulted in her husband Will Smith approaching Rock on stage and delivering a slap to his face in front of the 15 million viewers. While many thought it was a staged bit, that theory quickly dissipated as Rock confirmed to viewers that "Will Smith just slapped the s--- out of me." As tension mounted, Smith then demanded that Rock "keep [his] wife's name out of [his] f----- mouth." Smith repeated himself after Rock pleaded that it was only a joke.

However, as a viewer watching live on TV in Canada or in the United States, you probably did not catch the entire interaction between Smith and Rock because ABC quickly cut the audio (which it had sufficient time to do as it airs even live programming on a several-second delay), censoring the content for viewers at home. This aggressive approach to "content moderation" is a function of the current programming standards requirements governing U.S. "free" over-the-air ("OTA") broadcast for TV and radio stations. These broadcasting laws are overseen by the Federal Communications Commission ("FCC") and prohibit the airing of obscene content at all times of the day, while "indecent and profane content" are prohibited between the hours of 6:00 a.m. and 10:00 p.m., where there is a reasonable risk that children may be viewing. If a broadcaster violates these programming standards, even on live television, the FCC has a broad range of powers to impose fines, issue admonishments or warnings, or even fully revoke a station's licence.

It is noteworthy that the above rules prohibiting indecent and profane content on U.S. OTA stations are inapplicable to subscription cable and satellite TV, nor do they govern satellite radio, as these services are "discretionary" services protected by the First Amendment. By contrast, obscene programming does not benefit from First Amendment protection and is prohibited on all broadcast platforms, including OTA, cable and satellite platforms.

Sunday's Oscars would not be the first time a celebrity's actions stirred up trouble for a network with the FCC. In 2003, Nicole Richie made a comment on live TV at the Billboard Music Awards about removing cow manure from a purse being "not so f---ing simple" (referring to her experiences with Paris Hilton on *The Simple Life*). This comment enticed the FCC to re-examine their stance about broadcasting profane language, which led to the implementation of harsher sanctions against broadcasters violating legal standards. Fox Television, at the time owned by News Corp., challenged the FCC's sanctions imposed against it, which ultimately made its way up to the Supreme Court of the United States. While the Supreme Court found that Fox Television did violate indecency prohibitions, it refused to uphold the FCC's sanctions, as the broadcaster was not given fair notice that the FCC had implemented harsher sanctions prior to broadcasting the program. Nonetheless, the Supreme Court confirmed the FCC's jurisdiction to modify indecency policies. A similar example is when Bono accepted U2's Golden Globe Award in 2003 and uttered that the win was "f----- brilliant." While the fines issued in that case were ultimately rejected by the U.S. Second Circuit Court of Appeal as a permissible "fleeting expletive," it is no wonder audio at the Oscars was quickly cut following the slap to avoid potential fines and subsequent legal expenses.

By contrast, Canadian TV OTA stations are not subject to the same types of programming standards. Instead, all Canadian broadcasters (whether OTA or discretionary services) abide by condition of their broadcasting licence to the Canadian Broadcast Standards Council (“CBSC”) Code of Ethics. While the Code does impose some limits to the use of profane language, there is no requirement to censor profane language on live broadcasts. According to the CBSC, this is for two reasons. First, what can be considered offensive by some may not be considered offensive by others. So, to provide a wide range of programming to Canadians, broadcasters are permitted to air profane language, but must provide a viewer discretion advisory to ensure the viewer makes an informed choice. Second, including a censorship requirement would likely be considered offensive to most Canadians.

That said, Canadian viewers experienced the same confusing audio censorship as American viewers because CTV, which aired the Oscars in Canada, received the edited broadcast from ABC. Other countries, however, received the raw footage and any censoring was left to individual broadcasters. This allowed international viewers to quickly post the ordeal on social media, which helped Canadian and American viewers fill in the gap.

Despite apologizing, Smith will likely endure consequences from the Academy after it condemned his actions, and announced that it will be launching a formal review of the incident to “explore further action and consequences in accordance with [Academy] Bylaws, Standards of Conduct and California law.” The Academy does hold the rather extraordinary power of revoking Oscars, but according to Whoopi Goldberg, a member of the Academy’s board of governors, this will not be exercised. Instead, there is likely to be a sanction that sees Smith suspended of his Academy membership. This would prevent him from attending or being considered for future Oscars, and if Smith has voting rights, those rights will also be suspended for a defined period of time. In addition, the Academy could expel Smith entirely. In deciding which sanctions to impose, the Academy may review its policy surrounding ejection procedures, as many questioned why Smith was not immediately ejected from the Oscars after the attack on Rock. According to the Academy, Smith was asked to leave, but refused to do so.

Unfortunately, the tension between Smith and Rock overshadowed various achievements throughout the night. For starters, Smith himself won the Oscar for Best Actor for his moving portrayal of Richard Williams in *King Richard*, which tells the true story of tennis legends Venus and Serena Williams’ rise to the top of their sport through pure resolve, determination and the commitment of their father. Any discussion about the film itself and the amazing story it portrays were completely eliminated and many who have yet to see the film may boycott future viewings because of this incident. The film *CODA* also made history on Sunday as the first film featuring a largely deaf cast to win Best Picture. From an industry perspective, *CODA* is also the first film largely produced by an online streaming service (Apple TV+) to win Best Picture, beating out *Power of the Dog*, produced by Netflix. Ariana DeBose also became the first openly LGBTQ+ woman of colour to win Best Supporting Actress for her role as Anita in *West Side Story*, accepting her award with a beautiful speech dedicated to those “living in the grey spaces” of identity. Moreover, the hosts of the evening, who worked tirelessly to ensure an enjoyable evening for both the in-person and at-home audience, were robbed of any appreciation and recognition from the evening.

While we can expect to hear more about the implications of Smith’s actions, in the interim we should highlight the talents of all nominees, casts and crews. Through another year of COVID-19 and social isolation, these works have helped us reconnect with the world around us.

The 2022 Oscars were certainly a night to remember.

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Authors



Jose Garcia-Bonilla
Student-at-Law
T 416.863.1500



Jessie Lewis
Associate
T 647.426.2318
jlewis@airdberlis.com

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