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NATIONAL ENDOWMENT FOR THE ARTS


AGENCY: National Endowment for the Arts ("Endowment" or "NEA")

ACTION: Statement of Policy and Guidance

SUMMARY: This statement of policy and accompanying guidance define what the Endowment considers to be "obscene" for purposes of carrying out the Endowment's responsibilities under section 304 of the Department of Interior and Related Agencies Appropriations Act of 1990.

EFFECTIVE DATE: July 5, 1990

FOR FURTHER INFORMATION CONTACT: General Counsel, Julianne R. Davis, 202/682-5418

SUPPLEMENTARY INFORMATION:

1. Background

   Section 304(a) of the 1990 appropriations law provides as follows:

   None of the funds authorized to be appropriated for the National Endowment for the Arts . . . may be used to promote, disseminate or produce materials which in the judgment of the National Endowment for the Arts . . . may be considered obscene, including, but not limited to, depictions of sadomasochism, homoeroticism, the sexual exploitation of children, or individuals engaged in sex acts and which, when taken as a whole, do not have serious literary, artistic, political or scientific value.
2. The Endowment's Policy
   a. The Definition of "Obscene"

   For purposes of carrying out its responsibilities under the statute, the Endowment considers to be "obscene" only work which, (1) when taken as a whole, the average person, applying contemporary community standards, would find appeals to the prurient interest; (2) depicts or describes sexual conduct in a patently offensive way; and, (3) taken as a whole, lacks serious literary, artistic, political, or scientific value. This standard is identical to the legal definition of obscenity established by the Supreme Court in Miller v. California, 413 U.S. 15 (1973).

   b. Seasonal Support Grants

   The Endowment is currently examining the issue of how section 304 will be applied to "seasonal support grants," which are grants which provide funding for the general operations of recipient organizations. Guidance on this issue will be forthcoming.

3. Guidance to Grantees
   a. The Grant Conditions

   Paragraph 2 of the general terms and conditions for organizations and individuals receiving grants from the Endowment sets forth the restriction exactly as it appears in section 304. For purposes of the Endowment's enforcement of this grant condition, the condition should be understood as embodying the Endowment's definition of "obscene" as set forth in section 2(a) above. Accordingly, grant recipients, in order to receive funds, must agree that they will not use those grant funds to promote, disseminate or produce materials that are "obscene" under the well-settled legal definition employed by the Supreme Court in Miller v. California.

   b. Procedures for Implementing Section 304

   The Endowment, as part of its general review procedures, will review all grant applications to determine whether the proposed project violates section 304. The Endowment may, if necessary, seek additional information from potential grantees to make this determination. If the Endowment determines that the proposed project violates section 304, the grant request will be denied.
If the Endowment has reason to believe a grantee is violating section 304 after a grant is approved, either through Endowment sources or otherwise, the Endowment will write a letter to the grantee notifying it that it may be in violation of section 304 and that a written justification of the project and its compliance with section 304 must be submitted within thirty (30) days. The Endowment will then review the written submission (or if none is received, the available information) and determine whether the project violates section 304. If the Endowment finds that such a violation has occurred, the Endowment will recoup the grant money pursuant to its civil and administrative remedial powers.