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## **Argentine Congress Passes Controversial Communications Law**

*by LADB Staff*

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Weeks of debate on a government-backed new communications law (Ley de Servicio de Comunicacion Audiovisual) that will provide the operations framework for radio and television stations brought Argentina to the brink of constitutional chaos.

Following the heated debate, which exposed irreconcilable differences in interests and concepts, with President Cristina Fernandez de Kirchner arguing for the need to "end media concentration" to "democratize information" and an opposition united around the interests of the large media outlets insisting that "this is another step in the authoritarian policies" of a government that "curtails citizens' liberties," Congress finally approved the bill by a wide margin.

As seldom before, the media set the agenda for Argentines, practically dictated opposition-party talking points, and did not hesitate to divide society into two opposing camps. In general, opposition deputies and senators risked openly defending the business interests of the monopolies, and did so without weighing the consequences. They even ignored independent and technically irrefutable opinions such as that of the UN Human Rights Council, which praised the law on June 2, calling it "an example of promoting freedom of expression."

The previous law was written in 1980 during the last military dictatorship (1976-1983) and modified by decree in 1989, shortly after former President Carlos Saul Menem (1989-1999) took office. The original text of what was called the broadcasting law (Ley de Radiodifusion) contained numerous, although subtle, forms of censorship, allowed a given economic group to operate up to four radio stations, and blocked print-media companies from owning radio or TV stations.

Menem radically changed the rules of the game. He increased from four to 24 the number of radio stations that could be under the same ownership and rescinded Article 45 of the old law, giving print-media owners access to radio and television stations. "That gave rise to multimedia groups and concentrated information, analysis, and even standards for training society in the hands of a few," wrote an analyst for the Servicio de Prensa Alternativo (Serpal), a Spain-based nonprofit organization.

### ***Participatory process produces new law***

The idea of writing a new law arose early in this century. Its first milestone was Aug. 27, 2004, when, as a result of hundreds of meetings throughout the country, some 400 labor, social, and professional groups, community organizations, cooperatives, universities, journalism organizations, and well-known cultural figures produced the document "Citizen Initiative for a Broadcasting Law for Democracy."

The document became known as "The 21 Points" because it laid out "the 21 points that any democratic law on this matter must consider." Those 21 points were incorporated into the law that has just been passed. "Drafting the law has followed a unique and exemplary democratic route, with dialogues developed in public forums, in the press, and in both houses of Congress so that the debate achieved an unusual level of refinement.

Nevertheless, that rich and intense process has been undermined by an apocalyptic discourse in which certain members of the opposition repeat what certain media reports say that the law threatens public liberties," said Nestor Busso, president of the Federacion Argentina de Radios Comunitarias (FARCO), during a congressional hearing. Almost as a complement to what Busso said, Brazilian academic Emir Sader, director of the Laboratorio de Politicas Publicas (LPP) of the Universidade Estadual de Rio de Janeiro (UERJ), said on Oct. 10, "The media do not want to lose the freedom to lie and manipulate as they have been doing, because they know that, in the face of the right's political and ideological weaknesses, the large private monopolies assume the leadership role of the Latin American right."

The communications law that passed in the early morning hours of Oct. 10 divided the broadcasting spectrum equally among the government, the private sector, and nonprofit organizations (unions, cooperatives, universities, social organizations, foundations, and churches). The government said, "The new law will open up the game and allow a greater diversity of voices."

However, the opposition said, "There is a risk that the social third will be handed over to groups supportive of the government." Law creates regulatory agency Another of the law's 156 articles creates a regulatory agency, which will grant the frequencies and licenses or declare them out of use, as well as sanctioning violations of the law by businesses. Licenses will be reviewed every two years in what the law defines as "a technical control to guarantee the application of advancements in new technologies."

For the opposition, however, the mechanism "could be used by the government as an extortion tool." The regulatory agency will have a seven-member board, two named by the executive, three named by Congress all must belong to the legislative minorities and two acting as representatives of the Consejo Federal de Educacion (one must be a member of one of the accredited communications and journalism departments).

The fears expressed by the media and the opposition are unfounded, not only because the government will be in the minority in the regulatory agency but also because any change in the granting of frequencies and licenses must be brought to Congress and approved by it.

The new law reduces from 24 to 10 the maximum number of radio and television stations under one owner, six more than allowed during the dictatorship. The owner of an over-the-air TV channel is still not allowed to be a cable-TV provider in the same geographic area, which forces large media conglomerates to divest some of their businesses. They have a year to comply.

The emblematic case is Grupo Clarin, the country's most powerful multimedia giant and leader of the fight to defeat the bill. Clarin began as a morning tabloid in 1945 and today is a holding

company that includes five large national and provincial newspapers (free as well as with paid subscriptions, providing general, political, and sports coverage), eight newspapers aimed at the major conglomerates of Greater Buenos Aires (whose appearance led to the demise of dozens of neighborhood newspapers that ensured rich, diverse information), eight magazines (cultural, for women, for children, and about consumer products), the only newsprint factory in the country, a news agency, a communications satellite, 23 national and provincial AM and FM radio stations, one regular TV signal and 20 cable signals, three digital media outlets, four Internet providers, 17 TV production companies, three event producers (agricultural, industrial, educational, and sports), seven publishing houses for books and magazines, and even a mail business. Grupo Clarin's cable TV business alone generates US\$800 million annually.

### *Production guidelines promote local programming*

The law establishes new production guidelines regarding content: 60% of what is shown on over-the-air TV must be produced nationally, private radio stations must broadcast at least 70% local programming, and 30% of the music played must be Argentine, except in cases of thematic broadcasts or those directed toward foreign communities. An innovative regulation for cable TV requires at least one cable station focusing on the Southern Cone Common Market (MERCOSUR), the trade bloc comprising Argentina, Brazil, Paraguay, and Uruguay, plus associate members Bolivia, Chile, Peru, and Venezuela, and the rest of Latin America.

As it wound its way through both houses of Congress, the original bill underwent more than 200 changes, some significant, such as the prohibition against telephone companies participating in cable TV business.

In the congressional debate, the opposition repeated the talking points of the editorial boards ("We express our concern regarding the palpable deterioration in press freedom"); the affirmations of Clarin ("Signs of growing authoritarianism are seen"); and statements from the Sociedad Internacional de Prensa (SIP) ("We are facing a threat to press freedom and against private property"). However, the opposition centered its objections on two aspects that had nothing to do with either press freedom or supposed governmental authoritarianism.

One was the one-year deadline for businesses to divest properties not permitted by the law; it wanted three years. The other was the makeup of the regulatory agency; it wanted no government representation. During the almost five-month legislative process, and when the differences were reduced to those two points, some 20 opposition deputies and senators opted to support the law. Their parties the century-old Union Civica Radical (UCR) and the newer Frente de Todos and Union-PRO did not take kindly to their dissent, and five lawmakers were expelled from their party.

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