

Principles for a public interest communications environment: access and content diversity in Argentina

A report from the Freedom of Expression Project

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The Association for Civil Rights (ADC), Argentina, is a non-profit, non-governmental and non-partisan organisation. It was founded in 1995 with the purpose of contributing to the establishment of a legal and institutional culture that would guarantee fundamental rights to the inhabitants of Argentina, based on respect for the Constitution. ADC is a Partner in the Freedom of Expression Project. www.adc.org.ar

The Freedom of Expression Project began in 2006 as a response to global changes in networked digital communications. It set out to assess and understand this developing environment's relationships with democracy, justice and human achievement. The Project is working to promote principles to help guide policy and activity in the networked communications environment: the aim is to build an environment that supports human rights and the public interest. www.freedomofexpression.org.uk

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Executive summary

This paper offers an exploratory analysis of the Freedom of Expression Project's principles of access and diversity¹ in the media in Argentina, based on current legislation and on some indicators of evolution of the country's media system. The **introduction** explains the choice of these principles for analysis of the media environment in Argentina and offers an overview of the media system and its legal context. It specifies the methodology used in the research and the research questions that provide direction for this paper.

It presents **findings and analysis** in three areas. First, consideration of **access to the media** explains and discusses the following concerns:

- The law on the awards of broadcasting licences, and amendments that lengthened their duration, have effectively excluded non-commercial groups from holding licences.
- The media regulatory body is not sufficiently independent and does not effectively address matters of licence allocation or of media ownership.
- Close relations between the media and the state have produced anti-competitive practices, including: restrictions on bidding rights in the cable television sector; and the discriminatory allocation of public advertising spending, which has been used with a lack of transparency and as a 'carrot' and 'stick' for the media in respect of their editorial lines, both at national and local level.

An analysis of **diversity of content** explores the following areas:

- While ownership is a relevant factor in analysing the diversity of content, there are other relevant factors, including: the concentration on the Buenos Aires metropolitan area as a centre of production; the importance of government advertising as revenue and the lack of a non-governmental state public media with a public service mandate.
- No regulations address diversity of content or place obligations on the private media in relation to pluralism of information.
- While the government has invested in the provision of national television coverage, only seven cities have more than one free-to-view channel. State media has no public service mandate in law and a low audience share (1.1% for the state-run terrestrial television channel).

Discussion of **access and diversity on the internet** includes the following:

- Public policies to develop and extend access to ICTs have to date had limited effect.
- Argentina's size, geography, concentration of population and economic inequalities all pose challenges to increasing access.
- The costs of access to telecommunications remain high. The law provides for a 'universal service' tax on telecommunications operators, but it has not been

¹ The Project's Principles and research are available at www.freedomofexpression.org.uk

implemented. Internet access is growing, though a broadband service costs around 7.5% of average monthly income.

The **conclusions** outline regulatory and policy changes that are needed to enable Argentines to benefit from the democratising potential of communications technologies. The following needs are identified:

- policies to promote and subsidise universal access to media
- a democratic broadcasting law that specifically addresses pluralism of ownership and the promotion of diverse content
- the establishment of an independent broadcasting regulator
- measures to promote content production
- a non-governmental state public media
- regulation to ensure the transparent and equitable distribution of public sector advertising.

The report ends with a full **bibliography**.

1 Introduction

This paper is an explorative investigation of two guiding principles in relation to communications policy in Argentina: access and diversity.

Our starting points are the following Freedom of Expression Project principles²:

- All people should have affordable and equitable access to the means of receiving and disseminating opinion, information and culture.
- The range of content available should be diverse, representing the whole spectrum of cultures, interests and knowledge.

Equitable access covers equal *receipt* of information, which requires national coverage of communications and the possibility of choosing between different forms of communication. It also covers access to the *means* of broadcasting content, in other words, access to broadcasting licences.

Culture includes all the distinctive spiritual, material, intellectual and emotional features that characterise a social group. The free exchange and accessibility of culture, in its different forms, are essential. In other words, it is necessary not only to guarantee the free circulation of ideas, but also to ensure that all cultures can express themselves and become known. This was laid down by Article 6 of the UNESCO Universal Declaration on Cultural Diversity: 'Freedom of expression, media pluralism, multilingualism ... and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity'.³

These two principles are examined in this paper within the framework of the present media context and current legislation in Argentina.

We have chosen the concepts of access and diversity to analyse the communications environment, as these principles represent basic parameters for evaluating the degree of democracy in a particular country's communications. The genesis of both concepts can be found in Article 19 of the Universal Declaration of Human Rights: the right to freedom of expression covers not only the freedom to *receive* information and opinion but also the right to *impart* them by any means of expression.

There are many international treaties protecting this right. These include Article 13 of the American Convention on Human Rights, which addresses freedom of thought and expression, and Principle 12 of the Inter-American Declaration of Principles on Freedom of Expression. This provides that 'the concession of radio and television broadcast frequencies should take into account democratic criteria that provide equal opportunity of access for all individuals'.⁴

² See *Shaping a Public Interest Communications Environment*, available at: <http://www.freedomofexpression.org.uk/resources/shaping+a+public+interest+communications+environment> [Accessed 15 October 2008]

³ UNESCO Universal Declaration on Cultural Diversity, adopted by the 31st Session of the General Conference of UNESCO on 2 November 2001.

⁴ The Declaration of Principles on Freedom of Expression was approved by the Inter-American Commission on Human Rights (IACHR) in October 2000 as an aid to interpretation of Article 13 of the American Convention on Human Rights.

Numerous decisions of the Inter-American Court of Human Rights relate to this right. These include the recent judgment in the case of the Argentine journalist Eduardo Kimel, in which the Court reaffirmed the responsibilities of the State to promote diversity of information as follows: '[T]he State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism. Consequently, equity must regulate the flow of information.'⁵

Consultative opinions of the Court on this issue include Advisory Opinion OC-5/85, in which it held that '[if] freedom of expression requires (...) that the communication media are open to all without discrimination or, more precisely, that there must be no individuals or groups that are excluded from access to such media (...) there must be (...) a plurality of means of communication [and] the barring of all monopolies thereof, in whatever form'.⁶

The Joint Declaration on Diversity in Broadcasting stresses 'the fundamental importance of diversity in the media to the free flow of information and ideas in society' and the complex nature of diversity, 'which includes diversity of outlet (types of media) and source (ownership of the media) as well as diversity of content (media output)'. It also notes that 'undue concentration of media ownership, direct or indirect, as well as government control over the media, poses a threat to diversity of the media'.⁷

We thus understand that these declarations and principles regarding diversity and conditions of access to the media are aligned with the idea of freedom of expression as a precondition of a democratic system. Freedom of expression not only protects the individual right of the broadcaster but also guarantees to everyone else the right to access the full range of diverse information and opinion, which is necessary to enable them to control their own lives and to exercise their collective right of self-government. For this reason, we argue that the concepts of access and diversity are the principal indicators of a truly democratic media system.

Starting with these concepts, we analyse the legal framework and public policies on communication in Argentina, and attempt to evaluate whether these are consistent with the principles described. This research does not include content analysis, which would be necessary to deepen the evaluation of diversity in content in a media environment.

5 Inter-American Court of Human Rights, case 'Kimel v. Argentina', ruling dated 2 May 2008. The highest court in the region ordered Argentina to overturn a one-year suspended prison sentence imposed on Kimel, who had criticized a judge in the book *La Masacre de San Patricio (The San Patricio Massacre)*, in the course of his investigation into the murder of five Palatine priests on 4 July 1976. It is the first Argentine case relating to criminal defamation to be ruled upon by the Inter-American Court and orders the State to reform the law on this issue.

6 Inter-American Court of Human Rights, 'Compulsory membership in an association prescribed by law for the practice of journalism', OC-5/85, 13 November 1985.

7 The Joint Declaration on Diversity in Broadcasting was issued on 7 and 8 December 2007 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media, the OAS (Organization of American States) Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information.

1.1 The context: broadcasting law in Argentina

Broadcasting law governing radio (AM and FM) and television (free-to-view and cable) transmissions was approved in 1980 by the dictatorial government of Jorge Rafael Videla. This was Law number 22,285, brought into force in 1981 by Decree 286.⁸

After seven years of military dictatorship, Argentina regained a system of constitutional government on 10 December 1983 after elections in which the electorate supported the manifesto of the Radical Civic Union party (Unión Cívica Radical, UCR). President Raúl Alfonsín (1983-1989) did not amend the broadcasting law signed by Videla; he simply took over the various TV and radio stations then controlled by the State and also the regulatory body, the Federal Broadcasting Committee (Comité Federal de Radiodifusión, COMFER). Since Alfonsín's intervention, every subsequent Argentine president in the democratic era has continued to appoint inspectors answerable to the Executive Branch to lead COMFER.

Since the election of Carlos Menem as President in 1989, Law 22,285 has been amended over 200 times. This paper analyses notable amendments that affect diversity of content, plurality of voices and equitable access to information. These amendments include:

- the award of licences for the main audiovisual media through competitive bidding that is not open to everyone
- an increase in the number of licences that a single holder can operate
- the legalisation of radio networks with subsidiary stations that broadcast content produced by their principal station
- an extension of the duration of audiovisual licences previously awarded.

Most of those changes were effected by decrees issued by Menem himself during his two consecutive presidential terms (1989-1995 and 1995-1999), but practically every president since 1989 has altered aspects of broadcasting law. Nevertheless, the original substance of the current rule continues to be Jorge Videla's 1980 legislation and some key features of the media system in Argentina derive from that.

This paper highlights the most relevant articles of the legislation and some of the amendments introduced during the last 25 years. These affect access to licences, the operation of the media system, the role of the State as regulator and administrator of the media, and the existence of a real diversity of voices and content.

1.2 Methodology and research questions

This analysis was carried out within a relatively short timeframe (September to November 2008) and our investigation therefore draws principally on secondary sources. However, we also draw on primary sources in order to describe both the existing regulatory framework of communications in Argentina (laws, decrees, resolutions and other regulations) and the broader context of which this policy forms part (data on socioeconomic indicators, statistics, media maps, etc.).

⁸ The text of Law 22,285 is at <http://www.comfer.gov.ar/legislacion/1##deradiodifusion22285.html>

We conducted interviews with officials on media issues to inform our analysis of the implementation of regulatory provisions in practice. These included interviews with Gustavo Bulla (National Director of Supervision and Assessment), Federico Manero (COMFER television coordinator) and Cecilia Passavanti (advisor to COMFER's Office of Planning and Development).

The analysis is based mainly on the evaluation of the legal framework which is therefore complemented by analysis of relevant sources, integration of relevant data and indicators, and interpretation of legal and other relevant publications. This paper is a first approach to the subject which should be enhanced by field research, particularly in the area of content analysis in order to fully grasp the diversity existing in the media environment of the country.

The questions guiding this paper are:

- To what extent is access to the mass media affected by the existing rules?
- What are the obstacles to citizens' impartial access to the media?
- What is the nature and purpose of State intervention in this framework?
- Are there policies to promote diversity of content?
- Do convergent media technologies have the potential to improve access and diversity in Argentina?

2 Findings and analysis

2.1 Access to the media in Argentina

2.1.1 The legal framework governing broadcasting licences

Legislation governing the media affects various social groups' access to audiovisual licences. The broadcasting Law 22,285 excluded applicants without a solid financial basis, that is, non-commercial organisations. This regulation continued to apply for 25 years and, until its partial amendment by Parliament in 2005, almost all radio airspace was awarded to for-profit licensees.

Article 45 of Law 22,285 established that licences for domestic radio and television services 'will be awarded to a natural person or commercial company properly constituted in this country'. Licences for the provision of audio and televisual broadcasting services are granted by the Executive Branch by means of public tender; licences for complementary broadcasting services (FM transmitters and cable television), are granted by the direct award of COMFER, the Federal Broadcasting Committee (Article 39). Licences are awarded for a period of 15 years from the commencement of broadcasting, with the possibility of a single extension for a further 10 years (Articles 41 and 42).

In this way, before the 2005 reform, 'large sections of society were excluded from the possibility of being media owners, and the entire spectrum of civil society was relegated to being recipients and consumers of information, without being able to participate in the creation of the message or in the management of the media' (Califano, 2007: 37-38).

The Broadcasting Act (Law 22,285) provided for the development of a national broadcasting plan (Plan Nacional de Radiodifusión, PLANARA). This included plans to put licences out for public tender by commercial operators, which satisfied the requirements of the legislation. But in April 1984 Raúl Alfonsín, the first democratically elected president since the end of the dictatorship, issued Decree 1151. This suspended the PLANARA and the entire public tender process, pending the creation of an adequate technical plan and a democratically sanctioned broadcasting law.

Law 22,285 already made it financially impossible for many groups within civil society to gain access to radio and TV licences; Decree 1151/84 added the virtual suspension of public auctions which, according to the law, were the only means of access to audiovisual licences. For Elíades (2008), 'this means that any Argentine citizen intending to make use of any of the frequencies in our radioelectric spectrum, even if he wishes to comply with all legal and technical rules that might be imposed upon him, finds every legal avenue to exercising his right to communicate with others closed'.

This obstacle meant that a number of broadcasters had to develop enterprises on the fringes of the law. Elíades maintains that without a national technical plan or opportunities to exercise the right of communication, 'and relying only on a piece of legislation issued by a de facto government, then already very out of date, a number of sub-strength broadcasters emerged, especially in FM broadcasting, on the fringes of the

legislation who described themselves as “community” or “free” broadcasters and who some sectors preferred to call “the alternative media”’. (Elíades 2008)

However, during the first presidency of Carlos Menem (1989-1995) the National Congress approved the State Reform Act (Law 23,696) in 1989, Article 65 of which enabled owners of print media to gain access to radio and television licences. These rules also enabled the Executive Branch to adopt measures to regulate the functioning of media that were not covered by the existing regulations, pending a new broadcasting law. With that authority President Carlos Menem, through Decree 1357/89, created a register of broadcasting operators and granted provisional authorisations for services that existed before August 1989. According to Rodríguez Villafañe (2005), ‘this represented an improper legitimisation of the existing situation, since it relied solely on registration and those who did not do it were declared clandestine. They partially regularised as regards the past, but did not bother to ensure fairness as regards the future’.

Article 45 of the Broadcasting Act (Law 22,285), which favoured for-profit operators over other contenders, was modified by Congress in 2005 when it approved Law 26,053. Before 2005, the first paragraph of Article 45 had been the subject of a number of legal challenges, resulting in declarations of unconstitutionality by the federal courts in Cordoba and Jujuy, as well as in the Argentine Supreme Court in 2003.⁹ The new provision states that ‘licences will be awarded to natural or juridical persons properly constituted in the country’, without the need to have a commercial purpose.

Many civil society groups in Argentina had demanded this legal rule separating the media and commercial activity. It represents an important step towards diverse sectors within society having access to the provision of radio and television services.

However, the amendment contains a controversial prohibition: ‘The new article 45 expressly provides that businesses providing public services are excluded from the possibility of gaining licences, except in the case where there is no other provider in the area; and in the event of being awarded the licence, they must also comply with a series of requirements: they must keep separate accounts for the public service and the licensed service they provide, and submit to a regime of anti-competitive practices previously reviewed by COMFER, which include prohibitions on effecting cross-subsidies and denying competitors access to its support infrastructure’ (Califano, 2007: 72).

9 These decisions include the case of ‘Asociación Mutual Carlos Mujica c/ Estado Nacional’, details of which are discussed in Califano 2007:70: ‘[T]he highest court in the nation upheld, on 1 September 2003, the decision of the Federal Chamber of Appeals in Cordoba, against which COMFER had appealed. The ruling held that exclusion of the Carlos Mujica Mutual Association from running the FM radio station “La Ranchada Community Radio”, which has been operating since 1989, resulted in “an unreasonable limitation of the rights of free expression and association” (consideration 8) and that “neither the requirements of the Broadcasting Act nor the arguments expressed by COMFER provide any high value social reason for denying a constitutional right” (consideration 10) (...) In summary, the decision concludes that the first paragraph of article 45 of the Broadcasting Act and the regulations issued pursuant to it violate articles 14, 16, 28 and 75, sub-section 23, of the National Constitution, and article 13 of the Inter-American Convention on Human Rights, and as a result is declared unconstitutional.’

Law 26,053 continues to impede access to licences for some non-profit operators such as public service co-operatives, which in large parts of Argentina control water, electricity and telephone services. Their access to licences is permitted only in the event that no other operators in the region are able to provide broadcasting services. The main opposition to co-operatives' participation in the cable TV market came from associations of cable companies, which argued that co-operatives would have excessive competitive advantages in the event of providing radio and television services.¹⁰

The Cooperativa Telefónica de Libertador Gral. San Martín, from the province of Jujuy, raised a court action seeking to have the amendment declared unconstitutional, on the grounds that the Senate (where the proposal originated) made changes to the text debated in the Chamber of Deputies (the reviewing chamber) and made it law without returning it to the Chamber of Deputies, as required by article 81 of the National Constitution. The first decision, issued by a judge in Jujuy province, favoured the Cooperativa, but the government appealed to the Federal Appeal Court in Salta.

As a result, civil society organisations (apart from public service co-operatives) were only able by law to obtain licences to run radio and television stations from September 2005, when the radio spectrum was already almost saturated – spectrum was by then available only in frontier zones or small provinces.

In 2006 COMFER, circumventing the scarcity of available frequencies, recognised 126 licences for non-commercial radio. These were so-called 'community radio' stations (Resolution 753-COMFER/06), which had been accredited as suitable to operate a licence in the course of a survey carried out in 2005. 'They are not licences, but a legal recognition until the direct grant of licences is made,' explained a COMFER advisor. By the end of 2007, there had been applications to operate 3,000 radio stations, of which only 'two or three' had obtained a legal licence.¹¹

Paradoxically, several months before the promulgation of Law 26,053, the then President Nestor Kirchner signed Decree 527/05.¹² This decree, which surprised society and occurred without public debate, suspended the computation of all the country's broadcasting licences for 10 years with effect from 24 May 2005. The Broadcasting Act established that licences are awarded for 15 years, with a single possibility of a 10 year renewal (subject to COMFER approval), and the country's main media licence holders had already benefited from this. Yet Decree 527 permitted all licences to be

10 The Argentine Cable Television Association (Asociación Argentina de Televisión por Cable, ATVC) argued in a newspaper advertisement that 'co-operative organisations are subject to a legal regime that gives them benefits and privileges not recognised for other economic entities, especially to natural persons and/or juridical bodies holding broadcasting services licences. As a result, they can – and do in fact – resort to the use of 'cross subsidies' as a means of financing other enterprises, diverting funds that represent excessive tax deductions on profits to subsidise services at prices manifestly below market cost. These practices enable them to make progress in their local market, destroying businesses that operated in the community before the co-operative moved into its new activities.'

11 Interview with Cecilia Passavanti, advisor to COMFER's Office of Planning and Development, 3 November 2008. She also explained that the difficulty in knowing the exact number was that it would involve checking each of the application files one by one.

12 Decree 527, published in the Official Bulletin on 24 May 2005, sets out in article 1: 'The elapsed term of broadcasting services licences, or extensions thereof in terms of article 41 of the Broadcasting Act (Law No. 22,285) as amended, are hereby suspended for a period of TEN (10) years. The terms will resume automatically when said period of suspension ends.'

extended for another 10 years, with no checks that licence holders had complied with current legislation or their obligations under the terms of the licences originally awarded.

A significant proportion of audiovisual licences was granted to private management during the military dictatorship (for example free-to-view television channels 2 and 9) or after the return of democracy, at the end of 1989 (for example channels 11 and 13, Radio Belgrano and Radio Excelsior). Compliance with the legal expiry dates would have required the competitive renewal in 2007 of various licences awarded by the military government, while the majority of the remainder of the licences, granted in 1989, would have expired in 2014.

While the non-profit sector can legally obtain licences since the reform of Article 45 of the Broadcasting Act, in practice Decree 527 closed off the possibility of a public tender. COMFER's television coordinator conceded: 'Today there is no tendering for free-to-view television nor sales of bidding rights for complementary services, and it is less a technical-legal reason than a political one, that is the reality.'¹³

To sum up, broadcasting is regulated in Argentina by an obsolete, centralist and undemocratic statute that was promulgated during the last dictatorship. This legal framework excluded non-commercial applicants from the possibility of having access to broadcasting licences, until 2005 when it was partially amended by Parliament. After this modification, social organisations (apart from those providing public services) have been legally able to gain a licence, but in reality the spectrum was by then almost saturated in the main cities and a presidential Decree effectively extended all the country's broadcasting licences for 10 years with effect from 24 May 2005. The combined result is that only a few licences have been awarded to social organisations since 2005.

2.1.2 Responsibility for control and enforcement

The Broadcasting Act 22,285 provides that control of radio and television services (classified as 'public interest' services) is vested in the Federal Broadcasting Committee (COMFER). COMFER is a state body deriving its authority from the Executive Branch. It is not an independent institution; it receives a share of the national budget and has freedom to administrate it.

Article 96 of the Broadcasting Act provides that the regulatory body must be run by a directorate comprising a president and six members nominated by the Executive Branch, appointed for terms of three years with the possibility of further nomination for identical periods. These members represent the following bodies: the Army, Navy and Air Force high commands, the Ministry of Public Information, the Ministry of Communications and two Associations of Licensees (one representing radio and the other television). This article has never been amended: while various legislative proposals were submitted in Congress, none ever gained the necessary approval of both parliamentary chambers.

¹³ Interview with Fernando Manero, COMFER television coordinator, 3 November 2008.

Instead of modifying the composition and organisation of COMFER, and in order to avoid the participation of the military bodies, every constitutional president since 1983 has appointed officials ('interventores') to lead the agency. In 2008, Decree 377/08 passed responsibility for COMFER from the General Secretariat of the Presidency to the new Media Secretariat of the Office of the Cabinet Chief. Even if this change does not affect the ultimate accountability of the agency, which continues to be to the Presidency of the Nation, this new body comes under the sphere of influence of the Media Secretary and adds to the control he exercises over the national public media system.

COMFER's responsibilities include: regulating, controlling and supervising the installation and operation of radio and television transmitters throughout the country; administering public tendering for the award of licences; supervising the programming and content of broadcasts; imposing sanctions set out in the legislation; allocating licences for the provision of complementary services; and determining requests for the extension of licences.

In relation to its technical and regulatory capacities, COMFER has acknowledged publicly that it probably lacks current data about licences and licence holders, and that there are probably many out-of-date procedures in this area.¹⁴ However the current COMFER television co-ordinator explained that the records of the agency 'include the licence holders of all the channels and complementary services which we have authorised as such. Certain procedures take a while because the licence holders are slow to provide the documentation we request, there are procedures that take days and others years'.¹⁵

Licence holders must inform COMFER of their share structure and ownership, but it is not the agency's responsibility to approve mergers or acquisitions of media companies. As COMFER's television co-ordinator explained: 'The Law of Companies and the Inspection Board of Legal Entities are the competent authorities for determining whether company changes are acceptable or not. COMFER cannot go above other organisations which have specific jurisdiction. It can be said that these company changes cannot be opposed, they may be valid to the parties but not to COMFER. For us, the party responsible is the last one to whom we granted approval of the transfer. The problem lies in the fact that in many cases the original company no longer exists or disappeared in the merger. Then we are left without a responsible party to whom we can apply the sanctions.'¹⁶

14 For example in resolution 726/00 COMFER admitted that 'as a result of the evaluation, study and analysis of files being processed as at 10 December 1999 in the different areas of the Federal Broadcasting Committee, it has been possible to demonstrate the delay in the processing of a number of requests from licence holders, such as authorisations for the transfer of shares or other interests in licensee companies, requests for extension and/or widening of licences for complementary broadcasting services, the awarding of licences for that type of services, the granting of so-called 'authorisations for commencement of provisional broadcasts' to those who already hold the corresponding licence, requests for the transfer and extension of licences, and the approval of statutory changes, among other issues.'

15 Interview with Fernando Manero, COMFER television coordinator, 3 November 2008.

16 *Ibid.*

In any event the official acknowledged that they have this information on the principal media companies, but not in relation to the smaller ones scattered throughout the country.

To summarise, the Federal Broadcasting Committee (COMFER) exerts control functions over radio and television services in Argentina. The difficulty here is the institution's dependence on the Executive Branch, a consequence of the lack of updates to the Broadcasting Act 22,285, It is essential to have an independent regulatory body to remove any possibility of biased decisions.

2.1.3 Economic restrictions on access to licences

There are certain economic obstacles to becoming a lawful media broadcaster, in addition to the assessment of licence applicants' capital worth carried out during the public tendering of radio and television station licences. Two other important factors arise: concentration of ownership and the media's dependence on advertising.

In Argentina there are 46 free-to-view television channels, 50% of which are in the hands of three media groups: Telefónica¹⁷, Clarín¹⁸ and Vila-Manzano-De Narváez¹⁹. As well as these three groups, the businessman Daniel Hadad is also significant, with an interest in the largest audience radio stations in Buenos Aires and a cable television channel, CN5.²⁰ There are 124 newspapers (Mastrini and Becerra, 2006) and more than 2,600 radio stations, of which some 600 operate under a licence awarded by COMFER (Zenith Optimedia, 2006). It is estimated that another 2,000 or so stations operate unlicensed. Cable television coverage exceeds 60% of Argentine households.²¹

During the 1990s an important series of privatisations of Argentine state activities took place, including television channels, radio stations and the public telephone system. Among other things, changes in the law removed barriers to the same actor participating in different media markets.

Argentina has the highest indices of media concentration in the region. On average, the top four operators in each media industry (press, radio, free-to-view television and pay-to-view television) own more than 75% of the Argentine market. Market concentration in the form of conglomerates enables large media groups to own businesses in different industries, resulting in cross-ownership of the media (Mastrini and Becerra, 2006).

17 Telefónica Group is directly related to Telefónica of Spain. It controls more than 50% of the fixed-line and cellular telephone market, Channel 11 in Buenos Aires and 10 television channels in the rest of the country. It has interests in television programme production and film production, and maintains a strong presence in the internet connection market.

18 The Clarín Group, 82% owned by Argentine shareholders, owns the newspaper *Clarín*, Channel 13 in Buenos Aires, eight television stations in the rest of the country, Radio Mitre and FM 100, the cable company Multicanal-Cablevisión, and it also provides internet connections. It has significant interests in television programme production, film production and newspaper publishing.

19 The Vila-Manzano-De Narváez Group owns Channel 2, Radio La Red, the cable television channel Supercanal (in association with the Clarín Group) and the newspapers *Uno* in Mendoza, *Uno* in Santa Fe, *Uno* in Paraná and *La Capital* in Rosario, among other media.

20 For more on this issue see Becerra, Hernandez and Postolski, 2003

21 Data from the National Institute of Statistics and Surveys (Instituto Nacional de Estadísticas y Censos, INDEC), <http://www.indec.gov.ar>

According to the researchers, the combination of market concentration and cross-ownership by a small number of groups give the main operators a decisive influence. In other countries, different rules apply. For example in the United States, cross-ownership of print and audiovisual media with common areas of coverage is not permitted, and in France, no-one may control more than 50% of a television station.

In effect, many claim that market concentration produced through regulatory change forms a barrier to new parties and social sectors gaining access to the mass media. This is not only because of the saturation of the radio spectrum by radio and television licences, but also because of the economic obstacles it creates to entering the market. Interested parties need significant economic investment in order to compete with the concentrated groups already in the market with strongly established positions.

Another factor is the dependence of the media on the advertising market, which changed fundamentally in recent years as a consequence of the country's economic crisis. Total advertising spending declined from US\$3.231 billion in 1998 to less than US\$600 million in 2002. Since then there has been a strong recovery and currently it is around US\$2 billion. It is estimated that television receives 47% of total spending, the newspaper sector 35% and radio 3%. The remaining 15% is shared among magazines, the internet and billboard advertising. Within the television sector, cable television is growing in importance at the expense of free-to-view television, which nonetheless continues to be the sector with the greatest level of income (Zenith Optimedia, 2006).

The television market receives the largest percentage of advertising revenue, the majority of licences for television stations are in the hands of very few, powerful companies, and all radio, television and cable broadcasting licences in the country were extended for 10 years by Decree 527/2005. There is thus very little chance of any new parties gaining broadcasting licences against this background of strong control by market concentration. There is an evident relationship here between the growth of concentrated media groups as a result of changes to the Broadcasting Act since 1989 and the absence of new radio and television licences.

2.1.4 The relationship between the state and the media system

In a comprehensive study of television in Latin America, John Sinclair (2000) pointed out that in the region there were, historically, informal ties between the state and private media owners and licence holders. The predominance of a private commercial model was complemented by unwritten agreements based on mutual convenience, which promoted the legitimacy of the political system as much as the structure of the media. In this way the owners of the media had considerable liberty to operate in the market, while the state maintained informal control over media content.

Rosa Maria Brenca and Maria Luisa Lacroix (1995) have also emphasised the existence of a 'pro-government private sector'. This model of relationship cuts through different historical periods and appears largely to be accepted implicitly by the political class. Nevertheless, as Sinclair correctly points out, despite this relationship there are conflicts of interest between the political and business sectors.

The relationship between the state and the main media groups has had an influence both on access to the media for vast sections of the population and on the availability of

diverse audiovisual content. The following examples show the complexity of the economic and financial relationships between the two sectors, characterized by discretionary interventions by the State.

The issuing of Decree 527 in 2005, which extended current licences for radio and television stations for a further 10 years, was also financially beneficial for some operators. At that time a group of operators needed their licences to be extended, since they were subject to extrajudicial preventive agreements (APEs) or measures to prevent bankruptcy. Among these were the cable operators Cablevisión and Multicanal (both subject to APE) and free-to-view television channels 2 and 9 (bankruptcies), whose licences were close to expiring. Extension of their licences enabled these indebted operators to refinance their payment obligations on better terms (Califano, 2007).

In addition, other measures have effectively suppressed competition in the cable television sector. The sale of bidding rights to new providers of cable television services was suspended in 2000, on the basis of an ‘administrative emergency’ (Resolution 726–COMFER/00). The initial 120-day suspension was renewed time and again until 2006, when it became a permanent solution to an alleged temporary crisis, in spite of judicial decisions which had declared the measure unconstitutional.²² In 2006 COMFER issued Resolution 1242, which gave people the opportunity to participate in the creation of new rules. According to Resolution 1242, no bidding rights were to be sold pending the approval of ‘Rules governing access to licences and the provision of complementary broadcasting services’. The COMFER television coordinator admitted: ‘After Resolution 1242 a bidding conditions plan was published, in response to which we received hundreds of suggestions and comments. Technically we would today be selling bidding rights, but since the passing of a new broadcasting law and the finalisation of a new digital TV standard are imminent, there would not be much point in doing so, as the technical information it [i.e. the plan] would offer will be analogue. If you ask me why we have not sold bidding rights during the last seven years, the answer is obvious. Those decisions, by and large, are not taken by COMFER’.²³

In practice, this suspension has meant a restriction on competition in the cable television sector. On 7 December 2007, three days before the end of Nestor Kirchner’s presidential term, the National Commission for Competition Defence (CNDC) advised the Secretary of Internal Commerce to approve the merger of the country’s two main cable television operators, legally authorising further consolidation of the concentration of ownership which the sector has been experiencing in recent years. Approximately 55% of the national cable market will be controlled by the company created by the merger, and in some cities the percentage will be higher (CNDC, 2007).

On 19 February 2009, COMFER signed Resolution 143, which established a 15-day period for interested parties and the public to present opinions, objections and suggestions for the definite design of the ‘Rules governing complementary broadcasting services’. After the approval of these rules, the sale of bidding rights to new providers of cable television will be possible, though at the time of writing there was no further information available about this resolution and its implementation.

22 For example the decision of the Argentine Supreme Court in the case ‘Cooperativa Telefónica de Servicio Público y Comunicaciones de Villa del Totoral Ltda. c/ Comité Federal de Radiodifusión COMFER (PEN – EN) s/ amparo’, dated 24 August 2006.

23 Interview with Fernando Manero, COMFER television coordinator, 3 November 2008.

Consideration of state intervention must also include the issue of advertising spending to the media by public officials. The Association for Civil Rights (ADC) has been monitoring this issue for four years and has denounced the arbitrary and discriminatory distribution of state advertising as a form of indirect censorship of free expression.²⁴ Certainly, the absence of clear legislation regarding public sector advertising has allowed the creation of possible niches of corruption and in many cases makes the allocations look like a form of payment to the media and journalists for their conduct.

Finally, we must highlight the link between the state and the main operators of the newspaper market in the production of newsprint. This is an example of discretionary state intervention that benefits the key participants in the market – newspapers with the highest circulation²⁵ – by permitting the creation of vertical integration in the provision of this key ingredient on which the newspaper industry depends., The company Papel Prensa S.A. (which produces newsprint) is owned by the Clarín Group, which holds 49% of its shares (37% by AGEA plus 12% by CIMECO), by La Nación which has 22.5%, and by the State which has 27.5%. It has belonged to these owners since January 1977, when the military dictatorship of Jorge Rafael Videla presented each of the newspapers with a share in the company and reserved a percentage for the State. The newspaper *La Prensa* was also offered a share but turned it down. Since then, the two morning newspapers have decided, along with the State, to whom paper is sold and at what price.²⁶

All these actions and decisions combine with the lack of specific and impartial state policies to encourage access to and diversity of ownership of the media.

2.2 Diversity of content

2.2.1 Regulation and public policy

The Broadcasting Act establishes certain regulations in relation to media content, primarily related to the protection of national security, which calls to mind the enforcement of rules under a de facto regime. Some of its articles also provide that broadcasting services must collaborate in the ‘cultural enrichment’ and ‘moral elevation’ of the population, in respect for liberty, social solidarity, the dignity of persons (article 5), and contribute to the enrichment of culture and the education of the population (article 14).

It establishes restrictions on content at certain hours, relating to the protection of children under 18 (between 8am and 10pm) and sets requirements regarding in-house production (10% of programming for stations broadcasting for eight or more hours daily) and nationwide programming (40% of daily programming). Since Decree 1062/98 the broadcasting of foreign language programmes has been permitted, subject

24 For example, *Buying the News: A Report on Financial and Indirect Censorship in Argentina* (2005), the annual monitoring reports of official government advertising expenditure, and *The Price of Silence: The Growing Threat of Soft Censorship in Latin America* (2008), available at www.censuraindirecta.org.ar

25 According to figures from the Circulation Verification Institute, the average circulation for *Clarín* for the year 2007 was 395,587, while that for *La Nación* was 161,658: www.ivc.org.ar

26 Source: www.diariosobrediarios.com.ar

to COMFER authorisation, although the programmes must be aimed at spreading the Spanish language. Article 19 indicates a preference for the inclusion of works by domestic writers and performers.

However, there are no obligations on the private media in relation to diversity of content or pluralism of information. No regulations or self-regulations have been registered that create an obligation on private media to encourage debate amongst society as a whole, and nor have the state media taken on this task.

Media run by private licence holders have no internal guidelines that promote diversity, with the exception of a document regarding the treatment of crisis situations by Radio Mitre, one of the AM leaders in the market.

There are no quotas or rules that oblige audiovisual media to consult different sources (news bulletins, for example), or work to level out the editorial bias of each media company. The state lacks a system of subsidies, such as those that apply to the press and radio in Europe, which would promote diversity in programming or in the topics covered used by the stations.

In contrast, state action in the cinematographic market to promote private production stands out. Through the National Institute of Cinema and Audiovisual Arts in Argentina (INCAA), created by Law 24,377 in 1994, different policies have been developed to support the production, distribution and exhibition of Argentine cinema. These include a production fund, the establishment of a quota for Argentine films and the obligation to continue showing domestic films which achieve above-average ticket sales.²⁷

The only existing public policy in the broadcasting sector which might help to promote diversity of content is the support for public radio and television. However, these suffer a series of operational limitations (both economic and political) which are discussed below.

2.2.2 Direct and indirect limitations on diversity of content

As noted earlier, the IACHR's Declaration of Principles on Freedom of Expression points out that monopolies or oligopolies in media ownership conspire against democracy, by restricting the plurality and diversity of voices necessary for people fully to exercise their right to information.

The relationship between the high level of concentration in the Argentine media market and diversity of content should be studied in order to evaluate its real impact. This report has already described how several legal rules have helped to strengthen this concentration in the sector, including the suspension of the sale of bidding rights for complementary services, the approval by the National Commission for Competition Defence of the merger of the country's two main cable television companies, the promulgation of the Cultural Property and Heritage Act and the issuing of Decree 527/05 which de facto extended broadcasting licences held by long-term licence holders for a further 10 years.

²⁷ Resolution 2016/04, amended by Resolution 1582/06.

‘In the absence of open and pluralist media, the right to receive information is prejudiced’, point out Mastrini and Becerra (2006: 47). However, the authors also highlight that non-oligopolic ownership of the media market would not be a sufficient guarantee of diversity. Thus, it is necessary to ensure a multiplicity of content in the media. This should be at the political level, permitting the expression of a range of political opinions; at the cultural level, ensuring that different national cultures find a means of expression; and at the linguistic level, in relation to the inclusion of minority languages.

Although the issue of ownership might be important in relation to diversity of voices (Califano, 2007), other variables must be considered such as the size of the media market and the available resources. For example, large, healthy markets with abundant resources can tackle greater levels of diversity than smaller markets.

Another factor affecting diversity of content is the geographic centralisation of the media and dependence on the Buenos Aires metropolitan area as a centre of content production. A recent study carried out by COMFER (2008) revealed that channels in the interior of the country produce, on average, 29% of what they broadcast and rebroadcast 67% of the programming of the terrestrial channels in the City of Buenos Aires.

A large part of the content, and in particular fiction content, that characterises the national identity, is only presented through the lens of the main urban centre, where 33% of the population lives. This assigns to the remainder of the country the role of consumer, and limits the interior provinces’ capacity for self-production to news of a provincial and local nature.

The abuse of public sector advertising, by using it as a ‘carrot and stick’ for the media in respect of coverage received, is one element to be taken into account in the analysis of media content. The ADC has worked extensively on this topic and has analysed how this situation looks worse in the media in the interior of the country. The advertising market is small in comparison to the big cities, so most of the media in the interior depend financially on public sector advertising to survive. In several provinces, the possibility of *not* receiving state advertising acts as an economic constraint on diversity of content, especially political content.

ADC’s 2005 report *Buying the News* and the 2008 report *The Price of Silence* – coedited with Justice Initiative Open Society – showed how financial pressures are used to force the media to provide the government and its officials with favourable coverage, deny the opposition access to information and exercise direct control over printed text or airtime.

With no law to regulate the distribution of government advertising, there are strong indications of its discretionary use. In this way, indirect censorship of media content is exercised, criticisms of the government are silenced, research is discouraged and journalistic independence is obstructed.

2.2.3 State media

The media run by the state itself does not fit the definition of ‘public media’, since it lacks a public service mandate and its composition is defined exclusively by the

Executive Branch (presidency). Neither Parliament nor civil society has the power to influence the management, programming or content of the radio and television stations run by the state. Their funding relies on advertising and contributions from the state budget.

The media run by the state originally made up the Official Broadcasting Service Directorate (SOR), answerable to the Executive Branch (articles 33 to 38 of Law 22,285). Although some of those articles were amended during the 25 years of constitutional politics, the state media remain responsible to the Executive Branch today.

There is now a National System of Public Media (SNMP), created by Decree 94/01 with the aim of centralising the administration of Channel 7, the broadcasting stations included in the SOR and the state news agency Télam.

Decree 2507/02 removed Télam from the control of the SNMP and, as a result of a series of irregularities, the SNMP was taken over through a series of orders by Presidents Duhalde and Kirchner. When Nestor Kirchner assumed the presidency, the SNMP passed to the control of the Media Secretariat (Decree 624/03). State intervention lasted until October 2007, when a directorate was appointed to head the agency.

The discretionary and spasmodic intervention over decades by the Executive Branch in these media has meant that their audience is greatly reduced and their influence on the media system is almost marginal. According to the private company public opinion consultancy that has a monopoly on the measurement of audiences in Argentina, Channel 7 has a much lower average rating in comparison with the other terrestrial channels.²⁸

This weakens the potential for public media to offset the almost exclusively commercial character of the Argentine media system, which it *could* have if run as a public service. It could give audiences an alternative to programming driven by the ratings of private stations. Throughout 2007, for example, private stations altered the times at which their broadcasting commenced, in a strategy designed to confuse their competitors but which gave little consideration to audiences.

The Broadcasting Act of 1980 gave a subsidiary role to the public media, as relay stations for the state channel were permitted only in regions where private activity did not compete. Through Decree 2368/02, issued by former President Eduardo Duhalde, this provision was amended so that the Executive Branch would decide the location of relay stations in the interior of the country. In this way, the government of Nestor Kirchner implemented a policy aimed at expanding public radio and television coverage, which had stood still since the 1980s. Decree 84 of 8 February 2005 provided for the installation throughout the country of 18 new Channel 7 relay stations, and this programme is ongoing.

28 Average rating measured by Consultora Ibope for September 2008, for Capital Federal terrestrial channels: 12.8% for Channel 11 (Telefónica Group), 11.5% for Channel 13 (Clarín Group), 6.4% for Channel 9 (Ángel González Group), 4.5% for Channel 2 (Vila-Manzano-De Narváez Group) and 1.1% for Channel 7. See www.ibope.com.ar

Although significant geographical areas remain without public media coverage, it should be noted installations have now been completed in the cities of Mar del Plata (2006), San Rafael (Mendoza province, 2007), Bariloche (Río Negro province, 2007), Neuquén and Zapala (Neuquén province, 2007) and Junín and Ayacucho (Buenos Aires province, 2008). Channel 7 currently has 283 relay stations.

The plan established by the aforementioned decree anticipates further relay stations in the cities of Mendoza (Capital and Greater Mendoza), Córdoba and Río Cuarto (Córdoba province), Comodoro Rivadavia (Chubut province), La Rioja (La Rioja province), San Juan (San Juan province), Río Gallegos (Santa Cruz province), San Miguel de Tucumán (Tucumán province), Salta (Salta province), Santa Rosa (La Pampa province), San Salvador de Jujuy (Jujuy province) and Bahía Blanca (Buenos Aires province). The majority of these are provincial capitals, where until now only private commercial television was available. The areas that will remain without coverage following completion of this plan are mainly situated in the great Patagonian plateau, a vast and scarcely populated region in comparison with the rest of the country.

Currently only seven cities in the whole country receive more than one free-to-view television signal.²⁹ Every provincial capital has its own free-to-view television channel, with the exception of Catamarca, which only receives television from neighbouring provinces. Commercial television focuses clearly on the most important urban centres. In several less-populated provincial capitals, access to free-to-view television is only possible via provincial government transmitters (Santa Rosa, Trelew, Río Gallegos, San Luis, La Rioja, and Formosa).

The main obligation still owed by the state in relation to public media relates to plurality of information. Successive governments have shown an inability to provide the country with legislation which guarantees citizens' satisfaction of this right. There are no legislative references at either national or provincial level which regulate the operation of the public media. The exception is in Buenos Aires City, where an article in its constitution (approved in 1996) provides that state media must be controlled by a non-governmental organisation. However, no regulations were ever issued and therefore the article exercises only a symbolic function.

At the end of 1999 the National Congress approved a regulation which provided that the directorate of public media would be comprised of representatives of the different parliamentary groups. However this law was vetoed a few days later by then President Fernando de la Rúa.³⁰ Thus, the national public media continued under the discretionary control of the Executive Branch. This situation was more serious for the provinces, where the running of state media is directly linked to the political criteria and decisions of whoever happens to be governor.

A study carried out by the NGO Poder Ciudadano (2007) demonstrates the influence of government over the content of the public media. The study monitored the 2007 presidential campaign in different media, for two months prior to the October election.

29 Buenos Aires, Rosario, Bahía Blanca, Mar del Plata, Córdoba, Tucumán and Mendoza.

30 By Decree 152/99, Fernando de la Rúa vetoed the Argentine Radio and Television Act (RTA), Law 25,208/99 dated 24 November 1999. The RTA aimed to regulate a non-governmental State company, controlled by Congress, which would take charge of the administration of Channel 7, Radio Nacional, the SOR and Radio Argentina al Exterior.

It found, among other conclusions, that programming on the state channel had been interrupted on repeated occasions in order to broadcast the political rallies of the candidate of the ruling party, Cristina Fernández de Kirchner. This gave her 451 minutes of airtime – not counting the time dedicated to her in the main news bulletins – against the 12 minutes given by the end of the campaign to the main opposition candidate.

In 2004 the ADC published *Public broadcasting for democracy*, in which it pointed out that the confusion between public and governmental broadcasting has been a constant for years in Argentina. This has impeded the development of an autonomous public media capable of responding to the information and cultural needs of the population. The role of the public media should be to guarantee access to broadcasting free from political influence by the government and by the regulations governing the market, which would guarantee a diversity of perspectives in the treatment of information, and varied and high quality programming. It should also seek to expand possibilities for production and generation of content by the population.

2.3 Access and diversity on the internet

2.3.1 The regulatory framework: towards technological convergence

Argentina maintains a clear separation between its telecommunications and broadcasting policies. There are specific laws and regulatory frameworks for each sector and an express prohibition on telecom companies having a stake in broadcasting companies. Executive Branch Decree 62/90, which set out terms and conditions for the privatisation of the state telephone company ENTEL, prohibited telephone companies that were successful in the tender process from entering the broadcasting market, in exchange for a 10-year monopoly in the telephone market.³¹ The regulatory bodies are also different and autonomous in their day to day activities.

For the telecommunications sector, Decree 660 in 1996 merged the National Telecommunications Commission (CNT) and the National Postal and Telegraphy Commission (CNCT) to create the National Communications Commission (CNC). The CNC operates as a decentralised agency within the Communications Secretariat. The objectives of the CNC include: policing the radio spectrum, telecommunications and postal services, by implementing and monitoring compliance with the regulations in force, including implementing sanctions; assisting the Communications Secretariat in updating and developing Fundamental Telecommunications Technical Plans and in issuing general rules for the services within its jurisdiction; preventing and punishing anti-competitive conduct; and assisting the Communications Secretariat in representing the national interest before international bodies and entities.

In 2002, Decree 521/02 provided for state intervention for as long as the Public Emergency and Foreign Exchange System Reform Act remained in force (Law 25,561, dated 7 January 2002). However, the intervention was extended annually by presidential decree and remains in place at the time of writing (January 2009).

³¹ In spite of this the telephone company Telefónica has the operative control of several TV Channels (Telefe, amongst others) but COMFER has never authorized a change in the name of the licences' holders. It is an illegal situation that is widely known.

Internet access in Argentina is regulated by Executive Decree 764/2000 which operates as a regulatory framework for the whole telecommunications sector, with the exception of broadcasting. The entire sector is deregulated, and there is nothing preventing domestic or foreign companies from becoming a telecommunications service provider. The register of names of owners (NIC) and the management of Argentina's country code top-level domain (or ccTLD, which is .ar) is administered by the Ministry of Foreign Affairs.

As noted above, broadcasting is under the regulatory control of COMFER, created as a result of the Broadcasting Act 22,285/80 as successor to the National Radio and Television Commission (CONART), which was created in 1972 by the National Telecommunications Law No. 19,798.

The integration of the telecommunications and broadcasting sectors has already started in the corporate sector. Although they remain separate in their day to day operation, groups like Clarín and Telefónica, in particular, operate in both markets. Thus the Clarín Group not only controls the most widely read newspaper in the country, the main cable television operating company and various television channels and radio stations, it is also one of the most important providers of internet access services. The Telefónica Group, with broad ownership in the terrestrial and mobile telephone markets, also provides internet access and owns several television channels.

Although the platforms from which these companies provide services are separate, with integrated ownership the pressure to join these distribution platforms may become considerable in the future. For example, the Telefónica Group has put pressure on the government to sanction legal measures which would allow them to provide 'triple play services' (that is, telephony, internet and broadcasting provided over a single broadband connection) for which it has developed software. The problem here is linked directly to the questions of access to the communications media and the diversity of providers, as a very small number of groups control the greater part of the distribution platforms for broadcasting, telephone and internet. Without suitable regulation such as 'must carry' and 'must offer' rules, many claim that consumers face the risk that large media groups – those that offer connection services and also produce content – would block the distribution of other media companies. This is already the case in Mexico, for example.

2.3.2 Public policies relating to information and communication technologies (ICT)

In 2000 Decree 764 established a process of deregulation in the telecommunications market and approved the rules governing licences for telecommunications services and universal service, among other measures.

One of its objectives was that the inhabitants of the entire country should have the opportunity to access telecommunications services, especially those who lived in inaccessible areas or who had physical disabilities or special social needs. It also expressed the need to promote national integration and provide benefits in terms of culture, education and public health. However this was never achieved.

Nor did the collection of 1% of the turnover of telecommunications operators ever take place. This was provided for in the same regulation, was to be implemented before 1 January 2001 and was intended as a trust fund to cover investment in the unprofitable universal service market. The former Secretary of Communications during the presidency of Fernando De la Rúa (1999-2001), Hénoc Aguiar, explained: 'Decree 764/2000 (...) says that in the regions of greater teledensity (Córdoba, Rosario, Mendoza, etc.), which represent 80% of the Argentine market, supplier companies must take 1% and place it in a fund, which will permit services to be offered in valleys and places where there were never any. That represents a sum of money which up to today has been accumulating (according to the Auditor General it would reach 350 or 400 million pesos). That regulation is ready, it was set out and approved and the companies have the obligation to provide it, but it was never implemented due to state apathy.' (Mastrini and Califano 2006: 114)

Although there is a National Information Society Programme (PSI), it has had almost no effect. This was created by Decree 252/2000 with the objective of developing policies and projects to disseminate information and knowledge through the use of information technology. Decree 243/2001 subsequently amended this, transferring responsibility for the PSI to the Communications Secretariat, which is answerable to the Ministry of Federal Planning, Public Investment and Services.

Against this background, it is appropriate to mention the state assistance provided to operators of the convergent networks of information and communication technologies (ICT) and nascent regulatory activity in the field of digitalisation. Themes of recent legislation include protection of personal data, digital signatures and consumer rights, adopted without the articulation of a national plan. A national plan has since been defined by the country's Chamber of Software and Informatics Services Companies, which in 2008 presented its proposed 'Digital Agenda' to provide a harmonious development framework for initiatives in this field. There have been several plans for developing ICT in Argentina in recent times, most of them conceived with lack of coordination and overlapping resources. A Digital Agenda with the participation of the different actors involved could contribute to a steady and homogeneous growth.

The information technology sector has the backing of a regime of national software promotion, adopted between 2004 and 2005 and still in force, which promotes job creation in the sector. This national regime (passed by Law No. 25,922 in 2004) aims to improve companies' competitiveness by granting them fiscal benefits such as tax deductions on profits and on pension contributions, among other things. It also gives incentives for investment, stimulates research and development and exports.

2.3.3 Geographical, socioeconomic and structural difficulties

The geography of Argentina determines access to various media and the internet, and the inequality of income distribution in Argentina increases its socioeconomic and structural significance.³²

Socioeconomic inequality affects the population's access to physical equipment and infrastructure, since in Argentina there is neither a universal telephone service (basic coverage at prices everyone can afford) nor public service broadcasting media with complete geographical coverage. As a consequence, the most vulnerable sectors of the population have objective difficulties in affording the equipment and software necessary for interacting with information and communication technologies – in 2008 for example, 25% of the people living in Argentina were classified as poor.³³ This also erodes access to paid services which information and communication technology networks distribute.

The sheer size of the country increases the cost of providing a digital infrastructure, which is thus normally concentrated in the main urban centres and the most prosperous provinces. In this sense, the state does not promote plans for the construction of an information and communications infrastructure (fibre optic), and the market thus only invests in those areas with the largest population concentrations.

2.3.4 Forms of access and content

In terms of access to internet connections, Argentina ranks second in Latin America after Chile: 6.6% of households have high-speed connections, almost 7% of inhabitants (Soriano, 2008). But the quality of access is highly variable.

Almost 3 million homes had access in March 2008. Of these, 75% had broadband connections, 17% were connected via 'free' fixed telephone lines (the cost of the call being paid) and 8% had a dial-up connection.³⁴ 73.9% of broadband internet access is located in the Metropolitan Area of Buenos Aires (comprising the City of Buenos Aires and the area known as 'Greater Buenos Aires' in the province of the same name), while in the interior of the country 91.2% of people possess other types of connection.³⁵

Internet access, as with other digital technologies, is also determined by economic factors. The average cost of broadband connections in the city of Buenos Aires exceeds US \$30 per month and in the interior of the country it is more expensive. This

32 According to the National Institute of Statistics and Surveys (INDEC: www.indec.gov.ar), the richest 10% of the Argentine population has 31 times the income of the poorest 10%. In turn, INDEC's Permanent Household Survey (EPH) revealed the following indicators: average individual income \$1156 (almost half the population has no income); average total family income \$2090 (referring to the total average income of all members of the household); average family income per capita \$625 (this is the average family income divided by the number of people in the household).

33 These are specialist estimates based on a recalculation of official statistics believed to be biased. In February 2007 the Interior Commerce Secretary, Guillermo Moreno, intervened in INDEC. Since then lawmakers, governors, trade union federations and former ministers have denounced the manipulation of public statistics, the violation of statistical secrecy and the exercise of industrial violence against those opposed to the intervention.

34 National Communications Commission: <http://www.cnc.gov.ar/indicadores/estadisticas>

35 Source: IDC Consultancy (December 2007).

represents a significant outlay in a population where the average individual monthly income is less than US \$400.

As researchers Susana and Daniel Finkelievich point out, the home is Argentine users' preferred location for connecting to the internet (59.3%), followed by 'cibers' or cybercafés (46%), the workplace (19.4%) and educational institutions (2.2%). 'This preference is due to several reasons; among the positives: the low cost of cibers, which is around 1.50 pesos (US\$ 0.50) per hour; the frequency of use of broadband in them and the speed of their connections; the absence of the need to deal with virus monitoring, spywares and maintenance of the computers. The negative reasons are the high cost of the majority of cable or ADSL servers; the increasing monitoring by companies of the use of e-mail and the internet by their employees; and the limited existence of information laboratories or telephone centres serving students of educational establishments' (Finkelievich and Finkelievich, 2007).

Finkelievich and Finkelievich maintain that, in the absence of or inadequacy of state strategies, different social agents have used different tactics to satisfy their needs for access to the tools of the information society. Enterprises such as community telecommunications cooperatives (from civil society) or cybercafés (from the private sector, whether at the micro level of individual businesses or the macro level of telephone companies) have taken on an important role in enabling access to information and communication technologies for sectors of the population with limited resources: 'Those at average socioeconomic levels, and above all those at the lowest levels, access the Internet through cybercafés and "locutorios": they have found in these places a substitute to buying a computer and a broadband connection, both expensive since the crisis'³⁶ (Finkelievich and Finkelievich, 2007). They conclude that the success of cooperatives and cybercafés in Argentina is related to the inadequacy of state policies for closing the so-called 'digital divide'.

When it comes to most-visited Argentine information websites, the site of newspaper *Clarín* is clearly number one. This daily newspaper has the highest national circulation and its online version is the second most read of all newspapers in Spanish, after Spain's *El Mundo*. In the ranking of Spanish language newspapers' websites, the website infobae.com is in fifth place, and in second place among Argentine online media. It belongs to the entrepreneur Daniel Hadad, who also owns various radio companies (including AM Radio 10 and, on FM, Mega, Amadeus, Pop and Vale), cable television news channel C5N, and the websites 10musica.com and 10tango.com. In eighth place among Spanish language newspapers' websites, and ranked third in Argentina, is the website of *La Nación*, the other newspaper most widely circulated in Argentina.³⁷

Therefore the media websites with most traffic in Argentina belong to the country's principal media groups: the Clarín Group, Hadad's Group and La Nación.

There is greater use of web pages and blogs in Argentina compared to other Ibero-American countries. Argentina is the Ibero-American country with the most blogs created per month, and whose writers generate most content. However, the blogs that

³⁶ 'Locutorios' are businesses offering low-cost telephone calls or internet access to the public, e.g. from shop-front premises.

³⁷ Source: www.alexa.com

register most traffic are not those with news content but those dedicated to web technologies and strategies.³⁸

38 According to Alianzo, a website that tracks visits to blogs and ranks them, the blog most visited by Argentine users is 'Denken Über', dealing with technology. In second place is 'Celularis', dedicated to mobile telephones and services. In third place is 'Mirá!', dominated by images and articles aimed at provoking opinion. In fourth place is the information blog 'Bloc de Periodista' and in fifth place 'PuntoGeek', which deals with technologies and video games. Source: Télam (March 2008).

3 Conclusions and recommendations

In general terms there is a lack of policies in Argentina to promote the access of citizens to the media and guarantee the existence of a diversity of voices and content.

The principles of access and diversity have not guided the changes made since 1980, when the Broadcasting Act was passed in Argentina. Since its beginnings, the development of the media in Argentina has been principally in the hands of private operators guided by commercial criteria. The operation of broadcasting licences has been restricted for the majority of citizens and access to the broadcasting media has been linked primarily to the possibility of generating economic resources. The characteristics of the Argentine media system have been defined by the absence of state broadcasters with a non-governmental public service mandate, and the lack of regulations to promote diversity of content.

Since the Broadcasting Act 22,285 was passed, the television system in Argentina has undergone remarkable transformations, among them the legal change that enables non-profit organisations to obtain broadcasting licences. However, this was made when the frequency spectrum was already saturated and existing holders of radio and television licences had obtained the necessary legal amendments to protect their economic interests and extend the period of their broadcasting franchises.

The massive growth of cable television and the advances in technological convergence should be pointed out. As in other countries, there has been remarkable growth in access to the internet and mobile telephones. However, socioeconomic inequalities remain and continue to affect the quality of access people have. Factors affecting these include an individual's capacity to pay and the country's size and structures of population concentration.

The democratising potential of information and communication technologies is undeniable, but technological solutions will only realise this if they are adopted as part of inclusive and integrated initiatives. Regulatory changes in the legislation are needed along with public policies which promote access to the media for the entire population, with special emphasis on groups having difficulty in achieving such access.

We note the following:

- It is essential that a new, democratic broadcasting law is passed in Argentina which would address the promotion of diversity of content and information pluralism in the media, in addition to the technological changes which have been made in the last 28 years.
- The broadcasting regulatory body should be independent of the government of the day so that it can exercise its ability to control in a transparent plural and autonomous manner.
- A communications policy that considers the whole of society cannot ignore the need for state media to be public and non-governmental.

- Policy must:
 - ensure transparency in relation to the financial situations and interests of the media
 - re-establish the right of all citizens and their organisations to have means of communication, within the framework of policies for stimulating the growth and consolidation of low and medium-power media
 - promote a federal policy on content production.
- All of the policies to be implemented should be complemented by:
 - measures to support broadcasting production, including by minority groups and small business (for example by means of prize funds)
 - building capacity to create new media outlets and content in the least densely populated regions
 - establishing criteria based on impartiality and transparency for the allocation of the resources with which the State presently strengthens the concentration of ownership and centralisation of production
 - regulation of the distribution of public sector advertising.

In this way, with regulatory changes and inclusive policies to put into practice the current rules, we will be on the right track to allow the effective exercise by the entire population of the right of freedom of expression.

Bibliography

- Asociación Mundial de Radios Comunitarias (AMARC), 2008. *Informe técnico sobre concesiones de licencias de radiodifusión en Argentina*, Buenos Aires, unpublished.
- Asociación por los Derechos Civiles (ADC), 2006. *Principios básicos para la regulación de la publicidad oficial (Public broadcasting for democracy)*, Buenos Aires. Available at www.adc.org.ar
- Asociación por los Derechos Civiles (ADC) and Open Society Justice Initiative, 2005. *Una censura sutil. Abuso de publicidad oficial y otras restricciones a la libertad de expresión en Argentina (Buying the News: A Report on Financial and Indirect Censorship in Argentina)*, Buenos Aires. Available at www.adc.org.ar
- Asociación por los Derechos Civiles (ADC) and Open Society Justice Initiative, 2008. *El precio del silencio. Abuso de publicidad oficial y otras formas de censura indirecta en América Latina (The Price of Silence: The Growing Threat of Soft Censorship in Latin America)*, Buenos Aires. Available at www.adc.org.ar
- Becerra, Martín, Hernández, Pablo and Postolski, Glenn, 2003. 'La concentración de las industrias culturales', in *Industrias culturales: mercado y políticas en Argentina*, Buenos Aires, Ediciones Ciccus and Secretaría de Cultura de la Nación. pp. 55-84.
- Brenca de Russovich, Rosa María and Lacroix, María Luisa, 1995. 'Radio y poder en la Argentina, 1920-1953', in *Cuadernos de periodismo* No. 1, Faculty of Social Sciences, UNLZ.
- Califano, Bernadette, 2007. *Política de Comunicación: regulación de la radiodifusión durante el gobierno de Néstor Kirchner y análisis de su representación a través de la prensa escrita*, Faculty of Social Sciences, University of Buenos Aires, unpublished.
- Comisión Nacional de Defensa de la Competencia Report No. 637, 7 December 2007
- Comité Federal de Radiodifusión (COMFER), 2008. *Informe sobre contenidos de la televisión abierta en la Argentina*, Dirección Nacional de Supervisión y Evaluación del COMFER, unpublished, Buenos Aires.
- Elíades, Analía, 2008. *Historia legal de la radio y la televisión en la Argentina*, Universidad Nacional de La Plata. Available at: <http://derechodelacomunicacion.blogspot.com/2008/04/historia-legal-de-la-radio-y-tv-en.html>
- Finkelievich, Susana and Finkelievich, Daniel, 2007. 'Sistemas comunitarios de satisfacción a necesidades de conectividad en la sociedad de la información: el caso de Argentina', *The Journal of Community Informatics*, Vol 3, No. 3.
- Loreti, Damián and Zommer, Laura, 2005. 'Debates en torno a la libertad de expresión y el acceso a la información', in *Derechos Humanos en Argentina. Informe 2005*, Buenos Aires, Centro de Estudios Legales y Sociales.

- Mastrini, Guillermo (ed), 2009. *Mucho ruido, pocas leyes... Economía y políticas de comunicación en la Argentina*, Buenos Aires, La Crujía.
- Mastrini, Guillermo and Becerra, Martín, 2006. *Periodistas y magnates: estructura y concentración de las industrias culturales en América Latina*, Buenos Aires, Prometeo.
- Mastrini, Guillermo and Califano, Bernadette (eds), 2006. *Sociedad de la Información en la Argentina. Políticas públicas y participación social*, Buenos Aires, Friedrich Ebert Foundation. Available at:
www.fes.org.ar/PUBLICACIONES/Sociedad_dla_Informacion.pdf
- Poder Ciudadano, 'Proyecto Medios y Política: cobertura informativa de la campaña presidencial 2007', Poder Ciudadano – Konrad Adenauer Foundation. Available at
www.poderciudadano.org
- Rodríguez Villafañe, Miguel Julio, 2005. *Regulación del acceso a la radio y a la televisión en Argentina*, México, Legal Research Institute of the National Autonomous University of Mexico. Available at:
www.juridicas.unam.mx/publica/rev/decoin/cont/6/art/art8.htm
- Sinclair, John, 2000. *Televisión, comunicación global y regionalización*, Barcelona, Gedisa.
- Soriano, A., 2008. 'Argentina, el país de Sudamérica donde creció más la banda ancha', *Clarín*, Argentina, 28 March.
- Zenith Optimedia, 2006. *Americas Market & Mediafact*, available at
www.zenithoptimedia.com