

MEDIA INFLUENCE MATRIX: ARGENTINA

GOVERNMENT, POLITICS AND REGULATION

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Adapted from Spanish by Norina Solomon.

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LEGAL OVERVIEW

Freedom of expression in Argentina has been officially guaranteed since the adoption of the country's first constitution in 1853. The media operate within a formal framework of freedom rights, though not exempt from pressure from the state and commercial interests. There is no specific regulation for the written press, but radio and television must observe a particular set of legal norms.

There are general regulations for the protection of honor and privacy, and for national security. New technologies have sparked an important social and political debate about how the internet should be regulated, but no specific laws covering the online space have been enacted. Instead, such cases and controversies have been thus far solved in courts. For now, there is very limited space for legal intervention in regulating tech platforms and social networks.

The constitutional reform of 1994 incorporated the international treaties signed by Argentina into the country's constitution. Thus, the principles that guarantee freedom of expression stated in the Inter-American Human Rights System are now part of the Argentine constitution.

The constitution and freedom of expression

The Argentine Constitution of 1853 recognized the right of all people to "publish their ideas in the media without prior censorship"[1]. In 1860, article 32, which established that "the federal Congress shall not enact laws that restrict the

the freedom of the press or establish federal jurisdiction over it", was added.

Following the constitutional reform of 1994, a paragraph that guarantees the protection of journalistic sources was added to article 43 : "The confidentiality of journalistic sources may not be affected."

The main international treaties protecting freedom of expression that have been adopted by Argentina include the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1966); the American Convention on Human Rights (1969); and the Convention on the Rights of the Child (1989).

One of the fundamental documents for the interpretation of article 13 of the American Convention on Human Rights is the Declaration of Principles on Freedom of Expression, written by the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (2000)[2].

In May 2005, the National Congress, Argentina's lawmaking body, through Law 26,032, granted online media the same constitutional guarantees as those enjoyed by the press. Article 1 of the law states: "The search, reception and dissemination of information and ideas of all kinds, through the internet, is considered to be included in the constitutional guarantee that protects freedom of expression"[3].

[1] Article 14 of the Argentine Constitution, see more <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm> (accessed on 3 March 2022).

[2] Rodríguez Villafañe, M. (2015), *Libertad de expresión y periodismo en el Siglo XXI*, Córdoba: editorial Universidad Nacional de Córdoba, page 45.

[3] See the full text of Law 26,036 adopted on 18 May 2005 at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/105000-109999/107145/norma.htm> (accessed on 3 March 2022).

General rights affecting freedom of expression

For some time now, the Supreme Court of Justice has extensively established a strong presumption of unconstitutionality for any prior censorship exercised on freedom of expression.

With the transition of the country to democracy that began in 1983, the normative support for freedom of expression and its effective implementation have gradually been adjusted. The Supreme Court has limited subsequent liability for the disclosure of information and value judgments in order to avoid “self-censorship” of those who help shape the public debate. These standards regulate the responsibility for hate and discriminatory speech, and influence the interpretation of criminal, civil and administrative regulations that sanction such speech[4].

The Supreme Court has granted special constitutional protection of information to public officials, public figures and even individuals involved in matters of public interest[5]. In the area of public discourse, the Supreme Court has adopted regulations that seek to prevent self-censorship in order to ensure inclusive debates, and even the possibility to ask for compensation for damages in cases related to the right of dignity and personal privacy. These regulations do not cover debates referring to individuals or matters that are not of public interest.

People exercising freedom of expression cannot be censored in advance, but can be held liable after they exercise this right. However, in recent years, certain provisions on freedom of expression have been removed from the penal code. In 1993, through Law 24,198[6] insult was decriminalized following a ruling against Argentina by the Inter-American Court of Human Rights (Kimel case). Libel and slander were decriminalized in 2009 through Law 26,551[7].

Following the constitutional reform in 1994, Habeas Data was incorporated in the law as a guarantee, and at the same time as a confirmation at the constitutional level of the right to dignity and privacy, among others[8].

One of the limitations to the right to freedom of expression is the prohibition of war propaganda and the glorification of propaganda of racial or religious hatred as well as incitement to violence. These issues are regulated by the American Convention of Human Rights. There are other similar constraints related to the protection of national security, public order or public morals.

The right to rectification or to reply is enshrined in Article 14 of the American Convention on Human Rights. This right, giving access to a different version of the facts or to a different opinion, favors public interest in the search for the truth as a way to protect freedom of expression. However, since its implementation is not regulated, this right has rarely been exercised.

[4] Vázquez, G. (2021) Los discursos de odio en la doctrina de la corte suprema, en V. Abramovich et alrii (eds.): El límite democrático de las expresiones de odio, Buenos Aires: TESEO.

[5] Vázquez, G. (2021) Los discursos de odio en la doctrina de la corte suprema, en V. Abramovich et alrii (eds.): El límite democrático de las expresiones de odio, Buenos Aires: TESEO.

[6] Penal Code, Law No. 24,198, enacted in May 1993: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/596/norma.htm>

[7] Penal Code, Law No. 26,551, adopted in November 2009: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/160000-164999/160774/norma.htm>

[8] Rodríguez Villafañe, M. (2015), Libertad de expresión y periodismo en el Siglo XXI, Córdoba: editorial Universidad Nacional de Córdoba. Page 134.

Journalism as a profession does not require an academic degree, which means that anyone can be a journalist. Consequently, in Argentina, there is no journalistic body that regulates the profession, although there are some non-profit organizations focused on the protection of journalists as well as unions and other professional associations.

There is a Statute of the Professional Journalist adopted by Law 12,908 in 1947, which regulates the labor rights of journalists.

Over the years, the Supreme Court of Justice has ruled as jurisprudence the doctrine of real malice, which follows the guidelines of the North American court in the case “New York Times vs. Sullivan”. The court has indicated that those who consider themselves affected by journalistic content deemed to be false must demonstrate that whoever issued that piece of information was aware of the falsehood. Said standard is even stricter when it comes to officials and public figures, since the court understands that these persons voluntarily expose themselves to public scrutiny and have better access to the media, being thus able to spread more easily false accusations than private individuals who are thus more vulnerable[9].

The constitutional protection of political and social criticism also extends to hate speech and discrimination, which are tolerated if they are part of such political or social criticism. This legal provision is aimed at preventing suppression of dissenting voices[10].

Regarding hateful and discriminatory speech, the Supreme Court gives precedence to pluralism of information, diversity of voices and balanced participation as key principles related to the right to freedom of expression. For the Court, discriminatory speech is more damaging when the public debate is dominated by certain voices.

Access to information

During the government of Néstor Kirchner (2003-2007), the Decree 1172/03[11] concerning access to Public Information was promulgated. The new regulation established guidelines for the process of requesting information from the National Executive Power, Argentina’s executive branch represented by the President of the country. It also introduced various tools to encourage public participation and government transparency including regulations regarding public hearings, public interest, citizen participation in drafting regulations and open meetings of the regulatory authorities. Since this was a decree concerning the executive branch, it only covered matters related to it.

In September 2016, during the government of Mauricio Macri, the National Congress approved Law 27,275/16[12] concerning the Right of Access to Public Information, which extended the guarantees of access to the entire public administration: it covers all data that state bodies and state-run companies generate, obtain, transform, control or keep.

The Law guarantees the right to information to any individual or legal entity, public or private,

[9] Loreti, D. (1995); El derecho a la información. Relación entre medios, público y periodistas, Buenos Aires: Paidós.

[10] Vázquez, G. (2021) Los discursos de odio en la doctrina de la corte suprema, en V. Abramovich et al (eds.): El límite democrático de las expresiones de odio, Buenos Aires: TESEO. Page 217.

[11] To access the full text of the Decree: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/90763/norma.htm>

[12] Derecho de Acceso a la Información Pública, Ley N° 27.275, complete text: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>

and does not require the applicant to provide the reasons for the request or to have legal representation when making such a request. The only reasons to deny citizen access to state information are linked to data that are expressly classified as confidential or secret that are related to public defense or foreign policy; information that could jeopardize the proper functioning of the financial or banking system; and industrial, commercial, financial, scientific, technical or technological secrets whose disclosure could harm market competition.

The Law established the Access to Public Information Agency as an autonomous entity part of the executive branch tasked to ensure compliance with legal provisions, guarantee the right to access to public information, and promote transparency[13].

Data protection

Law 25,326 of 2000 regulates the protection of personal data and the right to access any personal information stored in databases, as well as the possibility to correct, cancel or nullify such information. This law pinpoints rights that had been stated through the 1994 constitutional reform.

The Law defines personal data as information of any kind referring to physical persons or people who can be identified through association. It considers as sensitive data information that reveals racial and ethnic origin, political opinions, religious, philosophical or moral convictions, union affiliation and information regarding health or sexual life.

The processing of personal data is considered illegal when used without the owner's consent. The regulation guarantees the citizens' right of requesting information regarding their own persons, as well as the correction of data exposed in the database[14].

Unlike the General Data Protection Regulation (GDPR), the EU's data protection law, personal data protection legislation in Argentina does not include the right to be forgotten. In the Argentinian regulation there is no specific provision that regulates this right. This means that judges have had to approach the issue as a derivation of the right to dignity or privacy or to go by analogy to the Law of Protection of Personal Data where the closest provision is the so-called "right of suppression".

In 2020, the National Civil Chamber applied for the first time in Argentina what is known in international data privacy doctrine as the "right to be forgotten", in favor of Natalia Denegri, who had sued Google Inc., with the aim of removing from the search engine all search results that referred to certain personal information about her that occurred more than 20 years ago.

[13] Published in the Official Gazette on September 26, 2016. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>

[14] Published in the Official Gazette on October 30, 2000. Available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm>

Platform-specific media regulation

In Argentina, audiovisual services that are provided through the internet, such as Netflix, are not regulated by the Audiovisual Communication Services Law 26.522/09 of 2009. This Argentinian law uses the European Audiovisual Directive as its basis. Therefore, its definition of audiovisual can be extended to other forms of distribution that “are like television.” However, there is no specific regulation of the convergence with other services.

Article 6 of the Law 27,078 (on telecommunications) identifies Information and Communications Technology Services as “those whose purpose is to transmit and distribute signals or data, such as voice, text, video and images, facilitated or requested by third-party users, through telecommunication networks”. This definition includes audiovisual over-the-top services (OTTs), but then it further clarifies that “each service will be subject to its specific regulatory framework”, which has yet to be developed[15].

Regarding the federal government and the provincial administrations, their greatest regulatory effort was aimed at collecting taxes from OTTs that provide services from abroad such as those offered by Netflix. On 27 December 2017, the National Congress approved Law 27,430, which in its Article 87 incorporated as activities subject to the Value Added Tax (VAT) Law the digital services provided by a foreign company that supplies services in Argentina.

Article 88 lists a series of services, including “access to, and/or downloading of images, text, information, video, music, games, including gambling.” As the majority of suppliers of this type of service do not have a commercial or fiscal domicile in Argentina, Article 89 established the tax liability for providers of these services. In turn, Article 95 stipulated that any intermediary in the payment process must designate a tax collection agent.

In April 2018, the government of Mauricio Macri introduced through decree 354/18 VAT on digital services provided by foreign subjects. In May 2018, the federal tax agency AFIP issued General Resolution 4240, which regulates the form of payment and established two lists of providers. The first section includes services such as Netflix, Spotify, iTunes.com and Prime Video. The second section lists websites like Airbnb, Booking, Apple and Nintendo.

Broadcast media

The regulation of broadcast media in Argentina was central to the public debate on media-related issues between 2008 and 2015. Until then, the decree-law[16] 22.285[17] that had been adopted in 1980 by the last military dictatorship was in force. That legal document was an authoritarian law that did not correspond to the democratic regime in existence since 1983. However, attempts to change that authoritarian law were unsuccessful due to pressure from various groups of interests. In 2008, after a strong dispute with the Clarín multimedia group, President Cristina Fernández de Kirchner (2007-2011 and 2011-2015) decided to fight for a legal

[15] Mastrini, G., & Krakowiak, F. (2021). Netflix en Argentina: expansión acelerada y producción local escasa. *Comunicación Y Sociedad*, 1-23.

[16] There is jurisprudence in Argentina that indicates that the decrees adopted during military governments maintain the character of law upon the return of democracy. This was justified many years ago by the Supreme Court for the sake of legal continuity. For this reason, to replace the decree-law passed by the military, a law of parliament was necessary and a presidential decree was not enough.

[17] <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/17694/texact.htm>

change. She had to wait until October 2009 when the National Congress approved the new Audiovisual Communication Services Law (LSCA) No. 26,522/09[18].

Based on a human rights doctrine, the new law sought to generate a more pluralistic and transparent enforcement regulation, while limiting concentration of media ownership. The LSCA has notable provisions in terms of the democratic regulation of communication such as that 33% of all radio-electric spectrum be reserved for non-profit organizations.

The Law guarantees freedom of expression as it does not regulate content; it lifted the ban on non-profit organizations to run broadcast operations; it reduced the power of the executive branch (which until then directly controlled the process of law enforcement through a regulator); it established mechanisms that hindered the creation of highly concentrated oligopolies; and it demanded local production quotas from all system operators.

The Audiovisual Communication Services Law represents an important step forward. It links the concept of freedom of expression with human rights, and for the first time in Argentina, neither the enforcement authority nor the state-run media are fully controlled by the government. Instead, the law provides for cross-checking mechanisms and guarantees participation of political minorities in the regulatory process. The law recognizes three types of providers: state providers, commercially funded, private providers, and non-commercial private providers.

Regarding the institutional design, the law created the Federal Authority for Audiovisual Communication Services, a regulator whose governance body consists of seven members. Two of them are appointed by the president, three by the National Congress (assigning two to parliamentary minorities) and three by the Federal Audiovisual Communication Council (CFC). The law also created the CFC as a forum for the discussion of public policies with the participation of representatives of the provinces, companies, non-profit broadcasters, indigenous peoples, public media, media workers' unions, and universities. The entities of the Audience Ombudsman and an Advisory Council for Audiovisual Communication and Childhood were also created. Thus, through this law, a wide and pluralistic body of entities is able to grant civil society greater visibility and participation in the design of public communication policies.

Another notable regulation was introduced to prevent the concentration of media ownership. The number of licenses that the same company or person can have was limited to 10 or up to 35% of the potential market. Cross-ownership of electronic media in the same coverage area is also limited, but not that of print and electronic media.

Finally, in terms of content, high quotas were established for national production (60%), own production (30%), and independent production (10%) with the aim of protecting the national audiovisual industry. The broadcasting system has also been linked to other cultural industries, since part of the taxes that broadcasters must pay for the use of the spectrum is transferred by the federal authority to the film and music industries.

Once the Law was adopted, the government did not show the same determination when it came to implementing it. For their part, political groups showed their opposition to the government and the most important media carried out legal actions challenging the constitutionality of the Law and its effect on freedom of expression. In 2010, the Supreme Court of Justice declared the constitutionality of the SCA Law in general terms. However, four articles directly related to

[18] Audiovisual Communication Services, Law No. 26,522, sanctioned in October 2009, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/155000-159999/158649/norma.htm>

restrictions on the concentration of media ownership got legally challenged.

In October 2013, the Supreme Court of Justice issued a ruling that declared the 2009 Audiovisual Communication Services Law constitutional and fully applicable. The judicial appeal had been pursued by the Clarín group on the consideration that Law 26,522 /09 affected property rights and violated freedom of expression.

Six of the seven justices established that the Law did not affect freedom of expression and a majority of four indicated that the impact on economic rights was not unconstitutional in this case.

The ruling of the Court has a great significance because it establishes jurisprudence of the highest level on the very concept of freedom of expression. The main verdict considers that there are two dimensions to freedom of expression, one of an individual nature, based on the personal right to make ideas public, from which patrimonial rights derive; and a social or collective dimension, in which the entire population must be guaranteed the right to exercise their freedom of expression. In a time marked by the centrality of the media, the Supreme Court states that freedom of expression cannot be separated from the process of disseminating ideas, proof of the importance of this regulation.

The Supreme Court did not assess the quality of the Argentine Audiovisual Law arguing that this should be the task of legislators, and highlighted that Law 26,522 “aims to favor competitive and antitrust policies” as a way to guarantee freedom of expression and information.

The ruling is based on the need to promote and guarantee a robust public debate. Therefore, the Court points out that the principle that the LSCA seeks to guarantee is that of the plurality of voices, thus allowing the state the right to establish limitations on the concentration of media ownership that it deems necessary, provided that these limitations do not affect the possibility of the companies in the sector to operate. One of the key issues in the ruling is the distinction made by the Supreme Court between profitability and sustainability. The Court indicates that although the law may affect the profitability of the companies (and, in fact, recognizes their right to make an economic claim for the losses that may be caused), it has not been proven that the companies’ continued existence is affected by the de-concentration process, which means that the law does not affect their freedom of expression.

In this way, the ruling recognizes a fundamental issue, the special nature of the communication sector whose diversity must be especially protected, since this is the cornerstone of a democratic society. “[U]nlike other markets, in communication the concentration has social consequences that are manifested over the right to information, an essential good of individual freedoms.” The ruling adds, “the restrictions of a strictly patrimonial order are not disproportionate compared to the institutional weight carried by the law’s objectives”.

However, the law as it was passed by the national congress had a short life. When it took over the government, the center-right alliance headed by Mauricio Macri (2015-2019) brought important amendments to Law 26,522.

On 4 January 2016, after less than a month as president, Macri published DNU 267/15[19], establishing the National Communications Entity (ENACOM) and modifying some of the core articles of the Audiovisual Communication Services Law. A year later, on the last business day of

[19] <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257461/norma.htm>

2016, Macri signed the Decree 1340/16, which expanded provisions from the previous law.

With the amendments, the Macri government introduced important changes, with the following standing out[20]:

- The control of the regulatory bodies and implementation of the media and telecommunications policy were given to the executive branch.
- Created the National Communications Entity (ENACOM), in which it included the Federal Authority for Audiovisual Communication Services (AFSCA) that disappeared as a standalone entity. The ENACOM was first run by the Ministry of Communications, later by the Cabinet Office, and after that it had a Board of Directors consisting of four members appointed by PEN and three proposed by Congress (bicameral commission) at the proposal of the parliamentary groups. All directors can be removed by the President directly and without cause.
- Modified the regulation on ownership concentration in open television, cable television and radio, removed the classification of public service in competition for ICT (which had been defined by congress in Law 27078), extended the validity of all existing audiovisual licenses, and allowed broadcast groups to provide fixed and mobile telecommunications services as well as, with a delay that favored broadcast groups, allowed telecommunications operators to offer cable television.
- It raised from 10 to 15 the number of open radio and television licenses at the national level and from three to four the number of local licenses that one licensee can hold.
- Cable television ceased to be regulated by the audiovisual law and was now considered an ICT service. Interestingly, satellite television, also paid, was not affected by this change in classification. With this, Macri eliminated the limit for licenses and ceiling for market dominance on the cable market.
- Repealed the regulation that prevented cross-ownership concentration between open television and cable television licensees.
- Repealed the 35% limit on potential audience coverage for television and radio broadcasters.
- Authorized an initial public offering (IPO) for 45% of the share capital.

A year later, with the Decree 1340/16[21], Macri complemented and amended some aspects of DNU 267/15, paving the way for the dominant media and telecommunications conglomerates to access and use the radio-electric spectrum, as well as to develop integrated services across sectors (triple and quadruple play).

With Cristina Fernández de Kirchner as vice president, the government of Alberto Fernández (2019) has not made changes in the regulation of communication systems.

Although most of the articles of Law 26,522 remain in effect, the changes introduced during the

[20] Martín Becerra (2021) Restauración transgresora. Las políticas de comunicación del gobierno de Macri, en Becerra y Mastrini (comp.) Restauración y Cambio. Las políticas de comunicación de Macri, SIpreba-ICEP: Buenos Aires.

[21] Ministry of Communications, Decree 140/2016, Buenos Aires, December 2016, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/270000-274999/270115/norma.htm>

Macri administration mean that this law has lost its essence. The result is a combination of a law and a decree that differ widely in their regulatory objectives. In any case, it is clear that after Macri's changes, most of the articles of the law that were controversial for the large communication groups were repealed and the regulatory authorities returned under the absolute control of the executive branch.

Digital platforms and internet services

No regulations have been adopted in Argentina that directly affect digital platforms. As stated in the introduction, the internet has the same constitutional guarantees as the media regarding freedom of expression. In 2018, congress tried and came close to approving a law aimed at regulating internet intermediaries, but in the end the necessary consensus was not reached.

At the judicial level, the Supreme Court adopted the most prominent ruling in 2014 when it dealt with the scope of freedom of expression on the internet in the case “Rodríguez, María Belén”[22]. First, the Supreme Court held that online content is covered by the freedom of expression. Second, it noted that the role of search engines is critical to the functioning of the internet because they allow users to access online content. According to the Supreme Court, search engines are liable for third-party content in cases in which they have taken “effective knowledge of the illegality of that content” and they have failed to take remedial action.

The press and digital media

There is no specific regulation for the written press in Argentina. In some regional markets there is a strong indirect influence by the state on the press through state advertising, which has become the main source of financing for small and medium-sized media.

[22] Full text available at: <https://cdh.defensoria.org.ar/normativa/rodriguez-maria-belen-c-google-inc-s-danos-y-perjuicios/>

REGULATORY AUTHORITIES

The different segments of the communication sector in Argentina are regulated by a set of laws and decrees that have been adopted from 2009 onwards, at different times, and include various contradictory aspects. These laws multiplied the regulatory authorities, with often overlapping functions.

Broadcast media and frequency spectrum

National Communications Entity (ENACOM)

Tasks

In 2015, the National Communications Entity (ENACOM) was under the control of the Ministry of Communications, as an enforcement authority of Laws 26,522 (Audiovisual Communication Services) and 27,078 (Argentina Digital).

According to the information available on the regulator's website[23], its mission is aimed to:

- Universalize digital inclusion
- Protect communications users
- Increase the quality of service in communications
- Promote competition for the development of Information and Communication Technologies (ICT)
- Promote investments in infrastructure for digital development
- Promote transparency and integrity in management

These guidelines suggest that the regulator specializes more in ICT services, yet ENACOM is a convergent regulatory authority although there are different laws for each sector.

ENACOM's main objectives include implementing a regulatory framework that allows the development of the industry based on competition that offers variety, quality services and diversity in prices. Additionally, the regulation of the frequency spectrum is a primary mission of the entity. Accordingly, ENACOM must safeguard healthy competition, its main focus being the benefit of the consumers. On the other hand, ENACOM is tasked to contribute to eliminating the digital divide; follow a fast and effective political line of action, bearing in mind the sector's development and requirements; guarantee freedom of the press, the diversity of voices and access to information; promote the development of new ICTs, and move towards digital convergence while maintaining legal certainty that allows investments in infrastructure; and

[23] For more details, see: https://www.enacom.gob.ar/que-es-enacom_p33.

lastly, guarantee proper cooperation between the various actors in the sector[24].

The entity is headquartered in the city of Buenos Aires and has offices in regions, provinces and cities with more than 500,000 inhabitants.

ENACOM has a strong relationship with the sector's other institutions, such as the Bicameral Commission for the Promotion and Follow-up of Audiovisual Communication of the National Congress, a commission that evaluates both the operation of ENACOM and that of the Argentinean Radio and Television State Society; with the Ombudsman for Audiovisual Communication Services, to which members of the audience can submit queries, claims and complaints regarding content in audiovisual communication services; with the Radio and TV Discrimination Observatory, a body that works together with the National Institute Against Discrimination, Xenophobia and Racism (INADI) and the National Women's Council (CNM); with the Casa Rosada, representing the Argentine state; and with the Chief of Staff[25].

Board

Since the disassembly of the Ministry in 2018, ENACOM has functioned as an autonomous and decentralized body that reports to the Chief of Cabinet Ministers. Four of ENACOM's directors (including the president) are appointed by the government and the remaining three are appointed upon nomination by the main political forces represented in the congress[26].

As specified in Decree 267/2015, the board of directors must be made up of one president and three directors appointed by the executive branch; and three directors proposed by the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication, Telecommunications Technologies and Digitization of the congress.

The current members (2021) of the board of directors are:



Source: www.enacom.gob.ar

Claudio Ambrosini - President: During the previous period (2016-2019), he served as a member of the Board of Directors of ENACOM on behalf of the Renewal Front Party. Appointed in January 2020 by President Alberto Fernández for the mandate of 2020-2024[27].



Gustavo López - Vice President: He was the supervisor of the Federal Broadcasting Committee (COMFER, predecessor of ENACOM) from 1999 to 2001. He was Deputy Secretary General of the Presidency of the Nation between 2008 and 2015. Appointed in January 2020 by President Alberto Fernández for the mandate of 2020-2024[28].

[24] For more details, see: https://www.enacom.gob.ar/funciones_p46.

[25] Links to each sector are described here: https://www.enacom.gob.ar/organismos-vinculados_p2375

[26] According to Law 25,522/09, the members of the Board of Directors had to be appointed as follows: two by the Executive Branch, two by the Federal Communication Council and three by the congress.

[27] National Communications Ministry, Decree 64/2020, Publication date 01/15/2020, Official Gazette of the Argentine Republic, available online at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/224580/20200116>

[28] Op. cit.



Raúl Gonzalo Quilodrán – Director: He served as Secretary of Communications, Press and Dissemination and Director of the Promotion and Development Agency in the government of Salta province. Appointed in January 2020 by President Alberto Fernández for the mandate of 2020-2024[29].



María Florencia Pacheco – Director: She served as an executive advisor at Conector Igualdad, a program aimed at reducing the digital divide in schools run by the National Social Security Administration (ANSES). She was appointed in June 2020 by President Alberto Fernández for the 2020-2024 mandate[30].



Alejandro F. Gigena - Director: Representative of the first minority, he was appointed Director by the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication of the Congress for the period 2020-2024. He represents the ruling Renewal Front party, and his appointment was made official by President Alberto Fernández in August 2020[31].



Silvana Giudici – Director: Representative of the second minority, she was appointed Director by the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication of the congress for the period 2020-2024. She is a representative of the party Republican Proposal (PRO) and her appointment was made official by President Alberto Fernández in August 2020[32].



Ariel Martínez – Chief of Staff: He worked for several years in the National Social Security Administration (ANSES). He was appointed by President Alberto Fernández for the period 2020-2024 in December 2020[33].

In May 2021, the Bicameral Commission for the Promotion and Monitoring of Audiovisual Communication proposed the appointment of the former governor of the province of Santa Fé, José Corral, from the Radical Civic Union, representing the third parliamentary minority. His appointment is yet to be confirmed by the executive arm.

Funding

The ENACOM is an autonomous and decentralized body. It receives its funds in line with the provisions of article 4 of decree 267/15, which in turn takes up the provisions of law 26,522/09.

[29] Op. cit.

[30] National Communications Ministry, Decree 629/2020, Publication date 07/30/2020, Official Gazette of the Argentine Republic, available online at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/232763/20200730> (last accessed 28 November 2021)

[31] National Communications Ministry, Decree 670/2020, Publication date 08/13/2020, Official Gazette of the Argentine Republic, available online at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/233636/20200814>

[32] ENational Communications Ministry, Decree 670/2020, Publication date 08/13/2020, Official Gazette of the Argentine Republic, available online at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/233636/20200814>

[33] National Communications Ministry, Decree 1047/2020, Publication date 12/27/2020, Official Gazette of the Argentine Republic, available online at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/239195/20201228>

The annual budget is made up of the following items[34]:

- The levies, fees, tariffs and right commissions provided for in Law 26,522 on Audiovisual Communication Services, which must be paid by those who hold licenses to provide audiovisual communication services.
- The levies, fees, tariffs and other due income provided for in Law 27,078 on Digital Argentina that must be paid by those who have licenses to provide Information and Communication Technology services.
- Revenues from fines
- Donations and subsidies
- State budget allocations

The budget for the financial year 2021 was ARS 7.18bn[35].

Budget breakdown	In ARS
Core Activities	1,671,564,797
Control and Supervision of ICT Services	358,875,104
Customer service	646,615,956
ICT Services Administration	249,572,560
Control of Postal Services	82,849,994
Control and Supervision of Audiovisual Communication Services	426,934,166
Teaching, Training and Vocational Training	46,135,051
Administration and Management of Promotion and Development Project	484,872,361
Other Public Subsidies	3,211,169,000

[34] E The full budget can be found at: https://www.ENACOM.gob.ar/multimedia/normativas/2015/Decreto-267_2015.pdf

[35] PUS\$ 71.8m according to the official exchange rate of the National Bank in Argentina: <https://www.bna.com.ar>, on 12/2/2021.

Secretariat of Public Innovation

Tasks

While ENACOM is the enforcement authority for the laws related to ICT and audiovisual services, the Secretariat for Public Innovation (SIP) is in charge of drafting public policies for these sectors. Like ENACOM, this entity has also undergone several changes in recent years. SIP was established by the government of Alberto Fernández in 2019 to replace the Government Secretariat for Modernization that, in its turn, was a successor to the Ministry of Modernization that took the place of the short-lived Ministry of Communication[36].

Currently, SIP is a secretariat of the Chief of the Cabinet of Ministers. It was created on 19 December 2019 by Decree 50/2019 that approved the organizational chart of the National Public Administration, a few days after the inauguration of the new president Alberto Fernández.

Among the objectives to be met by the Secretariat, those related to the communication, telecommunications and internet sector stand out:

- To define strategies and standards for information technologies, associated communications and other electronic systems (3);
- To participate in the drafting and execution of the telecommunications policy, as well as in the tax policy of the communications field (11);
- To participate in drafting policies, laws and treaties, and supervise the bodies and entities that control communications service providers as well as the standards of licensing regulation, authorizations, permits and registrations granted by the state (12);
- To participate in the promotion of universal access to new technologies, in coordination with the provinces and the sector's companies and organizations (14);
- To manage the state's shares in ARSAT S.A. and in the Official Mail of the Argentine Republic S.A. (15);
- To exercise tutelary control over the National Communications Entity (ENACOM) (16);
- To participate in matters of cybersecurity and protection of critical information infrastructures (17);
- To manage and supervise the actions of the National Information Technology Office (ONTI), in line with the objectives and strategies defined in the State Modernization Plan (18);
- To participate in the elaboration and execution of policies related to the development, use and promotion of public software (19).

[36] The Ministry of Communications was a public body dependent on the National Executive power created by the Decree of Necessity and Urgency No. 13/2015 by President Mauricio Macri: :
<http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/256606/norma.htm>

In terms of Information and Communication Technologies (ICT), the most important tasks that the SIP must carry out are:

- To continue the Connect plan with an investment of ARS 23m for the construction of the ARSAT-SG1 satellite[37],
- To develop the Federal Fiber Optic Network (REFEFO)[38];
- To enhance the National Data Center and Open Digital Television (TDA)[39].
- To uphold the National Plan for Digital Inclusion that has already trained 369,221 people to use new technologies.

SIP has a digital literacy and internet access plan with an emphasis on the interior of the country; it works on the implementation of new technologies with ministries and national public bodies, as well as on the spread of new technologies to facilitate citizen management processes; it develops web portals with open data and information on government management, in collaboration with ministries and national agencies, provinces and municipalities. However, the Secretariat has no clout in the media or among journalists.

Board

SIP reports to the Chief of the Cabinet of Ministers (JGM), a centralized structure headed by Juan Manzur. The Secretariat is a political body and all its authorities belong to the ruling party.

Micaela Sánchez Malcolm is the current Secretary of Public Innovation. The organizational chart of the secretariat is divided into the National Office of Information Technologies (Nicolás Karavaski); the Undersecretary of Administrative Management of Public Innovation (Diego Juan Bercholz); the Undersecretary of Open Government and Digital Country (César Leonardo Gazzo Huck); the Undersecretary of Administrative Innovation (Luis Mariano Papagni); the National Procurement Office (María Eugenia Bereciartua); and the Undersecretary of Information Technologies and Communications (Martín Olmos).

Funding

The budget available for the Secretariat of Public Innovation, according to the budgetary proposal for the fiscal year 2021[40], reached ARS 4.90bn[41].

[37] ARSAT-SG1, formerly known as ARSAT-3, is a geostationary communications satellite project operated by the Argentine state company ARSAT. The plans are to place it in 2023 in the geostationary slot at longitude 81° West:

<https://www.argentina.gob.ar/jefatura/innovacion-publica/ssetic/conectar/el-arsat-sg1>

[38] It was born in 2010 as part of the "Argentina Conectada", a plan launched through the decree 1552/2010. The purpose of the construction of this network was to allow it to serve both public institutions and retail providers of ICT services in order to bridge the digital gap: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/170000-174999/174110/norma.htm>

[39] Terrestrial digital television in Argentina, called Open Digital Television (TDA), constituted a state policy that began in 2009 with the implementation of the Japanese standard ISDB-T International modified by Brazil.

[40] The full budget can be found at:

<https://www.economia.gob.ar/onp/documentos/presutexto/proy2021/jurent/pdf/P21J25.pdf> (62-84)

[41] US\$ 49m according to the official price of the National Bank: <https://www.bna.com.ar>, on 12/2/2021.

Budget breakdown	In ARS
Core Activities	675,613,224
Open Government and Digital Country	860,669,288
Administrative Innovation	412,334,037
Management and Organization of the Procurement System of the National Public Administration	194,356,984
Connectivity, Digital Inclusion and ICT Policy Formulation	233,613,582
Financial Assistance to Public Companies	2,526,443,527

Print media regulators

The written press in Argentina is not regulated by any state organization, entity or institution. As a result, the sector has historically been characterized by minimal regulation based on the constitutional premises of articles 14 and 32 (freedom of the press)[42].

Since the end of 1976, the two most important print media conglomerates in the country (Clarín and La Nación) have been the owners - in association with the state - of the largest producer of newsprint in the country: Papel Prensa S.A.[43]. Although this company does not have regulatory capacity, in fact it holds great power over the market by controlling the flow of newsprint for the industry as a whole.

Internet regulators

The National Communication Entity (ENACOM) operates as the regulatory authority for both ICT services and audiovisual communication services. After Law 27,078 on Digital Argentina was enacted in 2014, the state recognized technological convergence and its impact on operators, but kept the different services (audiovisual and telecommunications) legally separated. In this way, although there is an authority covering technologically converged services, there are different laws for each of the sectors. There are no specific regulations for the internet so far, except for tax-related issues.

[42] “Article 14.- All the inhabitants of the Nation enjoy (...) publishing their ideas in the press without prior censorship...” and “Article 32.- The Federal Congress shall not enact laws that restrict the freedom of the press or exercise federal jurisdiction concerning this matter.”

[43] <https://www.papelprensa.com/>

Data protection regulators

National Directorate for the Protection of Personal Data

The protection of personal data is guaranteed in Argentina through the writ of Habeas Data, adopted in 1994 following the constitutional reform and thus included in article 43, paragraph 3, of the National Constitution[44].

Law 25,326 on Personal Data Protection[45] was enacted in the year 2000. It regulates the applicable principles in the matter and the procedure of the Habeas Data action. This regulation also created a regulatory authority that is accountable to the Ministry of Justice. In 2017, the authority achieved independence in line with international standards and commitments.

Currently, the National Directorate for the Protection of Personal Data (DNPDP) is the body responsible for data protection in Argentina. It is subordinated to the Agency for Access to Public Information (AAIP), created by Law 27,275 on the Right of Access to Public Information in 2016. It is an independent entity that has operational autonomy under the Chief of the Cabinet of Ministers of the executive branch.

The organizational structure of the AAIP[46] includes the Department of Informatics and Innovation (DIEI); the National Directorate for Access to Public Information (DNAIP) and the National Directorate for the Protection of Personal Data (DNPDP).

Tasks

The DIEI's task is to consolidate the technological and IT structure of the Agency through the supervision of the datacenter services with ARSAT; the administration of the IP telephony service; and the renewal of contracts for different services necessary for its activities.

DNAIP is in charge of the Directorate of Public Information Policies, and it manages requests or access to public information received by various bodies, according to article 7 of Law 27,275 on Access to Public Information[47].

DNPDP is in charge of the Privacy Protection Directorate, and, in line with the tasks mandated by Law 25,326 on the Protection of Personal Data[48], it receives and manages queries and complaints about legal breaches. It also conducts *ex officio* investigations.

The DNPDP works on two levels. On the one hand, at the local level, it operates as a guarantor of

[44] See the complete reformed National Constitution here: <https://e-legis-ar.msal.gov.ar/htdocs/legisalud/migration/html/877.html>

[45] See the full text of Law No. 25,326, here: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm>

[46] Agency for Access to Public Information. Administrative Decision 1002/2017. (structure approved) City of Buenos Aires, 11/15/2017, available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/174813/20171116>

[47] Right of Access to Public Information. Law 27,275. Object, exceptions and scope. See here: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/265949/norma.htm>

[48] Full text of Law 25,326 on the Protection of Personal Data: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm>

compliance with two key provisions of Law 25,326: "comprehensive protection of personal data stored in files, records, data banks, or other technical means of data processing, whether public or private, intended for reporting, to guarantee people's right to dignity and privacy, as well as access to one's own private information, in line with the provisions of article 43, paragraph 3 of the national constitution"[49].

The DNPDP is also the enforcement authority for Law 26,951 corresponding to the National Do Not Call Registry, which collects the telephone numbers of people who do not want to receive advertising calls. It is also a member of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108). On 19 September 2019, Argentina signed the second Additional Protocol to Convention 108, known as Convention 108+, which revises the text of the treaty and incorporates new regulations on data protection aimed to address the new technological challenges.

The DNAIP prepares annual statistics on requests for access to public information received by the various bodies, according to article 7 of Law 27,275 on Access to Public Information.

Neither DNPDP nor DNAIP have any impact in the media or on journalism in Argentina.

Board

Currently, the position of Director of the Agency for Access to Public Information (AAIP) is vacant due to the resignation of the last person in charge in 2020. This is also the case at the Directorate of Information Technology and Innovation (DIEI). On 18 February 2021, the Chief of the Cabinet of Ministers nominated Gustavo Fuentes for the position of AAIP Director[50]. In March 2021, a public hearing was held to discuss the candidacy. Several non-governmental organizations raised objections to the nomination. For now, the executive branch decided not to confirm Fuentes's candidacy, and as a result the AAIP remains without a director.

The leading positions for the other departments were filled following open calls organized by the previous government:



Source: LinkedIn

Mg. Eugenia Braguinsky - National Directorate for Access to Public Information. Previously, she was general director of Access to Public Information at the University of Buenos Aires and parliamentary advisor for different parties in the congress.



Mg. Ana Pichon Riviere - Directorate of Public Information Policies. She was the operations manager of the General Directorate for the Monitoring of Control Organizations and Access to Information of Buenos Aires local government.

[49] For the full text of the National Constitution, see: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/texact.htm>

[50] Head of the Cabinet of Ministers. Resolution 100/2021. City of Buenos Aires, 02/17/2021, available at: <https://www.boletinoficial.gob.ar/detalleAviso/primera/240897/20210218>



Dr. Eduardo Cimato - National Directorate for the Protection of Personal Data. He was legal advisor at the National Directorate for the Protection of Personal Data of the Ministry of Justice and Human Rights.



Mg. María Martha Panighetti - Privacy Protection Department. She was legal advisor at the National Directorate for the Protection of Personal Data and head of the Department of National Registry of Databases of the Ministry of Justice and Human Rights.

Source: argentina.gob.ar

The AAIP currently has 38 employees[51].

Funding

For the 2020 fiscal year, the Agency had a budget of ARS 79m[52], covering expenses related to personnel, goods and services, and fixed assets.

[51] A detailed list can be found at: <https://www.argentina.gob.ar/direccion-de-la-agencia-de-acceso-la-informacion-publica/equipo-de-trabajo>

[52] US\$ 792,954 according to the official price of the National Bank: <https://www.bna.com.ar> , on 12/02/2021.

DECISION-MAKING PROCESS

Throughout its history, Argentina has maintained a presidential tradition that has granted the executive branch, which is represented by the President, the initiative in political matters. The media are no exception. Although in general the Congress is in charge of preparing and developing bills, it is the President who directly influences and determines which laws will be dealt with in the chamber. The most hotly debated matters related to communication regulation are usually sent to parliament at the President's initiative. An important part of the regulation is elaborated at a second level, by means of decrees and regulations that are adopted by ministries and various enforcement authorities, which, although theoretically independent, in reality face heavy interference from the President. Finally, the President has the authority to adopt some regulations through emergency decrees (DNU's)[53] or veto laws. As already noted, according to the constitution (Arts. 14 and 32) the state does not have the power to regulate the written press, which still enjoys wide freedom. However, it does have power over radio, television, and digital platforms.

Within the government, the body in charge of planning the communication policy is the Secretariat of Public Innovation. Another important actor in the decision-making process is the ENACOM, which has formal autonomy from the government, although the changes introduced during the Macri administration made it dependent on the president.

Likewise, it should be noted that the Congress has committees tasked to develop and draft relevant bills. Additionally, there are two more entities, the Media Secretariat and the Public Innovation Secretariat, with influence in the development and drafting of public policies on media and ICT.

The business chambers (ATA, ADEPA, ATVC, ARPA, CAPIT, CABASE) have historically pressured the political system for favorable regulations. With the exception of the 2008-2015 period, they generally managed to make the regulatory system favorable to the commercial development of the media system. Their statements usually have social repercussions because they are propagated by the media system they own.

With the exception of the period mentioned above (2008-2015), communication policy is not a matter of public debate. Throughout history, in Argentina, four specific laws were passed for the broadcasting sector. Two were issued by military governments (Law 15460 of 1957 and Law 22285 of 1980) and two during the democratic periods (14241 of 1953 and 26522 of 2009). Only in the last case was there a significant social debate regarding the values that the legal system should protect.

The rest of the legal provisions that affect radio broadcasting were adopted by the executive branch and the organizations under its control. The executive branch has exercised control over the state-owned media (mainly Channel 7 and Radio Nacional) throughout its history.

[53] Argentine legislation allows the president of the nation to introduce DNUs that alter the country's regulatory framework. If they are not explicitly rejected by the National Congress, they acquire the force of law. This mechanism, which was used exceptionally until 1989, has been gaining increasing importance since Carlos Menem (1989-1999) saw in their use a possibility to skip Congress time.

INFLUENCERS

Internal influencers

Industry players

Although the communication policy is defined by the government and the laws are passed by the Congress, the main media conglomerates have had an important impact on the regulation of the communication sector during most of Argentine history. Their influence and lobbying capacity have been remarkable throughout the history of the country and, with the exception of Law 26,522 of 2009, they did not have major conflicts with the political power. It can be inferred that there has been a tacit pact under which the media refrained from being too critical in exchange for ruling politicians' agreement not to interfere in the media markets.

The industry players do not represent an absolutely homogeneous set of interests. In the first place, there is an important difference between the large concentrated multimedia groups based in the city of Buenos Aires (Clarín, La Nación, América), and the mid-size and small media groups based in the rest of the country.

The most important media groups in the country are the ones that own pay-TV providers, or news channels that are included in the pay-TV programming grids. Pay-TV systems (cable and satellite) have a high penetration in Argentina, reaching 80% of households[54]. News channels, focused on the consumption of daily, relevant information from the country and the world, are an important part of the package. On the other hand, in Argentina there are no radio and television licenses with national coverage (with the exception of state radio and television, which have very small audiences). The inclusion of news channels in the pay-TV programming grid was a form of “nationalizing” the news broadcasting. As a result, the news agenda of the media channels is influenced by the interests of these outlets' owners who are relevant actors in the media ecosystem as well as on the national political map.

The large audiovisual groups in the country have stood out in their quest to influence communication policy. Since the adoption of Law 26,522, they have been very critical of the former governments of Cristina Fernández and Alberto Fernández (Peronism) and very friendly with the government of Mauricio Macri. As it has been pointed out previously, the Macri government was very receptive to the interests of the media corporations.

Another sector that plays an important role in the media market is the telecommunications industry. Among them, Telefónica and Telecom have stood out, leading the sector since the privatization that the sector underwent in 1990. Their interests have often been opposed to those of the audiovisual companies. The telco providers tried to enter the pay-TV market, which was closed for them until 2018. Since they do not control the media, their ability to influence public opinion is less significant than that of the multimedia companies, although their influence as big advertisers should not be underestimated. For many years, the lobby of the telecom corporations and that of the media conglomerates clashed, preventing progress in the market regulation.

[54] Statistics available at: <https://datosabiertos.enacom.gob.ar/dataviews/241328/penetracion-total-nacional-de-la-television-por-suscripcion-y-satelital/> and https://encuestadeconsumo.sinca.gob.ar/tv_películas_series

A third sector that affects communication policies, albeit with much less intensity, is the local media segment, consisting of outlets operating in the interior of the country. These outlets have joined forces to be able to compete in an unfavorable environment marked by a high level of concentration of resources in the city of Buenos Aires[55].

In general, industry players seek to influence the enactment of regulations that are likely to affect media ownership. They also work hard to prevent laws that would allow new players to enter the market as that would spark fresh competition for them. This lobby is generally effective as industry players are always listened to by governments.

Civil society

The actions of civil society in media regulation and policy-making are less focused and less united than those of industry players. There are very few civil society organizations dedicated solely to influencing communication policy. Their interventions are usually responses to specific initiatives although on some occasions they have managed to effectively promote certain laws.

Some of the key, most influential non-governmental organizations that work on issues related telecommunications, media and ICT in Argentina, are:



World Association of Community Radios (*Asociación Mundial de Radios Comunitarias, AMARC*) **Argentina**[56], is a professional association consisting of about 40 radio stations and a few community television stations. It has a much shorter history than that of FARCO (see below). Also, its profile is lower. Nevertheless, it is an active organization that usually expresses more critical positions in the media policy debates.

The Association for Civil Rights (*Asociación por los Derechos Civiles*)[57] has a mission to work for “the protection of civil rights and democratic institutions”. The ADC has had significant activity on issues related to freedom of expression and media regulation, but in recent years it has narrowed its goals, and has not pursued this line of activity with the exception of its work on influencing the law on access to public information.



The Coalition for Democratic Communication (*Coalición por una Comunicación Democrática*)[58] was founded in 2004 under the name Coalition for Democratic Broadcasting (*Coalición por una*



Radiodifusión Democrática) by a group of press unions, universities, social organizations, community radio stations, small private radio stations and human rights organizations. It drafted a list of 21 fundamental guidelines for a new Broadcasting Law (and it managed to influence the law adopted in 2009). As of 2012, it has been known as the Coalition for Democratic Communication, signaling a broadening of its area of operation. Yet, in recent years the organization has lost some of its influence. It remains one of the few organizations dedicated exclusively to influencing communication policies although it appears less institutionally consolidated than other NGOs.

[55] The interior of the country refers to the whole territory that is not part of the metropolitan area of Buenos Aires. Although Argentina calls itself a federal country, throughout its history a marked economic and political centralism of the capital city has prevailed.

[56] <https://amarcargentina.org/>

[57] <https://adc.org.ar/>

[58] For more information: <https://web.archive.org/web/20090313100650/http://www.coalicion.org.ar/>



The Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales, CELS*) [59] is an NGO established in 1979 that works on “the promotion and protection of human rights and the strengthening of the democratic system in Argentina”.

Freedom of expression and regulation of the media are not its core targets now, but they used to be. The association continues to be actively involved in addressing these matters and remains an organization with influence in the design and implementation of public policies.



Checked (*Chequeado*) [60] was created in 2009 as a fact-checking organization, its work being conducted exclusively online since October 2010. Following the example of FactCheck.org in the US, which was established in December 2008, Chequeado became a solid source of verification of public statements in Latin America.

Chequeado’s agenda is broad and eclectic, not focused on issues of media regulation or freedom of expression, but some of its work sometimes covers related topics.

The Legislative Directory (*Directorio Legislativo*) [61] is an organization based in Argentina and the United States dedicated to strengthening democratic institutions in Latin America and the Caribbean. Its goal is to facilitate access to public information and to increase the accountability of institutions as a way to build up open governments. To do this, they analyze legal bills, draw up maps of regional trends, and analyze and profile key players in the policy process.



The Argentine Federation of Community Radios (*Federación Argentina de Radios Comunitarias, FARCO*) [62] brings together radio and television stations (mostly radios) run by civil society organizations. It stands out for its work in the sector, with an activity stretching over the last 25 years that gained great exposure. As an organization, it has been very committed to promoting and organizing the debates that led to the adoption of the Audiovisual Communication Services Law.



The Argentine Journalism Forum (*Foro de Periodismo Argentino, FOPEA*) [63] was founded in 2002 by media professionals and teachers. It is a space for debate aimed at promoting the professionalization of media and journalists, addressing the relevant issues related to journalistic practice and freedom of expression, and supporting actions that prevent interference with journalistic work. The association has four sources of financing: income from membership fees paid by its 600 members, funds from international cooperation agencies and individual donors, and financial earnings from entry to annual journalism conferences, seminars, payments for reports, publications, research, and fundraising events. The main sponsors of its events include Facebook, Google, Rosario Stock Exchange, Government of the City of Buenos Aires, Accenture, Pan American Energy and EDEN.



The Vía Libre Foundation (*Fundación Vía Libre*) [64], was founded in 2000. It is a non-profit civil organization initially focused on public policies on free software for the dissemination of know-how and sustainable development. Later, they expanded their activities to the promotion and protection of fundamental rights in digital

[59] <https://www.cels.org.ar/web/>

[60] <https://chequeado.com/>

[61] For more information: <https://directoriolegislativo.org/es/>

[62] <https://www.farco.org.ar/>

[63] For more information: <https://www.fopea.org>

[64] For more information: <https://www.vialibre.org.ar>

environments. Their aim is to raise public awareness and promote debates on issues related to ICTs that have an impact on human rights, as well as to monitor and develop public policies. Since 2003, they have been monitoring the adoption of technologies for electoral processes, including technologies for the allocation and counting of votes for final and provisional scrutiny, as well as voter identification.



Citizen Power (*Poder Ciudadano*)[65] was founded in 1989. It is a non-partisan and non-profit organization dedicated primarily to the protection of civil rights, by ensuring transparent public administration, good public governance and the commitment to strengthen democratic institutions, through the promotion of citizen participation and civic culture that allow citizens to engage in public life more than just by voting. The foundation is the Argentine Chapter of Transparency International. It used to carry out activities related to issues of freedom of expression and public advertising, but has stopped its activity in these areas. The foundation also stood out for its work on promoting the law of access to public information.

Numerous unions protect media workers' labor rights in Argentina. The main union organizations are the Argentine Federation of Press Workers[66] (FATPREN), the Argentine Television Union[67] (SAT-Said), Sipreba[68] and Utpba[69].

Employers' associations are also important players in influencing communication policies. They include ADEPA[70] (press), ARPA[71] (radio), ATA[72] (television), ATVC[73] (paid-TV), CAPIT[74] (television producers) and CABASE[75] (Internet providers).

The academic sector has also sought to participate in media policy debates, especially universities of communication studies. Two such academic networks stand out for their participation in the public debate: FADECCOS[76] and REDCOM[77].

Generally, civil society organizations are known to intervene in debates about specific aspects related to the regulation of the communication sector. During the public debate around the audiovisual communication services law (2009), they were actively supporting the adoption of the law. Some organizations such as the Coalition for Democratic Communication, FARCO, CELS and AMARC had notable contributions.

ADC and Poder Ciudadano participated more actively in the promotion of the law of access to public information. The Vía Libre Foundation has tried in recent years to influence the debates around data protection, copyright and the incipient regulation of the internet.

[65] For more information: <https://poderciudadano.org>

[66] For more information: <https://fatpren.org.ar>

[67] For more information: <https://www.satsaid.com.ar/satsaid/>

[68] For more information: <https://www.sipreba.org>

[69] For more information: <https://www.utpba.org>

[70] For more information: <https://adepa.org.ar>

[71] For more information: <http://www.arpa.org.ar>

[72] For more information: <http://www.ata.org.ar>

[73] For more information: <http://www.atvc.org.ar>

[74] For more information: <http://capit.org.ar>

[75] For more information: <https://www.cabase.org.ar>

[76] For more information: <https://fadeccos.ar>

[77] For more information: <https://www.redcomargentina.com.ar>

Civil society organizations mostly participate in the public debate by disseminating and promoting materials through civil actions and by lobbying the legislative and government bodies. Throughout history, civil society organizations' ability to influence policies was much lower than that of the industry players.

Media experts and journalists also play an important role in media policy, contributing to the debate on communication policies. As it does not frequently arise as a topic of public relevance, there are not many cases of specialists fully dedicated to the matter. Nevertheless, some of them have had a more prominent presence. They include:

- **Enoch Aguiar.** Lawyer specializing in telecommunications and media. Former secretary of communications of the Alliance government (1999-2001)
- **Martín Becerra.** University professor (UBA and UNQ) and expert in communication policies
- **Eduardo Bertoni.** Lawyer. Director of the Center for Studies on Freedom of Expression of the University of Palermo. Former OAS Rapporteur on Freedom of Expression
- **José Crettaz.** Journalist and university professor at UADE
- **Jorge Lanata.** Radio and television host, journalist for the Clarín Group
- **Damián Loreti.** Professor at the University of Buenos Aires and editor of the Audiovisual Communication Services Law
- **Joaquín Morales Solá.** Political columnist for La Nación newspaper
- **Víctor Hugo Morales.** Radio and television host, journalist, sports commentator
- **Carlos Pagni.** Journalist/Columnist for La Nación newspaper and host of a weekly show on TN (news program of the Clarín Group)
- **Graciana Peñafort.** Lawyer. She currently serves in the senate

Other influential actors

National Congress

The Argentinian Congress is made up of two chambers: the Chamber of Deputies and the Chamber of Senators. Both chambers are based on popular representation: the deputies directly represent the Argentine people, while the senators represent the provinces and the City of Buenos Aires.

Although the National Congress is the institution in charge of regulating and controlling the communication sector, in fact its authority has been subordinated to the interests of the executive branch, embodied by the President. The three most important laws that were promulgated in the communication sector in Argentina were all proposed by the executive branch.

To understand the limited capacity of Congress in media policy, it is enough to remember that between 1983 (the return of democracy) and 2009, deputies and senators proposed more than seventy projects aimed at changing the broadcasting law that was inherited from the dictatorship. Yet the new regulation was only adopted when the presidency proposed the bill and asked the congress to approve it. For its part, the government of Mauricio Macri concentrated all its communication policy decisions in the hands of the executive since it was unable to gain majority consensus in congress.

Another example of the Congress' inability to set an agenda of its own, at least in the media field, is its failed attempt to regulate internet intermediaries. Various initiatives by legislators from different parties resulted in a bill that was approved by the Chamber of Senators in 2016. However, two years later it lost its parliamentary status when it did not receive the approval of the Chamber of Deputies, which proved to be influenced by the lobby of the business chambers around their interests related to copyright[78].

Beyond the limits of Congress action, it should be noted that there are several committees in the lawmaking body that deal specifically with the regulation and control of media systems.

The permanent advisory committees are dedicated to studying all the bills forwarded by the Chamber of Deputies, of Senators (unicameral), or both Chambers (bicameral). Each committee is focused on a specific topic. In the Chamber of Deputies there are 46 permanent advisory committees, two of which are directly related to media regulation and communication policies, while of the 27 permanent commissions that exist in the Senate, one of them is related to the subject:

- Communications and Informatics Committee (Chamber of Deputies)
- Freedom of Expression Committee (Chamber of Deputies)
- Unicameral Committee for Systems, Media and Freedom of Expression (Chamber of Senators)

There are also non-permanent or special advisory committees, which are formed in an extraordinary process to deal with matters that exceed the matters handled by permanent committees due to their topic or special procedure. These may be unicameral (composed only of Deputies) or bicameral (composed of deputies and senators).

Such is the Bicameral Committee for the Promotion and Monitoring of Audiovisual Communication, Telecommunications Technologies and Digitization Law 26,522 and its amendments 27,078 and DNU 267/15.

Since 2019, the Bicameral Committee has presented for approval a total of four bills, none of which has reached a resolution[79]. Three of them are related to the articles of Law 26,522 on Audiovisual Communication Services referring to the monitoring for disinformation and violence in media and digital platforms, and one refers to the appointment of the Directors of the Argentinian Radio and Television (RTA SE).

[78] For more information: <http://papel.revistafibra.info/un-debate-postergado-la-regulacion-sobre-los-intermediarios-en-internet/>

[79] Details available at: <https://www.senado.gob.ar/parlamentario/parlamentaria/comision>

The Committee on Systems, Media and Freedom of Expression has presented for approval a total of 362 bills, of which only 62 were accepted for discussion[80]. They included the incorporation of the mobile telephony service as a public service (approved); free access to high-speed and quality internet service in popular neighborhoods' dining rooms and snack bars (no resolution); the request to carry out a dissemination campaign through mass media aimed at instructing the population on the proper use of Chlorine Dioxide[81] (approved); requests for information related to the installation of the Federal Fiber Optic Network (REFEFO)[82], as well as measures taken by the executive branch concerning state companies such as ARSAT[83], among others.

The Communications and Information Technology Committee (Chamber of Deputies) is tasked to decide on any matter or bill regarding concession, policy, management and execution of works, private or public, related to the state's internal or external communications, post office, broadcasting, television, social media and related activities, as well as any matter or bill related to the automatic processing of information by computers. During the period from March 2020 to October 2021, a total of 387 policy items were handled by this committee: 159 bills, 144 resolutions and 84 declarations.

The Freedom of Expression Committee is tasked to advise and decide on any law or legal norm related to freedom of expression, ideas and beliefs guaranteed by the constitution. During the period from March 2020 to October 2021, it handled 54 such policy items: one bill, 31 resolutions and 25 declarations.

Ministry of Media and Public Communication

The Ministry of Media and Public Communication is in charge of managing the state-owned media and organizing the government's public communication. The ministry also relies on the Head of the Cabinet of Ministers.

The ministry's main functions were modified at the beginning of the mandate of the current President, Alberto Fernández (through Decree 335/2020)[84]. The main tasks are the following: to intervene in the formulation, execution and supervision of public communication policies, to communicate the activities of the public sector, to prepare and disseminate public communication campaigns, to plan and execute implementation of existing regulations, to promote the use of technological tools, to manage the state's digital assets, to attend to the application of national and international treaties and conventions, to administer the state's radio and television broadcasting services, and to organize the production and distribution of content across the spectrum of media that hold state licenses.

Among the ministry's main tasks are the administration of the state media, mainly Radio y Televisión Argentina S.E., made up of LS82 Canal 7 and LRA Radio Nacional; the development of

[80] Details available at: <https://www.senado.gob.ar/parlamentario/parlamentaria/comision>

[81] To consult the full text of the presented project see:

<https://www.senado.gob.ar/parlamentario/comisiones/verExp/1895.20/S/PC>

[82] To consult the full text of the presented project see:

<https://www.senado.gob.ar/parlamentario/comisiones/verExp/2987.20/S/PC>

[83] To consult the full text of the presented project see:

<https://www.senado.gob.ar/parlamentario/comisiones/verExp/876.21/S/PD>

[84] National Public Administration. Decree 335/2020. City of Buenos Aires, 04/04/2020 available at:

<https://www.argentina.gob.ar/normativa/nacional/decreto-335-2020-336062/texto>

Public Content Society of the State, which runs the networks Encuentro, Pakapaka, DeporTV, and Cont.ar[85], and the administration of official state advertising. It should be noted that in Argentina there are no nationwide radio and television licenses, except for Canal 7 and Radio Nacional.

The Ministry of Media and Public Communication reports to the Head of the Cabinet of Ministers. The head of the ministry, at the time of writing this report, is Francisco Maritello. It has the following undersecretaries: Public Communication, led by Javier Tomas Porta; Communication and Dissemination Content led by Victoria Banegas; Public Media led by Claudio Daniel Martínez; Operative Management of Public Media led by María Natalia Cabral; and Public Content led by Jorge Meneses[86].

Within the set of tasks of the Ministry of Media and Public Communication, two stand out for their close relationship with communication policies. The first one is the role in the administration of state-owned media, including Canal 7 (TV) and Radio Nacional. It should be noted that these media are the only ones that have licenses to cover the entire national territory. State-owned media should fulfill a public service function, yet for decades state radio and television stations were aligned with government interests. Their limited autonomy from political power has meant that, with few exceptions, these media have very small audiences and their impact on public opinion is negligible. Therefore, the role of the ministry is minor. In the current government, those who manage the state-owned media have justified the alignment of the state media with the government.

The second relevant task is the administration of the state advertising. Although at formal level this function is not directly related to communication policy and decision-making, it is important to highlight that the state is an important advertiser and that the discretionary management of the official funds has an impact on the media market. In this sense, a system of rewards and punishments have also historically operated for private media as a manner of granting state advertising, according to their support or criticism of government policies[87].

As a conclusion, it can be pointed out that the participation of the Ministry of Media and Public Communication is not important in the decision-making process related to the development of communication policies, but it has an indirect impact on the media market through the administration of the state radio and television, and the management of the official advertising budgets.

[85] Access to the available channels at: <https://www.argentina.gob.ar/jefatura/contenidos-publicos>

[86] Organizational chart of the centralized-decentralized Administration of the Head of the Cabinet of Ministers available at: <https://mapadelestado.jefatura.gob.ar/organigramas/jgm.pdf>

[87] For more details: https://www.eldiarioar.com/politica/gobierno-concentro-pauta-grupos-tradicionales-clarin-cabeza-seguido-indalo-octubre-america-telefe_129_7068557.html and <https://www.lanacion.com.ar/politica/pauta-oficial-el-gobierno-gasto-7563-millones-en-un-reparto-que-tuvo-premios-y-castigos-nid07102021/>

External influencers

The most important external influence on Argentine media policy in recent decades has been the **Inter-American Court of Human Rights** (I/A Court HR), as some of its rulings have led to changes in Argentine law. The most important case was the ruling *Kimel vs. Argentina*, in which the I/A Court HR ruled in favor of the journalist, but also ruled that Argentina had to adjust its internal law within a reasonable time. As a consequence, in 2009 slander and libel were decriminalized[88]. Previously, in 1994, the Argentine State had reached a friendly resolution with the Court to repeal the crime of contempt. The rulings of the Inter-American Court are mandatory for member states such as Argentina, and in the cases mentioned, it has meant that the country must change its criminal legislation to adapt to rulings against the country on issues of freedom of expression.

At the regional level, there is also the **Inter-American Commission on Human Rights** (IACHR), which is responsible for the promotion and protection of human rights in the Americas. The Commission often lobbies to protect the freedom of expression. Under its orbit is the Office of the Special Rapporteur for Freedom of Expression (RELE), whose general mandate is to carry out activities to protect and promote the right to freedom of opinion and expression. These activities include visits to the various Organization of American States (OAS) member states, preparation of reports and provision of technical advice. Unlike the Court, the Commission urges states to respect human rights, but it does not have the same decision-making weight.

Argentina is a full member of **MERCOSUR**, the Southern Common Market. Although there have been attempts to coordinate communication policies between the members of the bloc, their influence on policies has been limited.

The **media employers' associations** seek to influence the protection of the media entities of their respective countries. In this sense, it is worth highlighting the influence that the Inter-American Press Association (IAPA) seeks to exert, as the association of owners, editors and directors of newspapers, periodicals and information agencies in the Americas, that represent more than 1,300 newspapers and magazines in the region, including the most important media in Argentina. Another major employer organization is AIR, the International Broadcasting Association, an organization that brings together private radio and television associations from the three Americas as institutional partners, and television channels and radio stations as individual partners, in various countries and regions.

The **Regional Alliance for Free Expression and Information** is a network made up of non-governmental organizations from different countries in the region focused on freedom of expression and access to public information. It currently consists of 18 organizations from 16 countries. Its purpose is to facilitate, on the one hand, dialogue between civil societies, and, on the other hand, between civil society, government entities and international organizations through knowledge development, horizontal exchange of experiences and creation of a regional agenda for the protection of civic space.

Although it is difficult to quantify, another external influence that should not be neglected is that of **foreign governments** tied to companies operating in the sector. The governments of the United States and Spain stand out in this regard. The former has carried out lobbying actions in favor of information technology companies and pay-TV services, protecting the interests of

[88] Loreti, D. y L. Lozano (2014); *El derecho a comunicar*, Buenos Aires: Siglo XXI. Página 122.

American content channels. For its part, the Spanish government has been active in promoting the interests of Telefónica, one of the largest telcos in Argentina. In various visits by the Spanish Prime Minister to Argentina, his entourage included directors of the operator.



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