

Reporters Without Borders

<http://www.rsf.org/argentina-new-law-will-benefit-media-06-12-2012,43769.html>

Americas - Argentina

Dramatic twist

Last-minute court ruling delays application of new broadcasting law

7 December 2012

The Argentine media group *Clarín* obtained an eleventh-hour ruling yesterday delaying the application of a section of the country's new media law which would have forced it to give up some of its broadcasting licences. The Civil and Commercial Court extended the deadline for the application of article 161 of the Audiovisual Communication Services (SCA) bill, known in Spanish as the *Ley de Medios*.

The decision has had the effect of postponing the bill's entry into force, originally scheduled for midnight tonight, until there is a final judgment on the constitutionality of its contested sections. The Federal Broadcasting Authority has announced it plans to refer the case to the Supreme Court in the hope of having the ruling struck down.

"The decision by the Civil and Commercial Court is all the more surprising since it contradicts a previous ruling on 28 November by the Supreme Court, the country's highest judicial authority, rejecting an earlier, identical petition by the *Clarín* group," Reporters Without Borders said.

"This dramatic twist does not affect our support for the law, although it could further aggravate the tense atmosphere which, at the end of the day, has adverse effect all journalists and information providers."

06.12.12 - New law will benefit media pluralism despite polarized climate

Argentina's new law on Audiovisual Communication Services (SCA), known in Spanish as the *Ley de Medios*, is due to enter fully into force tomorrow. Reporters without Borders reiterates its support for the bill's general principles and endorses its application. However, the press freedom organization regrets that it has created [a climate that is detrimental to journalists](#), both on the government side and among media groups – *Clarín* in particular – that are hostile to the law. The SCA should not have become a hostage to the current polarization in the country.

The deadline for a constitutional challenge lodged by *Clarín* a year ago expires on 7 December. A petition by *Clarín* to extend the deadline was rejected by the Supreme Court on 28 November, but the move meant two of the law's key provisions were suspended:

- Article 45, which restricts the concentration of media ownership, including limiting the number of open frequency licences that any single media organisation can hold, and bans a single organization from holding open-frequency and cable licences in the same town;
- Article 161, which obliges the main media groups to divest themselves of their excess radio and television licences — including cable and satellite — in order to diversify broadcasting ownership.

From tomorrow, Argentine media groups, and foreign groups broadcasting in Argentina, must give up some of their licences. If they fail to do so, the licences will be taken back and put out to tender by the Federal Broadcasting Authority, the government's regulatory body.

Reasons for supporting bill

In November 2008, Reporters Without Borders was invited by the World Association of Community Radio Broadcasters to take part in preliminary debates in Buenos Aires on future legislation to replace a 1980 broadcasting law inherited from the 1976-83 military dictatorship. These talks were conducted in the presence of special rapporteurs on freedom of expression from the United Nations and the Organization of American States, both of which have expressed support for the new law. The bill was approved by the Argentine Congress in October 2009 by a large majority.

Reporters Without Borders believes the SCA bill is a model of its type in at least three respects:

- The bill is the first of its kind to allocate 33 percent of the frequencies to non-profit organizations. This is key to ensuring fairness and pluralism. Since then, this rule has inspired similar legislation in other South American countries, such as Bolivia and Ecuador.
- As a result, the SCA carves out a place for community radio and television stations, which are widespread in Latin America but are often discriminated against and excluded from the airwaves in many countries. Only Uruguay preceded Argentina with [a law passed in 2007](#) giving these civil society voices proper status and guaranteeing their independence. Such status would certainly benefit from inclusion in the SCA.
- The SCA bill in no way seeks to control or censure broadcast content. The only restriction it contains is a 60-percent quota for local programming. Such a provision, already in force in a number of countries, does not contravene freedom of news and information.

Counter-productive clashes

Freedom of the press and freedom of information should not be equated with commercial interests. In our view, the *Clarín* group was wrong to maintain this confusion while fighting the SCA bill. Similarly, Reporters Without Borders rejects the notion that the SCA bill was approved with the sole aim of dismantling, or even closing down, the country's main media group. Ten years of tension, often serious, between the Kirchner governments and a section of the commercial media have never reached such an extreme and nothing in the bill is designed to bring this about. Reporters Without Borders nonetheless deplores the repeated attempts at printing plants to block the distribution of *Clarín* and *La Nación*.

The press freedom organization also believes President Cristina Kirchner's government has itself made more complicated the conditions for applying the law that it is trying to promote. At issue is a dramatic increase in the volume of public advertising, which is designed to favour media groups that support its policies. Although it has had no impact on the turnover of the *Clarín* group (9.7 billion pesos – 1.6 billion euros – in 2011, up more than 25 percent compared with 2010) and has not affected the overall media audience, official advertising should not be allocated in a discretionary manner, or in accordance with ideological criteria that are also legally unacceptable, as confirmed by a Supreme Court ruling two days ago in favour of the *Perfil* group.

As pointed out to Reporters Without Borders by several observers who support the SCA bill, this could cast doubt on the intentions of the legislation's proponents. It can only add to a "media war" atmosphere that is totally at odds with the purpose of the new law.

Even more deplorable are the direct clashes between one news organization and another, and between one journalist and another, which typify a climate of polarization. Public condemnation, name-calling between colleagues based on the organization they work for, mutual accusations of "destabilisation" and "incitement to commit a crime" – like those made recently by *Clarín* against six journalists working for state media – have plagued the public debate and undermined professional solidarity.

A government that is impartial and a guarantor of the public peace should, in our view, stay out of such controversies and stop using the state media to attack commercial news outlets, which must also bear their share of responsibility. In this regard, new rules of transparency in state broadcasting and the approval of a law giving access to public information would usefully complement the measures implemented by the SCA bill. The sharing of information itself is fundamental to fairness and pluralism among the providers of news and information.

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