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Legal Jeopardy: Clarín Group and the Kirchners

The three----member executive committee of Clarín Group, Argentina's largest media conglomerate, convened an emergency meeting on October 1, 2009—one day before a crucial Senate vote on a media reform bill might force the company to break up. Advocates of the bill, which had been introduced that summer by President Cristina Fernández de Kirchner, argued that it rectified some shortcomings of Argentina's still----young democracy, which had emerged from a military dictatorship in 1983.[1] The existing media law, for example, barred nonprofit groups from access to broadcast licenses. In a stated effort to expand the variety of voices on the airwaves, the new bill reserved part of the spectrum for nonprofit and civil society groups and imposed new limits on the number and kind of media properties any one company could own—which meant Clarín would have to sell off lucrative properties or face legal consequences.

The bill had been debated in a toxic atmosphere as the once----congenial relationship between the Fernández government and Clarín deteriorated. In response to negative coverage of a controversial farm tax, Fernández and her husband and predecessor, former President Néstor Kirchner, had accused the powerful conglomerate of using its clout to discredit—perhaps with the aim of toppling—the government. Clarín denied the charges—explosive accusations in a country accustomed to military coups—and counterattacked with blistering editorials, while its news pages dug into evidence of government corruption. Meanwhile, over the fall of 2009, Clarín faced an unprecedented degree of government interference with its various business properties—including a raid by tax police on its flagship newspaper. Few viewed such events as mere coincidence.

The Kirchners were known for using a heavy hand when dealing with Argentine industry, and threatening disfavored corporations with tax raids was a favorite tactic. Both Kirchners' presidential tenures were marked by expanded state control over the economy.[2] Further, the Kirchners' conflict with Clarín had escalated against a backdrop of hostility to the press more generally. In a nation of voracious news consumers, both

[1] For clarity, this case study refers to President Cristina Fernández de Kirchner as President Fernández and to her husband and predecessor Néstor Kirchner as President Kirchner.

[2] "Hand of Gold," *Economist*, August 13, 2009, http://www.economist.com/world/americas/displaystory.cfm?story_id=E1_TQNNRGVP.

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Kirchner governments shunned press conferences and, like many Latin American governments, were alleged to have spied on journalists and political opponents.[3]

Clarín viewed the media bill as yet another manifestation of the Kirchners' contempt for both private industry and media. Yet the law wasn't solely the government's initiative. Civil society groups had been agitating for broadcast reform for decades; many felt that Clarín's dominance in most of the media sectors in which it operated was a threat to democratic pluralism. Clarín was scheduled to testify before Congress on October 2 and hoped to use the opportunity to convince legislators that the bill's steps toward dismantling Clarín set a dangerous precedent for free media in Argentina. But on October 1 at 6 p.m., Senate Majority Leader Miguel Pichetto announced that the Senate had the votes to pass all 164 articles of the bill without revisions.

Clarín's executive committee—and crucially, CEO Héctor Magnetto—now faced the decision of whether to appear before the Senate to testify as planned, knowing that there was no way to influence the outcome of the vote. Was there anything to be gained by participating in the political process? What about editorial coverage? Was it best to treat the bill as any other political issue to be discussed in its editorial pages and on its news programs? Did Clarín's responsibilities as a corporation conflict with its responsibilities as a proprietor of news organizations? If the law passed, as now seemed certain, Magnetto and the executive committee would have to decide whether—and how—to fight back.

Clarín corporate history

Clarín Group properties had played an active role in Argentine public discourse for over 60 years. Roberto Noble, a former lawyer, congressman, and rancher, founded *Clarín* newspaper in Buenos Aires in 1946. When Noble died in 1969, his wife Ernestina Herrera de Noble became publisher. In its first four decades, *Clarín* negotiated an uncertain and often hostile media environment as Argentina's government veered from the authoritarian populism of famed Colonel Juan Domingo Perón, to military dictatorship, back to Perón, and back again to dictatorship. By focusing on sports, entertainment, and crime, *Clarín* never seriously antagonized the party in power.[4]

In part to help assure the security of its production amid the political turmoil, *Clarín* in 1977 joined with the government and two other Buenos Aires newspapers to open Papel Prensa, the first newspaper plant in Argentina. This kind of "vertical integration"—whereby a corporation owns content as well as a stake in its distribution—added a commercial component to *Clarín*'s complex political relationship with the government, and at the

[3] Committee to Protect Journalists, "Attacks on the Press in 2009: Argentina," http://cpj.org/2010/02/attacks-on-thepress-2009-argentina.php.

[4] Company History: Grupo Clarín S.A., Funding Universe, http://www.fundinguniverse.com/company-histories/Grupo-Clariacute;n-SA-Company-History.html.

same time facilitated the newspaper's steady expansion.[5] By 1985, *Clarín* was the highest circulation newspaper in Latin America.

By then, Argentina had emerged from the yoke of a brutal military dictatorship that ruled the country from 1976–1983. During the so----called "dirty war" of the period, the regime killed or kidnapped an estimated 30,000 Argentines, including 84 journalists, under the stated aim of rooting out left----wing "terrorists."[6] According to one history:

> There were casualties from social and political organizations, union leaders in factory shop----stewards' commissions—some factory owners tended to cooperate with the military to eliminate "troublemakers"— together with political activists of various tendencies, priests, intellectuals, lawyers representing political prisoners, human rights activists, and many others detained solely because they were someone's relative, appeared in someone's address book, or were mentioned in a torture session… The operations sought to eliminate all political activism, including social protest… any expression of critical thinking, and any possible political outlet for the popular movements that had been evolving since the middle of the previous decade.[7]

The regime kept a tight grip on newsgathering as well. A 1980 law barred nonprofit enterprises from securing broadcast licenses—assuring their concentration in the hands of the regime's allies and dependents. The law also barred newspapers from owning other forms of mass media. This was a stricter version of media "cross----ownership" rules elsewhere; the United States, for example, had since the 1970s banned newspapers from owning broadcast properties in the same market. The Argentine military's press director also notified editors of major newspapers that they were forbidden to reference "the death of subversive elements and/or the armed and security forces" without confirmation from a "responsible official source."[8] This meant that many of the regime's atrocities went unreported.

Democracy. After Argentina's return to democracy in 1983, *Clarín* found itself in a more congenial political and commercial environment. The 1990s were particularly propitious as President Carlos Menem embraced deregulation and privatization. In 1990, when Menem lifted the dictatorship----era cross----ownership ban at the same time that he was selling off state----owned broadcast properties, *Clarín* bought Buenos Aires' second----largest television station as well as a radio station that would grow to become Buenos Aires'

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[5] Grupo Clarín S.A., Annual Report and Financial Statements as of December 31, 2008.

[6] Jerry W. Knudson, "Veil of Silence: The Argentine Press and the Dirty War, 1976-1983," *Latin American Perspectives*, Nov. 1997, Vol. 24, No. 6, p. 93-112.

[7] Luis Alberto Romero, "A history of Argentina in the 20th century," Trans. James P. Brennan (Pennsylvania State University Press; University Park), 2002, p. 219.

[8] Jerry W. Knudson, "Veil of Silence: The Argentine Press and the Dirty War, 1976-1983," *Latin American Perspectives*, Nov. 1997, Vol. 24, No. 6, p. 93-112.

largest. The resulting multimedia conglomerate, Grupo Clarín—or Clarín Group—expanded further as the decade progressed, buying a cable provider in 1992, establishing a free sports newspaper in 1996, and in 1997 buying stakes in several regional newspapers and founding an Internet service provider called Ciudad Internet.

Clarín Group's expansion coincided with a broader trend of media consolidation during the 1990s, both in Latin America and globally, as states loosened restrictions on media ownership and sold off public holdings. At the same time, waves of corporate mergers resulted in multi---billion–dollar international conglomerates, such as the Time Warner and News Corporation, each of which by the end of the decade owned newspapers, television channels, cable providers, film and television production companies, and publishing houses the world over.[9] Meanwhile, Mexico, Brazil, Argentina, and Venezuela saw the rise of nationally or regionally dominant media players, Grupo Clarín among them.[10]

Some analysts warned of the threat to democratic pluralism if the means of communication were concentrated in a few powerful sets of hands. Media scholar Robert McChesney issued one typical warning in 1999:

> With hypercommercialism and growing corporate control comes an implicit political bias in media content. Consumerism, class inequality and individualism tend to be taken as natural and even benevolent, whereas political activity, civic values and antimarket activities are marginalized. The best journalism is pitched to the business class and suited to its needs and prejudices; with a few notable exceptions, the journalism reserved for the masses tends to be the sort of drivel provided by the media giants on their US television stations. This slant is often quite subtle. Indeed, the genius of the commercial----media system is the general lack of overt censorship. As George Orwell noted in his unpublished introduction to *Animal Farm*, censorship in free societies is infinitely more sophisticated and thorough than in dictatorships, because "unpopular ideas can be silenced, and inconvenient facts kept dark, without any need for an official ban."[11]

Dominant player. At the turn of the 21st century, Clarín was the dominant, but by no means the only, media player in Argentina. Indeed, Argentina had one of the most vibrant and varied media markets in Latin America, due in part to high rates of literacy. There were five 24----hour national news channels, of which Clarín owned the most popular, Todo Noticias (TN). It owned the most----watched of five free----to----air channels in Buenos

[9] For a guide to six of the largest media conglomerates and their properties, see: http://www.freepress.net/ownership/chart/main.

[10] Robert W. McChesney, "The New Global Media," *The Nation*, November 11, 1999, http://www.thenation.com/doc/19991129/mcchesney/3.

[11] Robert W. McChesney, "The New Global Media."

Aires, and four of 44 nationwide. Cablevision, a cable provider in which Clarín had a controlling stake, had a 47 percent market share—and Clarín operated six cable channels of its own. Clarín also had 11 of approximately 5,500 local radio signals in Argentina. Its flagship newspaper was the highest circulating among 13 general----interest national newspapers; it also owned a news agency that distributed content to other providers. Of over 150 smaller local newspapers in Argentina, Clarín owned four.

Clarín Group's primary competitors were private companies—they included Grupo Uno, Argentina's second----largest media conglomerate, and Spain's Telefónica, a multinational media corporation with a significant presence in Argentina. The Argentine government also ran a handful of media properties—widely considered the communication arms of the party in power–including a free-to-air television station, a news service, a radio station, and several free local newspapers.

Clarín Group in some form or another was thought to reach into three out of four Argentine homes every day.[12] Its estimated worth in 2007 was $2.7 billion (in US dollars).[13] Printing and publishing brought in 25 percent of its revenues. Cable and Internet access accounted for by far the highest proportion of its revenues at 56 percent. Broadcasting and programming brought in another 17 percent.[14]

Néstor Kirchner

Clarín Group had achieved this steady expansion amid crises both political and financial. In 2001, Argentina's economy was wracked by turmoil, threatening to buckle under the weight of high foreign debt. Capital flight exacerbated the crisis as investors panicked in the aftermath of emerging market meltdowns elsewhere. Between December 2001 and May 2003, Argentina cycled through some four presidents in rapid succession, as each proved unable to calm the markets and consolidate political authority. In the meantime, Argentina announced it was suspending payments on most of its foreign debt. Its $94 billion default was the largest sovereign debt default in history.[15] At the same time, the government froze citizens' bank accounts while devaluing the currency—the peso—to roughly a third of its former value, and Argentines watched helplessly as their savings were wiped out. Those on fixed incomes were plunged into near penury, unemployment climbed to 20 percent,

[12] Company History: Grupo Clarín S.A., Funding Universe, http://www.fundinguniverse.com/company-histories/Grupo-Clariacute;n-SA-Company-History.html.

[13] Charles Newbery, "Grupo Clarin raises $463 million in IPO," *Variety*, October 19, 2007, http://www.variety.com/article/VR1117974424.html?categoryid=19&cs=1.

[14] Grupo Clarín, "Fact Sheet," accessed March 2, 2010, http://www.grupoclarin.com/ir/Files/Kit/633912045060625000.es.pdf.

[15] "Timeline: Argentina's Road to Ruin," *Washington Post*, August 3, 2003, http://www.washingtonpost.com/wp-srv/business/articles/argentinatimeline.html.

and the poverty rate skyrocketed. Amid seething political turmoil, as often----violent protests swept the nation, Néstor Kirchner was elected president in May 2003.[16]

Representing a left----leaning faction of the ruling Perónist party—which emulated the populist, worker----centric posture of former president Juan Perón—Kirchner and his wife, fellow politician Cristina Fernández, began their careers as activists in the anti----dictatorship movement of the 1970s.[17] Fernández had been a senator in the far----southern region of Santa Cruz, the couple's home region; when he assumed the presidency in 2003, Kirchner had served as Santa Cruz's governor for 12 years but was relatively unknown elsewhere in Argentina.

He moved quickly to consolidate state control over the economy. At the same time that high global commodity prices delivered enormous profits to Argentina's dominant agricultural sector, Kirchner's aggressive program of state stimulus, selective price controls, and low valuation of the peso contributed to a rapid and dramatic economic turnaround.[18] Kirchner's four----year term saw average yearly GDP growth of over eight percent and a steep drop in unemployment and poverty.[19]

At the same time, Kirchner purged from his government remnants of the despised military regime of 1976----1983 and brought new trials against accused human rights abusers from the era. His economic stewardship and anti----dictatorship zeal proved popular with large swathes of Argentine society. Argentine living standards rebounded to a degree few had thought possible amid the chaos of 2001. As the owner of large mainstream media, Clarín counted itself part of the seeming societal consensus in Kirchner's favor. Remarks Gustavo Sierra, an international reporter for *Clarín* newspaper:

> The government of Néstor Kirchner was, in general, by Argentinean standards, a very good government… That was a general consensus in the society, and Clarín is part of the mainstream in that way.[20]

Yet Kirchner had an uneasy relationship with the media. Unique among modern Argentine presidents, Kirchner did not hold a single press conference throughout his entire four---year term. It was so difficult to get information out of his spokesman, Miguel Nuñez, that reporters jokingly referred to him as "*El Vocero Mudo*," the mute spokesman.[21] Argentine media, furthermore, often relied on government----funded advertising—which provided information about hospitals and schools, among other things—for a significant share of

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[16] "Party Time," *Economist*, February 16, 2008.
[17] For clarity, this case refers to Cristina Fernández de Kirchner as Cristina Fernández throughout.
[18] Jason Mitchell, "Veering Off Course," *Latin Finance*, September 1, 2007.
[19] Alexei Barrionuevo, "Conflict With Farmers Takes Toll on Argentina," *New York Times*, June 24, 2008, http://www.nytimes.com/2008/06/24/world/americas/24argentina.html.
[20] Author's interview with Gustavo Sierra in Buenos Aires, Argentina, on February 8, 2010. All further quotes from Sierra, unless otherwise attributed, are from this interview.
[21] Author's interview with Leonardo Minez in Buenos Aires, Argentina, on February 9, 2010.

their revenues. Many of them were therefore dependent on the good graces of the government in power.

A 2007 investigation by the nonprofit Committee to Protect Journalists (CPJ) found that Argentine governments at both the national and local level had long sought to influence coverage through their control over advertising dollars. Noted CPJ:

> Because national and local governments are not bound by clear rules governing the placement of their advertising, CPJ and other analysts have found, the targeted influx of ad dollars influences coverage—including news about the presidential and legislative elections. News outlets that provide favorable coverage of incumbents get lots of ads; organizations that are critical get few or none.[22]

Kirchner himself had been particularly generous—and particularly discriminating—with government ad money, both as governor of Santa Cruz and as president.[23] Over his 2003–2007 presidential term, he expanded the national advertising budget by 354 percent––far outpacing Argentina's high rate of inflation—and disbursed ad dollars most freely during political campaigns.[24] One radio host in Kirchner's southern home state of Santa Cruz told CPJ: "Without state advertising, it is almost impossible to survive."[25]

Grupo Clarín had staked out an advantageous position in this environment. Its financial strength largely insulated it from the whims of the executive—state advertising accounted for only about five percent of the company's ad revenue.[26] In 2007, in a further effort to improve its finances, Clarín CEO Héctor Magnetto sold shares of the company on the Buenos Aires and London stock exchanges for the first time, raising $463 million for 17.5 percent of its shares.[27] US investment bank Goldman Sachs owned another nine percent of the shares. Further, Clarín enjoyed relatively good relations with the Kirchner administration; the president's general reticence notwithstanding, Clarín journalists—both in print and on television—had better access to his government than most, which often meant exclusives.

Meanwhile, after four years in office, Kirchner announced on July 2, 2007 his decision not to stand for a second term as president. Instead, he endorsed his wife Cristina Fernández for the top spot. She campaigned vowing to carry on her husband's popular policies and to

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[22] Carlos Lauria, "News for Sale," Special Report for the Committee to Protect Journalists, October 23, 2007, http://cpj.org/reports/2007/10/news-for-sale-in-argentina.php.

[23] Committee to Protect Journalists, "Attacks on the Press in 2008: Argentina," February 10, 2009, http://cpj.org/2009/02/attacks-on-the-press-in-2008-argentina.php.

[24] Committee to Protect Journalists, "Attacks on the Press in 2008: Argentina."

[25] Committee to Protect Journalists, "Attacks on the Press in 2008: Argentina."

[26] Author's interview with Martin Etchevers in Buenos Aires, Argentina, on February 10, 2010.

[27] James Attwood and Lenka Ponikelska, "Grupo Clarin to Sell Shares in Buenos Aires, London," Bloomberg, October 4, 2007, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aO6PTylYe3Zw.

include him in executive decisionmaking, billing her candidacy as an opportunity to elect two capable leaders at once. Like her husband, Fernández eschewed press conferences; she did not convene one for the duration of her presidential campaign.

Fernández won the October 28, 2007 election handily with 45 percent of the vote, nearly double the vote share of her nearest rival. Her party also won wide majorities in both houses of Congress. In an editorial, *Clarín* hailed Fernández's victory, as well as Kirchner's willingness to give up power in a nation with a history of strongmen, writing:

> The first----round victory introduces an element of innovation and generational renewal. A majority of public opinion has broadly endorsed the direction of the outgoing government. President Néstor Kirchner is, in that sense, a principal tributary of the support received by his wife and will be able to realize another historic first: it will be the first time a democratically elected president has ended his mandate with high levels of support and stepped down without hoping for re----election.[28]

President Fernández

Yet Néstor Kirchner retained a great deal of authority in the new administration; major decisions were seen as coming from him, and he was widely expected to run for the presidency again at the conclusion of his wife's term in 2011. Argentine presidents were restricted to two consecutive terms in office but could run again after a term out of power. Some suspected the Kirchners intended to trade the presidency between them for many terms to come.[29]

Fernández herself enjoyed high popularity for about three months after her January 2008 inauguration. That began to change on March 11, 2008, when she raised taxes on agriculture exports by decree, arguing that farmers had benefited unduly from high worldwide commodity prices paired with a low peso. The higher export tax, she argued, would bring in $3 to $4 billion a year in additional revenue, to be spent on public works projects.

The tax hike antagonized Argentina's wealthy and politically powerful agricultural sector. The conflict erupted into a full----blown crisis over the succeeding months as demonstrators blocked highways and farm strikes caused food shortages, rationing, and

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[28] *Clarín*, via "Kirchner victory sparks memory of Peron," BBC, October 30, 2007, http://news.bbc.co.uk/2/hi/business/7069172.stm.

[29] Larry Rohter, "Argentina's President Steps Aside to Support His Wife as Successor," *New York Times*, July 3, 2007, http://www.nytimes.com/2007/07/03/world/americas/03argentina.html?_r=1.

skyrocketing prices in urban supermarkets. As the protests continued through June and Fernández refused to back down, her approval rating plummeted to 20 percent.

It was during this period that the relationship between Clarín and the Kirchners soured. Néstor Kirchner later claimed on state television that Clarín CEO Magnetto had approached him during the farm crisis to offer positive coverage of the government if Kirchner agreed to help Clarín acquire Argentina's dominant telephone company.[30] In any case, the Kirchners began to accuse Clarín outlets—especially its flagship newspaper and news channel Todo Noticias—of biased reporting on the farm crisis, targeting the group in speeches and in posters on city streets declaring "*Clarín Miente*," or "Clarín Lies."

Clarín newspaper responded with blistering editorials; its news pages, meanwhile, featured ever more frequent investigations into government corruption and ever more critical coverage of the farm crisis. When Congress, dominated by the Kirchners' own party, repealed the farm tax on July 17, 2008, Fernández publicly blamed Clarín for the farm tax's defeat. As soon as a new legislative season began on March 1, 2009, Fernández took up the cause of media reform.[31]

Broaching broadcast reform

The timing looked suspect in light of the escalating clash between Clarín and the Kirchners. But media reform had been a pet cause of Argentine human rights and civil society groups since *the* country's return to democracy in 1983.[32] The 1980 dictatorship----era media law— including its provision barring nonprofit enterprises from access to the airwaves—largely remained in force. Though the law had been amended 170 times, critics of corporate media argued that the amendments had only further concentrated Argentine media in too few hands—for example by allowing cross----ownership and raising the number of broadcast licenses a single company could own from four to 24.

In 2003, Argentina's Supreme Court found the military----era law unconstitutional. The court decision had little immediate practical effect. But it spurred the consolidation of a diverse group of community broadcasters, academics, unions, human rights groups, and others under the umbrella of the Coalition for Democratic Broadcasting, which began to lobby the government to pass a media reform law. In May 2004, representatives of the group presented to then----President Néstor Kirchner a blueprint of "21 Points" on which the Coalition wanted reform of the media law to be based. The document called on the government to

[30] Shane Romig, "Argentina Ex-President: Clarín Offered Spin For Telephone Co," Dow Jones Newswires, January 25, 2010, http://www.tradingmarkets.com/news/stock-alert/grcnl_-argentina-ex-president-clarin-offered-spin-fortelephone-co-725534.html.

[31] Charles Newbery, "Argentina Cries for Reform," *Variety*, March 16, 2009.

[32] Liliana Chiernajowski, "The 21 Points of the Coalition for Democratic Broadcast Regulation are Now Law," Trans. Brandon Brewer, Americas Program, Center for International Policy, November 4, 2009, http://americas.irconline.org/am/6550.

condemn censorship and, more specifically, to promote the diversification of broadcasters by expanding access to licenses and reserving a third of the spectrum for nonprofit and civil society groups.[33] A central contention was that the government should actively prevent the concentration of media ownership and introduce more transparency— including public hearings—to the process of granting and renewing broadcast licenses.[34]

To the Coalition's bitter disappointment, Kirchner did not take up broadcast reform, instead renewing for another 10 years the existing broadcast licenses of Argentina's main media conglomerates, among them Clarín.[35] In 2005, however, Congress passed a revision to the 1980 law allowing nonprofits access to the airwaves for the first time. Now in 2009, Fernández revisited the "21 Points" as the basis for a complete overhaul of the existing media law.[36]

She vowed to host open and transparent town hall style discussions about the bill throughout the country. Several such meetings took place through the spring and summer of 2009; Clarín representatives and some outside observers dismissed them as photo----opportunities, stocked with Kirchner supporters, designed to legitimate rather than truly debate the law. Remarks one reporter who had long covered Latin American politics for Reuters but had no relationship to Clarín:

> [The Kirchners] said they were open forums, to discuss [the law] all over the country. There were, but they were very fake. They were packed with people who supported the deal… In Chile, when they want to reform a law, they really, really have real civic discussion on it. And here… it's kind of a joke. Now the government clearly would not agree with me when I say that.[37]

Clarín opposes. Clarín stood to lose money from the proposed media reform, as did a handful of other large players in Argentine media, all of whom opposed the law. Rather than send representatives to government----sponsored meetings it viewed as illegitimate, Clarín took to the pages of its flagship newspaper to explain its opposition––which it maintained was not purely commercial in nature. *Clarín* warned in an editorial in May, for example, that though expanding the number of voices in Argentine media was a worthy goal, the government's current initiative risked expanding state discretion over broadcast licenses, potentially granting access only to supporters and withholding it from critics like Clarín. This was certainly a threat to Clarín's own profitability, but *Clarín* argued

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[33] Nonprofit groups already operated a handful of radio and television stations extralegally. Though they were not granted licenses, they were for the most part allowed to operate unmolested.

[34] Liliana Chiernajowski, "The 21 Points of the Coalition for Democratic Broadcast Regulation are Now Law," http://americas.irc-online.org/am/6550.

[35] Liliana Chiernajowski, "The 21 Points of the Coalition for Democratic Broadcast Regulation are Now Law."

[36] Liliana Chiernajowski, "The 21 Points of the Coalition for Democratic Broadcast Regulation are Now Law."

[37] Author's interview with Fiona Ortiz in Buenos Aires, Argentina, on February 10, 2009. All further quotes from Ortiz, unless otherwise attributed, are from this interview.

it was likely to threaten the Argentine free press more generally. The paper maintained that the law could

> influence the editorial policy and content of independent media and, under the guise of community purposes, build… a vast network of media that looks diverse but becomes one voice obeying and serving a single ideology.[38]

Meanwhile, Clarín's news reporting—in print and broadcast—focused on opposition to the bill *among* legislators, free press advocates, and media owners. Clarín outlets also underscored how the bill differed from media laws in other countries, such as Spain and the United States, whose governments had in recent years revised their laws to facilitate––rather than discourage— media conglomerates' further expansion.[39] Such stories relied almost exclusively on sources opposed to the law, rarely including quotes from Kirchner allies.

In a mid----term Congressional election widely viewed as a referendum on the Kirchners' leadership, Fernández's unpopularity led to electoral defeat for her party in congressional elections on June 28, 2009. The party emerged with 115 of 257 seats in the lower house of Congress, an even split in the Senate, and nationwide support at around 30 percent of voters.[40] Néstor Kirchner, who had himself run for a congressional seat in Buenos Aires in a high----stakes bid to shore up the national ticket, came in second place. Though still entitled to a seat in Congress under Argentina's proportional representation system, Kirchner had suffered an embarrassing setback.

Still, the new opposition----dominated Congress would not be seated until December, giving the Kirchners several more months to pass laws through a supportive legislature. On August 27, Fernández presented Congress with a draft of her media----reform bill, saying that the legislation would "allow everybody to speak their minds."[41] Fernández argued that Clarín was a media monopoly.[42] Clarín responded that it held only four of 42 television broadcast licenses nationwide, 9 of over 5,000 radio licenses, and only a 47 percent market

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[38] Luis Pardo Saínz, "No violar la libertad de expresión," *Clarín*, May 18, 2009.

[39] In 2003, for example, the United States Federal Communications Commission (FCC) relaxed media ownership rules, allowing broadcast networks to expand their reach from a 35 percent to a 45 percent market share and lifting a ban on broadcast-newspaper cross-ownership in the same market, except in the smallest markets. Advocates of independent media vociferously protested the new rules.

[40] "Argentina's mid-term election," *Economist*, Jul 2, 2009.

[41] Carlos Lauria, "Attacks on the Press 2009: Argentina," Committee to Protect Journalists, February 16, 2010, http://www.cpj.org/2010/02/attacks-on-the-press-2009-argentina.php.

[42] Eliana Raszewski, "Argentine Senate Approves Fernandez's Media Bill," Bloomberg, October 10, 2009, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aLWUKJC3baHI.

share in cable, which was less than the market share held by the dominant cable companies in many other countries. [43]

The bill

Fernández's draft bill reserved one----third of the broadcast spectrum for nonprofits and non---governmental organizations, one----third for state media, and one----third for the private sector. It also instituted a new seven----member broadcast regulatory body, billed as a more independent replacement for an existing agency that reported directly to the president. In the new regulatory body, two members would be appointed by Congress, three by the president, and the remaining two by a council of governors and civil society representatives. Congress's authority to appoint members meant that Argentina's broadcast regulator might for the first time include opposition party representatives. But many observers were skeptical that the new committee would in fact be more independent than the one it replaced. "The regulator will rely heavily on political appointees, and the executive will have a lot of power in nominating its members and controlling its functions," remarked a columnist for *La Nación*, a major daily.[44] Other critics said that the law was so vague it risked handing the government the power to revoke broadcast licenses arbitrarily.[45]

Several of the bill's other articles directly impacted Clarín's commercial interests, and to some within and outside of Clarín, appeared tailor----made to do so. For example, the bill barred any organization from owning both a cable provider and a broadcast channel in the same market— which Clarín did in four. Further, whereas previously an entity was allowed up to 24 national broadcast licenses, the new law would slash the number of permitted licenses to 10—Clarín had 12. The law further stipulated that no company should enjoy more than a 35 percent market share in either broadcast (radio and television) or cable—and Clarín claimed nearly 50 percent of cable subscribers nationwide. Though the bill did not deal with print publications directly, Clarín executives worried that the government might try to use its authority over broadcast licenses indirectly to influence what the Group printed in its newspapers.

Where a company had too many licenses or had a cable provider and broadcast station in the same market, it had one year to bring itself into compliance with the law by selling properties. Clarín had several years remaining on its broadcast licenses, which then----President Kirchner had extended for another 10 years in 2005. The proposed law would

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[43] "64 años creyendo en el país y construyendo medios argentinos," *Clarín*, October 4, 2009.
The market share of dominant media companies elsewhere, according to Clarín: France (65%), Italy (75%), Spain (57%), Germany (52%), United Kingdom (50%), Chile (67%), Peru (82%) and Venezuela (50%), Brazil (46%), Colombia (46%), and Mexico (46%).

[44] Carlos Lauria, "Attacks on the Press 2009: Argentina," Committee to Protect Journalists, February 16, 2010, http://www.cpj.org/2010/02/attacks-on-the-press-2009-argentina.php.

[45] Carlos Lauria, "Attacks on the Press 2009: Argentina."

retroactively revoke this extension—and scale back Clarín's reach in advance of the 2011 presidential election.

Having to sell off properties in such a short period could cost Clarín hundreds of millions of dollars. For one thing, it would mean giving up several revenue streams. For another, Clarín executives worried that the rush to sell would force the company to accept "fire----sale" prices for lucrative television stations. Besides that, the required sales would cut to the heart of Clarín's integrated business model, which relied in large part on control over content and its means of distribution. For the most part, Clarín used its broadcast properties to produce content and its cable providers to distribute both its own content and that of other providers—a typical practice for media conglomerates the world over. Explains Clarín spokesman Martin Etchevers:

> No competitiveness arguments, no economic arguments, and no technological arguments justify these [cable----broadcast cross----ownership] restrictions. Cable TV distributes the content of different providers and open [broadcast] TV is nowadays more a content producer than a distributor… [In the United States] ABC, CBS, Fox, [and] NBC are the main [content] producers for cable channels... Cable channels are [owned by the same companies that own] the main stations of open TV. [Under the new law], if you're an open TV channel here in Buenos Aires, the law forbids you to distribute your content, your programming to the other provinces. You cannot establish a network.[46]

An escalating battle

The law was a frightening—but so far still hypothetical—prospect for Clarín's commercial interests. If it passed, which seemed likely, Clarín could appeal to the courts. But as the bill wended its way through Congress in the summer and fall of 2009, there were more immediate threats to Clarín's business. In August 2009, the Argentine Football Association (AFA) broke its contract giving a Clarín cable partner nearly exclusive rights to broadcast soccer games until 2014. The AFA would instead partner with the government to broadcast games for free on state television. Argentines would no longer require a subscription to a Clarín----affiliated cable service to watch soccer.[47]

Fernández billed the deal as "a giant step in the democratization of Argentine society," for the first time making a popular sport available to those who could not afford cable. In a

[46] Author's interview with Martín Etchevers in Buenos Aires, Argentina, on February 10, 2010. All further quotes from Etchevers, unless otherwise attributed, are from this interview.

[47] Juan Forero, "In mixing soccer and politics, score one for Argentine government," *Washington Post*, November 1, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/10/31/AR2009103102092.html.

nationally televised speech announcing the new contract, Fernández took a jab at Clarín in language that evoked the disappearances common under the military dictatorship:

> Only those who paid could watch a game of soccer, because [Clarín] kidnapped the goals… I do not want any more kidnappings. I want a free society.[48]

Clarín argued that the goal of "democratizing" soccer in a country with one of the world's highest rates of cable penetration—60 percent—was a pretext for stripping Clarín of a lucrative franchise. Another blow to Clarín's business came on September 3, when Argentina's broadcast regulator, the Federal Broadcast Committee, halted a merger between two Clarín----controlled cable companies, which then----President Kirchner had approved in 2006.[49]

A little over a week later, on September 10, 2009, 200 tax agents descended on *Clarín*'s newsroom in what the government called a "routine" inspection but Clarín representatives labeled "harassment"—perhaps retaliation for a front----page report that morning that the government had improperly granted a farm subsidy.[50] The head of the government tax agency claimed that he had not ordered the raid and apologized to Clarín, promising to order an investigation.[51]

Congress speaks

Debate over the bill in the Chamber of Deputies, Argentina's 257----member lower house of Congress, was brief and contentious, lasting about two weeks in September 2009. Over 100 members of the opposition walked out of the vote in protest, saying the bill had been rushed through committee and that there had not been enough time to analyze it. "There has not been a proper debate… We couldn't even finish reading [the bill]," remarked one legislator on Clarín channel Todo Noticias.[52] Clarín had not been invited to testify before Congress on its own behalf, though numerous press associations had appeared during the two weeks of debate to protest the bill. The Argentine Press Association (ADEPA)—which represented Clarín as well as many of its competitors—cautioned that the bill was being debated in a "strongly politically biased environment" and would "silence"

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[48] Juan Forero, "In mixing soccer and politics, score one for Argentine government."

[49] Shane Romig, "Argentina TV Regulator Blocks Cablevision, Multicanal Merger," Dow Jones Newswires, September 3, 2009.

[50] "Tax raid on Argentine Newspaper," BBC, September 11, 2009, http://news.bbc.co.uk/2/hi/americas/8250251.stm.

[51] "CPJ seeks comprehensive inquiry in Clarín tax raid," Committee to Protect Journalists, September 11, 2009, http://cpj.org/2009/09/cpj-seeks-comprehensive-inquiry-in-clarin-tax-raid.php.

[52] Todo Noticias via Luis Andres Henao, "Argentine Congress debates media reform law," Reuters, September 17, 2009.

existing media voices in its attempt to expand access to new ones.[53] Nonetheless, on September 17, the Chamber of Deputies passed the bill without changes, 146–3.

The bill then moved to the Senate for debate. Senators of different parties announced that the Senate would take a more deliberative approach to the bill, would invite more interested parties to participate in the discussion, and would work to revise some of the legislation's more controversial articles. Clarín secured a place on the agenda for Friday, October 2, the last day of debate.

On Thursday, October 1, however—the day before Grupo Clarín's scheduled testimony— Senate Majority Leader Miguel Pichetto, a Kirchner ally, announced that the body had the votes to pass all 164 articles of the law without changes.

Clarín's testimony on its own behalf would therefore be irrelevant at worst and symbolic at best. It was up to Clarín's executive committee—especially CEO Héctor Magnetto—to decide whether to go before the Senate anyway as a gesture of protest. Would doing so legitimate a process Clarín executives saw as corrupt and exclusionary? Were Clarín's own media properties— including its television news station and the editorial page of its flagship newspaper—better outlets for protest? To what extent could the conglomerate, as a corporate actor, defend its commercial interests while maintaining its editorial integrity?

Further, if the law passed the Senate, as now seemed virtually certain, Magnetto and the executive committee would face another set of decisions. An opposition----dominated Congress would be seated in December, and Fernández's current approval ratings suggested it was unlikely that either she or her husband could win another term as president in the upcoming 2011 presidential elections. Could Clarín rely on a new Congress to redress the aspects of the law it found objectionable? Should it lobby legislators to ensure that outcome? Should it sue the sitting government on the grounds that it was attempting to revoke legally obtained broadcast licenses? Or should it simply accept mild commercial damage and comply with the law? Was it unreasonable to have to sell a handful of channels in the name of pluralism? What was really at stake?

[53] Argentine Press Association press release, April 7, 2009.