



Legal Jeopardy: Clarín Group and the Kirchners Teaching Note

Case Summary

The relationship between government and media ranges from total state control in authoritarian regimes to relatively minimal oversight in more liberal societies. No matter where a country falls on the spectrum, however, this dynamic is subject to stress and must be constantly adjusted, even in democracies where free media—unimpeded by government control and influence—is considered to be fundamental.

This case focuses on Argentina in 2009, when the Clarín Group, the country's largest media conglomerate, faced off against the government of President Cristina Fernández de Kirchner over a controversial media reform bill. Fernández insisted that the initiative—which would cap the number of licenses controlled by media giants and significantly curb Clarín's influence—would democratize television and radio broadcasting. A number of civil society groups, which had long insisted that broadcast reform was needed for democratic pluralism, agreed. Critics of the legislation, including Clarín, insisted it would dangerously increase state influence over media in the still-fledgling democracy.

Students trace the history of the Clarín Group and learn about its role in Argentina's public discourse over the past six decades. They also learn about Fernández, and her husband and centerleft predecessor Néstor Kirchner, who initially received largely favorable coverage from Clarín for his handling of the battered economy. That changed in 2008, when the media group turned against Fernández during a bitter tax revolt by farmers. Class members chart the deteriorating relationship between the two sides, as the first couple accuses the media giant of bias and takes up the cause of media reform, while Clarín charges the government with corruption and with launching a vindictive campaign that specifically targets its operations.

The case lays out the background of broadcast regulations in Argentina, outlines the media reform bill proposed by Fernández, and charts the escalating battle between the two sides. Clarín's plans to testify before the Senate, which is due to vote on the bill, are derailed at the last minute when the Senate majority leader announces that the body has enough votes to pass the bill without changes. Students step into the shoes of Clarín executives who must decide what action to take: participate in the political process; wage their fight on the airwaves and in their newspapers; hold

off taking action in the hope that Fernández will lose office and an opposition-dominated Congress will reverse legislation; or accept the bill and direct their energies towards the adjustments to come.

Teaching Objectives

Use this case to discuss the relationship between media and government; media conglomeration; media law; media reform; and journalism in different parts of the world.

Clarín's expansion coincided with a broader wave of media consolidation during the 1990s, both in Latin America and globally. At the turn of the 21st century, the media group is thought to reach into three-quarters of Argentine homes every day. What are the pros and cons of such expansion and reach? Discuss as part of a broader consideration of media consolidation, and its implication for media companies, and for society as a whole.

Over the years, media have enjoyed varying fortunes in Argentina depending on the country's political leadership, which includes the authoritarian populism of Colonel Juan Domingo Peron, military dictatorships and, since 1983, more democratic governments. Consider the interplay between government and media in different political systems, and the impact of the former on journalistic performance. In a democracy, for instance, what is the relationship of media to the government? What are the advantages or disadvantages of being a news organization in a free market economy?

Clarín opposes media reform, and largely ignores Fernández's town-hall style meetings to discuss the bill in the spring and summer of 2009, dismissing the events as photo sessions. Was this a wise move, or did Clarín miss an opportunity? Similarly, was it ethical of Clarín to opt out of reporting on these events, even if it questioned their authenticity? What about the organization's focus on opponents of the law, rather than Kirchner's allies? Consider its approach as part of a broader conversation about the responsibilities and limits of media organizations in covering news in which they are involved or reporting on events they oppose.

Similarly, the timing of Fernández's turn towards the issue of media reform in March 2009 seems suspect in light of the Kirchners' clash with Clarín. However, human rights and civil society groups in Argentina had long pressed the government to diversify broadcasting by expanding access to licenses. Consider the extent to which the company should use its news outlets to discuss the drama in which it is embroiled.

Class Plan

Use this case in a course about media law; politics and media; or media consolidation and conglomeration.

Study questions. Help students prepare for discussion by assigning the following question in advance:

- 1) Can a conglomerate or corporate actor such as Clarín defend its commercial interests while maintaining its editorial integrity?

Instructors may find it useful to engage students ahead of class by asking them to post brief responses (no more than 250 words) to the question in an online forum. Writing short comments challenges students to distill their thoughts and express them succinctly. The instructor can use the students' work both to craft talking points ahead of class and to identify particular students to call upon during the discussion.

In-class questions. The homework assignment is a useful starting point for preliminary discussion, after which the instructor could pose any of the following questions in order to promote an 80–90 minute discussion. The choice of questions will be determined by what the instructor would like the students to learn from the class discussion. In general, choosing to discuss three or four questions in some depth is preferable to trying to cover them all.

- a) Clarín has an obvious venue for voicing its grievances about the reform bill: its own newspapers and broadcast stations. Discuss the pros and cons of the company utilizing these means to voice its grievances in its battle with the Kirchners.
- b) Many Argentine media companies depended on state advertising dollars to survive, and Kirchner dispersed such funds freely during political campaigns. But Clarín was largely insulated from these whims: state advertising accounted for only 5 percent of its ad revenue—a situation made possible in part by raising money from selling company shares on the Buenos Aires and London stock exchanges. Discuss possible strategies for Clarín, or other media companies operating in similar political environments, to bolster their independence from the government.
- c) Clarín gains independence from the Argentine government by selling around 25 percent of its shares. Discuss the risks and benefits for a media company of such an arrangement, including its dependence on the free market and need to account to outside investors.
- d) Clarín's reporting on the media bill tends to focus on opponents of the legislation and largely ignores the town hall meetings that Fernández holds to discuss the legislation. Should it have treated the proposed legislation more evenhandedly, like any other political issue? Similarly, was Clarín obligated to cover the town-hall meetings, regardless of its institutional opinions about them?
- e) Clarín's business model depends in large part on the company's control over both its content and the means of distribution—a typical practice for media conglomerates all over the world. According to Clarín spokesman Martin Etchevers: "No competitiveness arguments, no economic arguments, and no technological arguments justify these [cablebroadcast cross-ownership] restrictions" called for by the media reform bill. Do you agree?

- f) On October 1, the Argentine Senate announces that it has enough votes to pass the media reform bill before it hears testimony from Clarín executives. What does Clarín's executive committee stand to gain on October 2, or conversely lose, by appearing before the Senate committee? Consider its options at this point.
- g) If the media reform bill passes, as it seems likely to do, Clarín could rely on a new Congress to redress aspects of the law that it finds objectionable; lobby legislators to ensure that outcome; or comply with the law. Discuss these and other possible strategies, and weigh their relative merits and implications.
- h) Is this situation unique to Argentina, or might news organizations in any country face a similar dilemma? Discuss.

Suggested Readings

Ben H. Bagdikian, *The Media Monopoly*, 6th ed., Boston, MA: Beacon Press, 2000.

SYNOPSIS: Originally published in 1983, *The Media Monopoly* describes the dominance of a few large multinational corporations which, through mergers and takeovers, now control most of America's media output—with significant ramifications for the nation's news and its political and economic agendas. Although critics have charged Bagdikian—a Pulitzer Prize-winning journalist and dean emeritus at Berkeley's Graduate School of Journalism—with alarmism and hyperbole, the book remains a classic critique of corporate media, and useful context for considering Clarín's dominant role in Argentina's media market.

David Croteau and William Hoynes, "Political Influence on Media" in *Media Society: Industries, Images, and Audiences*, Thousand Oaks, Calif.: Pine Forge Press, 2003.

SYNOPSIS: This chapter helps to contextualize Argentine media and the political environment in which it operates by focusing on the role of government in regulating ownership, technology, content, and distribution. The "Regulation in International Perspective" section is particularly helpful in outlining the different kinds of relationships that governments have with media in their different parts of the world.

David J. Park, "Media, Democracy, and Human Rights in Argentina," *Journal of Communication Inquiry*, 2002, Vol. 26, Issue 3, 237-260.

SYNOPSIS: This article provides background on Argentine media and echoes the arguments of media reform proponents in the country by arguing that "media concentration, institutional connections with media, foreign ownership, violence against the press, and neoliberal market restraints limit the quality of Argentina's transitional democracy." It also suggests that "vestiges of authoritarian control, such as government regulation and threats against the press, continue to

plague the mass media” — conditions that severely impact the country’s ability to construct a vibrant public sphere.