Media Laws in Latin America: A Comparison between Venezuela and Argentina

Julieta Grinfield
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I. INTRODUCTION

FREEDOM of expression is an inalienable right and one of the pillars of a democratic society. Since the days of de Tocqueville and Locke, media has been regarded as crucial in the prevention of authoritarianism and the loss of individual liberties. As integral as freedom of the press is to American society, many nations around the world still practice forms of prior censorship on media outlets and individual opinions alike. In fact, earlier this year, the Egyptian government ordered the shutdown of the five internet service providers in Egypt while a nation-wide anti-government protest was taking place. Reiterating American ideals, President Obama urged Egyptian authorities to refrain from any violence and stated, “[t]he people of Egypt have [a] . . . right to peaceful assembly and association, the right to free speech, and the ability to determine their own destiny. These are human rights. And the United States will stand up for them everywhere.” Latin American countries, due to their histories and cultures, have been criticized for being more restrictive than countries like the United States and the United Kingdom. Recently, Venezuela and Argentina experienced changes in their

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2. Id. at 96.

3. Id.


media laws. This article will compare each law in light of each country’s respective history. Part II will focus on Venezuela, first by discussing the country’s history, then by outlining the provisions in the Social Responsibility on Radio and Television Act of 2004, newly amended to include the Internet as a regulated medium. Part III will focus on Argentina’s history and the provisions of the Audiovisual Communications Services Law of 2009. It will also highlight a lawsuit that has been brought against the Argentine government to challenge the act. Part IV will discuss the Hutchins Commission of the 1940s and by applying the five requirements that constitute a free media, will come to the determination that the Argentine law fosters democratic ideals and the promotion of human rights better than the Venezuelan law. Finally, Part V will consider changes that Venezuela should implement in its media law to incorporate the universal right to freedom of speech and ways that the international community can pressure President Hugo Chavez and the National Assembly in an attempt to further democracy.

II. VENEZUELA

A. HUGO CHAVEZ’S RISE TO POWER

In the 1970s, Venezuela was known to its citizens as “Venezuela Saudita” as they believed that they would soon live in a rich and highly industrialized nation due to revenues from their oil. But by the beginning of the 1980s, it was clear that Venezuela’s economy was starting to deteriorate due to the Venezuelan government’s foreign debt and the sudden decrease of oil prices. It was during this time that Chavez created the Movimiento Bolivariano Revolucionario (MBR) within the Venezuelan army. Although it initially began as a “political study circle” rather than the eventual coup d’etat that it manifested into, MBR saw its current government as anything but a democracy and began recruiting discontented members of the army into its movement. During the 1980s, the members of MBR climbed up the army ranks and waited for the perfect time to stage their coup d’etat on President Carlos Andres Perez and it was the event known as the Carazco that fueled their revolu-

11. GOTT, supra note 9, at 38.
12. Id.
13. Id. at 38-39.
tionary fervor. The Carazco began on the morning of February 27, 1989. Due to the country’s overwhelming debt, President Perez implemented a few economic policies that caused the price of petroleum to increase by 100% and subsequently increase the price of gasoline. The frustration of the citizenry was clear as thousands of workers protested this increase on the streets of Caracas that morning and every day for over six days, resulting in riots and a state of emergency for the country. In addition to imposing a nationwide curfew on the citizens, the Perez regime further “imposed . . . martial law and suspended . . . all civil liberties.” The Carazco started as a protest that culminated in the popular disapproval of the government and the country’s recession. Soon after the Carazco began, President Perez suffered another shot to his popularity when he implemented the economic policy of the International Monetary Fund (IMF), a policy he had long opposed. Hugo Chavez used this opportunity to overthrow the government, but inevitably failed and was incarcerated for his attempt.

It was not until 1998 that Hugo Chavez finally rose to power. The Venezuelan citizenry, hungry for a new leader and enthused by Chavez’s charisma and rhetoric about nationalism and the improvement of the Venezuelan condition, brought the president into power with fifty-six percent of the vote. Four years later, President Chavez was nearly ousted and overthrown by an attempted coup d’etat staged by the media. Private media outlets, frustrated by the Chavez administration’s changes to the executive board of Petroleros de Venezuela (PDVSA), encouraged the opposition to march the streets and demand the resignation of President Chavez. In an attempt to thwart the oncoming coup, the Chavez administration applied Article 192 of the Organic Telecommunications Act. This article states that the government can order the media, both private and public, to transmit its messages for free whenever

15. Gorr, supra note 9, at 43.
17. Id. at 404-05.
18. Gorr, supra note 9, at 45.
20. Gorr, supra note 9, at 49, 54 (stating an outline of this policy).
22. Id. at 406.
23. Id. at 405-06.
25. See generally Gorr, supra note 9, at 223-38.
27. Id. at 8-9.
28. Id. at 9.
required without the obligations of a public media channel. The media bypassed this measure by cutting their screen shots into two and playing President Chavez’s messages alongside their scheduled programming. Because the media had opposed President Chavez since his entrance into the political arena, the reports coming out of the country were one-sided and failed to tell the world that in actuality the president had not resigned and had instead been kidnapped by the opposition. Eventually, the coup failed as Chavez supporters flooded the streets and demanded the release of President Chavez. Because of the damage that the media caused in the 2002 coup d’etat, it is no surprise that President Chavez signed the Social Responsibility on Radio and Television Act (RESORTE) into law in 2004.

B. The Venezuelan Constitution, American Convention on Human Rights, Inter-American Commission on Human Rights, and International Covenant on Civil and Political Rights

Upon being sworn into office, President Chavez’s first major action was to re-write the Venezuelan Constitution to “include a more diverse spectrum of social, economic, cultural, political and civil rights, and to integrate the armed forces into the economic and social life of the country through a program titled ‘Plan Bolivar 2000.’” Article 57 of the Venezuelan Constitution addresses freedom of expression, stating, “[e]veryone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication and diffusion, and no censorship shall be established.” It further states that, “[c]ensorship restricting the ability of public officials to report on matters for which they are responsible is prohibited.” Article 58 of the Venezuelan Constitution states

[e]veryone has the right to timely, truthful and impartial information, without censorship, in accordance with the principles of the Constitution, as well as the right to reply and corrections when they are directly affected by inaccurate or offensive information. Children and adolescents have the right to receive adequate information for purposes of their overall development.

Article 108 guarantees the Venezuelan citizenry public access to media and library and information networks to further “universal access to

31. Id.
32. Goff, supra note 9, at 236.
34. Id. at 7.
35. VENEZ. CONST. art. 57 (emphasis added).
36. VENEZ. CONST. art. 57.
37. VENEZ. CONST. art. 58.
Although the Venezuelan Constitution states that there is a right to freedom of expression, Article 60 constrains this right by stating, "[t]he use of electronic information shall be restricted by law in order to guarantee the personal and family intimacy and honor of citizens and the full exercise of their rights." This inconsistency renders the freedom of expression moot if the government has the power to tell families what is and what is not good for them.

Beyond the Venezuelan Constitution, many international treaties to which Venezuela is a party also proclaim the importance of freedom of expression. Article 13 of the American Convention on Human rights states that "[e]veryone has the right to freedom of thought and expression. . . . includ[ing] freedom to seek, receive, and impart information and ideas of all kinds. . . ." This article further proclaims that this freedom of information "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law. . . ." Venezuela, as it shall be shown, has not constructed prior censorship, but has made the social responsibility in the radio and television law so vague as to create a method in which the media outlets subject themselves to prior censorship in order to avoid any fines or liabilities in accordance with Venezuelan law. On the other hand, this same article states, under clause 4, that "public entertainment may be subject to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence." Supporters of RESORTE would point to this as a basis for the legitimacy of the law. But the construction of RESORTE and the heavy restriction on public media is not in compliance with either Venezuelan or international law and customs.

The Inter-American Commission on Human Rights also has certain articles to which opponents of RESORTE could point in order to claim that censorship of this type is prohibited. In its 108th regular session, the Commission stated, "[f]reedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals . . . [that]
is an indispensable requirement for the very existence of a democratic society.\textsuperscript{47} When speaking about the ownership of media, it clearly states, "[m]onopolies . . . and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information."\textsuperscript{48} "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information . . . must be prohibited by law. Restrictions . . . and the imposition of obstacles to the free flow of information violate . . . freedom of expression."\textsuperscript{49} The regular session even cited to Article 13 of the American Convention on Human Rights, thereby solidifying its stance on freedom of speech and the dangerous consequences that can occur in a society if this freedom is not exercised.\textsuperscript{50}

Finally, the International Covenant on Civil and Political Rights (ICCPR) is also being violated by Venezuela's law. Article 19 states that "[e]veryone shall have the right to hold opinions without interference [and] . . . shall have the right to freedom of expression,"\textsuperscript{51} similar to the language employed by the American Convention on Human Rights.\textsuperscript{52} But with this international work, it is important to note that the ICCPR does carve out two exceptions for the exercise of freedom of speech: (1) it can be restricted to protect the "rights and reputations of others"\textsuperscript{53} and (2) it can be restricted for the sake of national security.\textsuperscript{54} RESORTE supporters could potentially point to these exceptions to demonstrate that the Chavez administration is well within its right to restrict the media in the way that the law does, but in instances where two seemingly contradictory articles exist, a balance must be achieved. RESORTE does no such thing and, as the following paragraphs will show, annihilates freedom of speech to such a degree that it ought to be reformed.

C. RESORTE AND ITS PROVISIONS

In 2004, the Venezuelan National Assembly enacted RESORTE, a law drafted by the National Telecommunications Committee (CONATEL).\textsuperscript{55} Under the guise of holding radio and television outlets socially responsible for the messages they disseminate,\textsuperscript{56} RESORTE implemented various

\begin{itemize}
  \item \textsuperscript{47} Id.; see also Golinger, \textit{supra} note 26, at 5-6.
  \item \textsuperscript{49} Id.
  \item \textsuperscript{50} Id.
  \item \textsuperscript{51} International Covenant on Civil and Political Rights (ICCPR), art. 19.
  \item \textsuperscript{52} American Convention on Human Rights, art. 13, Nov. 22, 1969, No. 17955.
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} Id.
  \item \textsuperscript{56} RESORTE, art. 1.
\end{itemize}
restrictions on the types of messages that could be transmitted and the manner by which they could be transmitted. The more controversial components of RESORTE will be discussed in more detail below.

1. Dividing Airtime and the Classification of Language, Health, Sex, and Violence

One of the most obvious provisions of RESORTE is its division of airtime into three slots. Between 7 a.m. and 7 p.m., programming should be directed to "all users, including children and adolescents without supervision." Programming between 5 a.m. and 7 a.m. as well as from 7 p.m. to 11 p.m. should be directed to all users, with supervision from adults. While the adult programming time slot where children “should not” be the recipients is between 11 pm and 5 am. The law also guides the media in determining what it can and cannot disseminate during these times by classifying certain topics.

According to RESORTE, language has three classifications: 1) “images or sounds of common use that can be seen by children and adolescents without supervision,” 2) “images or sounds that when used commonly have a gross character,” and 3) “images and sounds that when commonly used have an obscene character” that describe, represent, or allude, without any explicit educative purpose, to genitalia or sexual practices.

Health has four classifications: 1) content that gives information, opinion, or acknowledgement over prevention, treatment or eradication of the consumption of alcohol, tobacco, narcotics, or psychotropic drugs and other addictive behaviors that do not require parental supervision, 2) the same that requires parental supervision, 3) content that promotes or refers to the moderate use of these substances and describes their addictive behavior, and 4) content that not only promotes this behavior, but demonstrates it to an excessive degree without an explanation as to the addictive behavior that can arise.

Sex has five classifications: 1) content that gives information, opinion, or acknowledgement of sexual reproduction, parenthood, promotes breastfeeding, and art that is considered educative that requires no guidance from an adult, 2) the same that does require supervision, 3) content without an educative end, but also without any semblance of eroticism.

57. See generally Soto, supra note 10, at 429-46.
58. RESORTE, art. 7.
59. Id.
60. Id.
61. Id.
62. Id. art. 6; see also Soto, supra note 10, at 430-35 (discussing the hour blocks and demonstrative table that details the classification system).
63. Id.
64. Id.
65. Id. art. 7.
66. Id.
67. Id.
and which does not include any explicit sexual acts, 4) dramatized sexual scenes without full-frontal nudity, without an educative purpose, and 5) content regarding real sexual acts with full-frontal nudity that may include violent imagery such as rape or any other denigration.  

Finally, violence is divided into five classifications as well: 1) content that is used for the prevention or elimination of violence that can be presented to children and adolescents without supervision, 2) explicit imagery of violence, though dramatized, 3) graphic content or descriptions that require adult supervision when shown to children so long as the content is not detailed or the consequences of the violence is shown to a detailed extent, 4) imagery that shows real violence or the consequences of violent acts that is not explicit or, on the other hand, dramatized violence and its consequences in an explicit way without details, and 5) graphic content that demonstrates real or dramatized violence or the consequences of violent actions in an explicit and detailed manner; physical, psychological, or verbal violence directed towards children, adolescents, or women; or sexual violence, violence as the central theme, presenting suicide or self-abuse.

Depending on the time block, messages containing certain language, health, sexual, or violent messages, whether or not for entertainment purposes, may not be shown. Another implication of these hour and content restrictions is that certain types of news may not be communicated to the public. For instance, if breaking news occurs regarding any violent crime or if news of ongoing protests or strikes is to be heard, because the content may "disturb the public order," the messages cannot be broadcast. Not only does the content have to adhere to the block times, but Article 7 further stipulates that during the supervised hours of broadcasting, at most only two hours can be allotted to soap operas and "at least 50 [percent] of this time has to be of Venezuelan production."

2. Government Control over Private Media

RESORTE provides a way for the Venezuelan government to use both public and private media to disseminate its messages, free of charge to the state and mandatory for the media companies. The government is not obligated to give any timely warning to the media companies; they have the obligation of sending the messages out at any time that is chosen by Chavez, making the media subservient to the state demands of length and time of publication. In January of 2010, Chavez used this provision to take control over Radio Caracas Television (RCTV), a private corpo-

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68. Id.
69. Id.
70. Id.
71. Id. art. 28.
72. Id.
73. Id. art. 7.
74. Id. art. 10.
75. Id.
ration, due to its unwillingness to comply with this law.\textsuperscript{76} The case went to the Venezuelan Supreme Court and although the tribunal held that there was an issue to be resolved through the judicial process, the media company could not renew its license and had to wait for the outcome in order to continue regular broadcasting.\textsuperscript{77}

3. Rights of the Citizenry

Article 12 covers the participation and organization of the citizenry with regards to RESORTE.\textsuperscript{78} According to this article, citizens have the right to assemble, in any lawful fashion, and to inquire as to the programming of each broadcasting company; further, they have the ability to complain, \textit{in advance}, for the future airings and if this happens, it then becomes the responsibility of the broadcasting company to comply. Citizens are also crucial in the "formation, execution, and evaluation"\textsuperscript{79} of the political messages that are disseminated through the airwaves.\textsuperscript{80} In short, this allows not only mere citizens to form coalitions, but also governmental entities to form organizations as concerned citizens that promote their viewpoints.

If a citizen wishes to form an organization, he must register with CONATEL and with the public registry.\textsuperscript{81} These organizations \textit{must} be non-profit, among other requirements that they must meet; CONATEL is obligated, by RESORTE, to facilitate these organizations in their attempts to register with the nation.\textsuperscript{82} Further, Article 12 creates a presumption of legitimacy for these organizations.\textsuperscript{83} For instance, when a group of people organize themselves and attempt to register as a "watchdog" under RESORTE, \textit{if within thirty business days} CONATEL does not give them the green light as a watchdog organization, it is presumed that they have been given organizational status.\textsuperscript{84} CONATEL also has the power to choose the procedures and the guidelines by which the organization registers. One of the more troubling clauses in this article is the fact that if a citizen organization chooses to file suit against a broadcast corporation, regardless of the outcome, the citizen organization need not pay court fees, as long as the reasons for filing suit were reasonable.\textsuperscript{85} This leads to the question as to how the court fees are paid: does the state pay for the court fees or the corporations? This may also lead to an abuse

\textsuperscript{78} RESORTE, art. 12.
\textsuperscript{79} \textit{Id.}
\textsuperscript{80} \textit{Id.}
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} \textit{Id.}
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.}
of the system, whereby citizen organizations can file suit against any media corporation, for any reasonable belief, such as the welfare of the public health or public order (RESORTE specifically states that it was created to protect the public order), and the judicial system would not hold them fiscally liable for any of the fees incurred. Although supporters of RESORTE may claim that these provisions incentivize the citizenry to be watchdogs, this article allows government-created organizations to use the system itself to prohibit anti-government views and to use the law to shut down broadcasting companies and suppress freedom of expression.

D. Programming Under RESORTE

Under Article 15, the Television Programming Commission, created by the government, will be responsible for establishing “the mechanisms and conditions of assigning the allotted spaces for independent productions.”“Democracy, pluralism, freedom of expression, and economic competition” are the goals of this commission and consist of one representative from the executive branch (who will preside over the entirety of the commission), one representative of the television stations, one representative of the independent producers of Venezuela, and finally one representative of the citizenry. Decisions over the space allotted to each type of program will be made by majority vote of these four people, and in cases of ties, the presiding representative will have a double vote. In effect, this commission can be one-sided because it is comprised of the government representative, the representative of the citizen-organization (who has enumerated powers given to him by the government), the independent producer that represents those who are given licenses by the government, thereby leaving the television broadcasting company representative as the only person opposite the scales of decision-making. Further, by giving the presiding representative a double vote in case of a tie, this provision fully defers to the government.

From these provisions, it is quite unclear where the government’s power ends and where the interests of the citizenry are being protected. RESORTE has the language of a law that seeks democracy and the advancement of human rights, but it is invariably nationalistic and paternalistic. Not only does RESORTE include guidelines that are so vague and hard to materialize that media outlets are better off practicing their own prior censorship than to face the penalties associated with breaking the law, but it also centers on the theme of nationalism. For instance, not only does television programming have to conform to particular rules regarding culture and nationalism, but during the unsupervised and super-

86. Id.
87. Id. art. 15.
88. Id.
89. Id.
90. Id.
vised hours of radio programming, four hours have to be independent productions (i.e. not private media corporations) and must also incorporate the youth either in the program itself or in its production.91 Priority is given to cultural, educational, or informative programming, both in radio and in television.92 When it comes to the music that is being broadcast, during the unsupervised and supervised hours, it has been determined that fifty percent of the programming must be Venezuelan, while the other fifty percent is international in nature.93 Of the fifty percent of Venezuelan music, half of that time must be used to promote Venezuelan folk or traditional music.94

RESORTE’s provisions create a nanny-state with regard to the media and this has now been extended to also include the Internet.95 The government is allowed to determine what is good for families and their children as well as the hours that the families will be subjected to the programming that the government has determined is in the best interest of the country as a whole. The paternalism could be tolerable if there was an opportunity for media outlets to express themselves or present grievances through the law, but RESORTE does not grant this ability. Since the implementation of RESORTE, the number of privately owned media corporations has drastically dwindled and has in effect rendered media accessible only to a minority of the population.96

III. ARGENTINA

Argentina’s history is also fraught with dictatorship and authoritarian regimes. The 2009 Audiovisual Communications Services Law (Audiovisual Law) in Argentina is not so focused on regulating the programming behavior of the broadcasting companies, nor is it interested in acting on behalf of the citizenry by explicitly enumerating the type of programming that is important to the social development and education of its youth.97 The Audiovisual Law does the exact opposite, to a certain extent, of what the Venezuelan law does: by allowing for more diversified ownership of the media, President Kirchner is increasing competition and decreasing the ability of particular groups, such as Grupo Clarín, to control the whole of the media.98

91. Id.
92. Id.
93. Id. art. 14.
94. Id.
95. Committee to Protect Journalists, supra note 55.
97. Compare Audiovisual Communication Services Law, art. 68 with Ley de Responsabilidad Social en Radio, Televisión, y Medios Electrónicos, art. 7.
A. Media Laws During Argentina’s Junta Military Dictatorship

Prior to the military coup d’etat that occurred in 1976, the Peronist government, under the belief that government ought to control the mass media, cancelled the licenses of various private television channels, confiscated production companies “in the [name of the] public interest,” and levied taxes on advertising that in effect decreased the earnings of the privatized media and increased the government’s control. Upon the death of President Perón in 1974, Argentina entered an era of lawlessness that the armed forces used in order to stage a military coup d’etat. Although the military stated its belief in freedom of the press and private media ownership to the citizens, it still demanded strict adherence to the notion of Argentine national security. This demand soon converted Argentina into a state of terror: the junta declared indefinite jail terms for any media outlet that released information on guerilla groups as well as a ten-year jail term for members of the media who transmitted information in opposition of the armed forces or made mention of the military’s flagrant disregard of human rights.

In addition to the junta strategy of threatening journalists into submission with prison terms, “[d]uring its reign, seventy-two journalists disappeared and were probably murdered. . . and many fled into exile.” It also maintained tight control over the television channels that had previously been taken over by President Perón. Although the junta had promised to return the television channels to private control, it failed to do so and opted instead to use them to gain “favorable news coverage and strict censorship control.” The Broadcasting Law of 1980 was also passed during the junta regime. The law “establish[ed] caps on station ownership. . . prevent[ed] newspaper-TV cross-ownership, prohibit[ed] the formation of TV broadcasting networks, ban[ned] foreign investment . . . and impose[d] numerous content regulations.” Further, licensing was the responsibility of the executive in cases of local broadcasting and in the hands of the Comité Federal de Radiodifusión (COMFER) in cases of complementary services, such as cable TV. It was not until the 1990s, almost seven years after the dictatorship’s defeat in the Malvinas Islands, that reform began to take hold on the media.

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100. Id.
101. Id.
102. Id. at 117.
103. Id.
104. Id.
105. Id.
107. Id.
108. Id. at 28.
109. Id.
110. Id. at 22; MURARO, supra note 99, at 120.
The law reforms took time partly because of the media owners' desires to be protected by the government and not have to compete in the international market, while simultaneously demanding that there be less government interference in their broadcasting and commercial affairs.111

B. THE WAVE OF REFORMS

Beginning in the late 1980s, Argentina began to see a new era where government began loosening its control over media outlets and Argentina itself went through the process of internationalization.112 With respect to deregulation, the Law of State Reform 23.696/89 had the most impact when it was passed in 1989.113 This law required that all state-controlled commercial TV stations become privatized and further eliminated ownership restrictions, such as that on cross-ownership of newspaper and television.114 In 1991, Presidential Decree 1771/91 lifted the ban on the creation of national networks as well as eliminated the cap on advertisement time per hour and the restriction on product placement during regular programming.115 Advertising regulations loosened again in 1993 when Resolution 1226/93 lifted the restrictions on foreign-produced ads.116 In 1994, the ban on foreign investments was lifted through an investment treaty with the United States.117 Because of the increase in foreign investments after the ban on ownership was lifted,118 the relief of the financial burden on Argentina allowed for more educational and cultural programming, something that the Argentine government could not afford when it financed the state-owned media.119

C. THE AUDIOVISUAL LAW OF 2009

Contrary to RESORTE, which is preoccupied with imposing social responsibility upon media outlets in order to protect the youth of the county,120 the Audiovisual Law states that it hopes to promote ethical behavior between media groups, either through the ideals of international journalism groups, journalistic code of conduct, or through the ethics outlined in the Argentine Constitution.121 More importantly, this law explicitly states that its purpose is not to control the programming of the media broadcasting company nor to limit or sanction freedom of expression, but to promote these ideals unlike its predecessor law, the Broad-
casting Law of 1980. Audiovisual communications are a crucial social activity that the state has an interest in protecting to the highest degree because it includes the freedom of expression. Unlike the Venezuelan law, the Argentine law does not have as one of its objectives the protection of the youth of the nation. This eliminates any need that lawmakers may have to regulate the type of programming or the times for certain programming as well as eliminates any paternalism that may seep into the congressional law-making powers of the nation. This is evidenced by the fact that the prior reforms of 1990 made it a priority to ban a significant amount of the regulatory language from the Broadcasting Law of 1980.

Article 3 demonstrates the Argentine conviction to freedom of speech by stating that by virtue of its objectives, it should be the services of audiovisual communication themselves that choose what to transmit and what not to transmit in accordance with the Argentine Constitution, the American Convention on Human Rights, the respect of others’ personal rights, and the democratic ideals. This is one of the major distinctions between the Venezuelan and Argentine law: while Venezuela attempts to label every single type of content that is available on the television, radio, and internet services in order to put them into specific categories and then to subsequently restrict the hours that they can be transmitted, Argentina leaves this determination up to the providers themselves and hopes that by increasing the number of media providers, more ideas will be presented to the masses through which debate can be conducted and ideas interchanged.

1. Argentina’s Stance on Monopolies

The Audiovisual Law holds economic opportunities and the diversification of investments as priorities. The law encourages the prevention of anti-competition and monopolies while the overall big picture is to make sure that a majority of the media is not dominated by only a few companies, as it has been in past years. In order to receive a license as a broadcasting company, specific criteria need to be met. The evaluation of a license application must look to: (1) always amplify or at least

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123. Audiovisual Law, supra note 8, art. 2.
124. Id. art. 3.
125. See generally Galperin, supra note 106, at 28–30.
126. Audiovisual Law, supra note 8, art. 3.
127. RESORTE, supra note 8, arts. 7–9.
128. Park, supra note 114, at 245; see generally Argentina Media Bill Passes, supra note 98.
129. See generally Argentina Media Bill Passes, supra note 98.
132. Audiovisual Law, supra note 8, art. 34.
maintain pluralism in the awarding of licenses, (2) guarantee freedom of expression and the free exchange of ideas and opinions within the specific audiovisual service, (3) the interests of the users and society in general, (4) accommodate all service providers, (5) contribute to the development of that specific industry, and (6) contribute to the development of social issues.\textsuperscript{133} The note to the article states that these criteria came about specifically after the Inter-American Commission on Human Rights recommended to both Guatemala and Paraguay the need to apply "democratic criteria in the distribution of radio and television licenses" and implement mechanisms that guarantee people equal opportunity to access television and radio licenses.\textsuperscript{134} This sentiment was echoed for the rest of the region.\textsuperscript{135} One of the more controversial provisions of the Audiovisual Law states that all media in the country shall be divided into three groups: (1) media outlets that are privately owned, (2) media outlets owned by the state, and (3) media outlets that are owned by citizen organizations or civil groups (independent groups).\textsuperscript{136} By mandating that all media outlets will be divided in this fashion, President Kirchner is attempting to break up the small monopolies and spread access to media ownership to all groups in an attempt for a more democratic Argentina.\textsuperscript{137}

2. The Feud between Grupo Clarín and President Kirchner

Though it seems that the Audiovisual Law is more agreeable to the ideals of democracy, one of the main critics of the law has been Grupo Clarín, which at the point of the passage of the law was one of the biggest media companies in Argentina.\textsuperscript{138} Grupo Clarín and President Kirchner have often butted heads during the president's term.\textsuperscript{139} The feud began in 2008 when Kirchner accused Grupo Clarín of biased and unfair coverage related to a tax scheme that she imposed on the farming population.\textsuperscript{140} In fact, the media juggernaut rose up in defense of the farming sector and thereby began the feud between it and the President that culminated in an eventual lawsuit.\textsuperscript{141} Last year, Kirchner ordered

\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{136} Id.; supra note 130.
\textsuperscript{137} See generally Id.
Fibertel, Grupo Clarín's internet service provider, to shut down, claiming
that Grupo Clarín was building an illegal monopoly.142 The judge in this
instance realized that Fibertel fed internet wires to over 1 million people
in the country and refused to apply the Audiovisual Law, not necessarily
because it was unconstitutional, as was argued by Fibertel, but because it
would cause the citizens to lose access to information.143

Because the feud between Grupo Clarín and President Kirchner exists,
many criticisms that arose from the implementation of the Audiovisual
Law allude to the idea that President Kirchner signed the bill into law in
an attempt to punish Grupo Clarín for its own criticisms of the Kirchner
administration.144 This is not the only instance in which Grupo Clarín has
been attacked by the administration.145 In September of 2009, soon after
Grupo Clarín's newspaper, Clarín,146 ran a story stating that the govern-
ment had illegally granted a farm subsidy, the Argentine tax authorities
were sent to the newspaper's offices in Buenos Aires in order to “ex-
amin[e] the company’s books"147 and to conduct an inspection similar to
that of other companies, though Grupo Clarín took it as a targeted raid
and tensions between the two parties have since escalated.148

In August of 2009, President Kirchner and her administration accused
the two leading newspapers in the country, Clarín and La Nacion, of
“conspiring with the former military regime to commit crimes against hu-
manity”149 by gaining control of Papel Prensa, a newspaper that had ties
with the international distribution market,150 and then “leveraging . . .
[the] ownership to drive other publications out of business.”151 This alle-
gation, in addition to adding fuel to the feud, also drove a wedge within
the press in the country.152 Since the allegations, President Kirchner has
also presented an official investigation entitled “Papel Prensa: The Truth”

142. Mac Margolis, The Read and the Black: Why are Latin American democracies sud-
html.
com/politica/Fallo-completo_CLAFL20100827_0003.pdf; Bill Farries, Argentina
Judge Freezes Order to Close Clarin's Fibertel Unit, Perfil Says, BLOOMBERG, Sept.
der-to-close-clarin-s-fibertel-unit-perfil-says.html.
144. Mariano Castillo, Critics Say Argentine Media Bill Targets Single Conglomerate,
media_1_grupo-clarin-eurasia-group-nestor-kirchner?_s=PM:WORLD.
145. See generally Lauría, supra note 138.
146. Tax Authorities Raid Argentina's Biggest Newspaper, REUTERS, Sept. 10, 2009,
20090910.
147. Id.; Committee to Protect Journalists, Attacks on the Press 2010: Argentina, Feb.
148. Id.
149. Committee to Protect Journalists, supra note 147.
151. Committee to Protect Journalists, supra note 147.
152. Id.
and has accused the former owners of having made the deal under duress. Soon after President Kirchner revealed this information, she called on the judiciary to evaluate the responsibility of the two conglomerates for their crimes against humanity, and in October, the administration even introduced legislation that would deem newspapers a “matter of public interest” in order to regulate them as well. Although this overview of the Audiovisual Law seems to be much more democratic than that of the Venezuelan law, there are pending dangers, especially when one considers the feud between the government and the mass media. It can be noted that the Audiovisual Law of Argentina does not conflate with the international instruments of law previously discussed.

With regards to the American Convention on Human Rights and the Inter-American Commission on Human Rights, the Audiovisual Law’s objective of promoting freedom of speech and eliminating monopolies complies completely. It also does not violate ICCPR, as ICCPR would allow for certain regulation, as discussed above.

IV. THE HUTCHINS COMMISSION

In the 1940s, the United States itself debated the role of media in its democracy. Because of the growing technologies of the time and the small number of entities that could provide media outlets to the people, the Hutchins Commission was brought together to explore the media’s role in a democratic society and to see whether mass media could indeed be self-regulated in order to not advance totalitarianism.

When an instrument of prime importance to all the people is available to a small minority of the people only, and when it is employed by that small minority in such a way as not to supply the people with the service they require, the freedom of the minority in the employment of that instrument is in danger.

In studying the role of media in a free society, the Hutchins Commission found that if a medium was unaccountable, then government could

153. Id.
154. Id. at 2.
155. Id.
156. See generally Castillo, supra note 144.
157. Audiovisual Law, supra note 8, art. 1.
158. Id. art. 34 (note to art. 34).
161. Victor Pickard, Whether the Giants Should Be Slain or Persuaded to Be Good, 27 CRITICAL STUDIES IN MEDIA COMM’C 391, 396 (2010).
163. Pickard, supra note 161, at 396.
164. Hutchins, supra note 162, at 1-2.
intervene and set regulations for it. But because of the international climate at the time, the majority of the commissioners chose to instead frame the issue as that of social responsibility that media outlets must undertake. The crucial finding of the Hutchins Commission was that in order to be effective in a free society, media outlets ought to be self-regulated and take one or more of the following roles: (1) provide a "truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning," (2) provide a venue for the exchange of ideas, (3) project a representative picture of the citizenry in the country, (4) clarify the values of the society, and (5) provide "full access to the day's intelligence." Although these roles seem self-evident to those who hold the First Amendment so highly, the report received much unwelcomed criticism because it imposed a certain amount of accountability on the U.S. press that had not previously been established. But the Hutchins Commission did provide the blueprint for a responsible media in a democratic society that balances First Amendment press rights with the rights of the public interest. The following paragraphs will explain the roles previously mentioned and apply them to the Venezuelan and Argentine laws respectively.

A. Truthful and Comprehensive Account

Because of the power that the media has in society, it is important that reporters and journalists alike not lie when it comes to presenting the news. This should not be confused with the fact that the journalists may divulge information that not everyone is content with being public. Using Venezuela as an example, it is clear that the media coup d'etat of 2002 depicted inaccurate information. In fact, the media's actions in 2002 would be egregious enough for prosecution had the coverage occurred within the jurisdiction of the United States. But the way that the Venezuelan law reads now absolutely prohibits any anti-government viewpoints and creates a scheme in which everyday news must conform to a specific time frame, no matter how urgent the information. Therefore, any dissent that is covered on the news cannot be shown. If there is violence in the news (i.e. news coverage of acts of violence that have been perpetrated upon the citizens of the state), the details on the events can-

165. Pickard, supra note 161, at 396.
166. Id. at 400.
167. Id. at 404.
169. Id. at 20-21, 28.
170. Pickard, supra note 161, at 405.
171. See id.
172. Hutchins, supra note 162, at 21.
173. See generally Golinger, supra note 26, at 8-11.
175. RESORTE, supra note 8, art. 1.
not be discussed in full. Further, if the news may cause chaos, media outlets are explicitly forbidden from detailing the information. Protests or strikes that occur on the streets of Venezuela would not be reported because the messages may cause public disorder. The Argentine law, because it attempts to diversify the number of media outlets available to the public, does not hinder the responsibility imposed on the press in being truthful and giving an account on the events of the day. It is important to note that the Audiovisual Law does have some similarities to the Venezuelan law in that Article 68 also illustrates the government’s desire to protect the youth of its country by imposing certain restrictions on what can and cannot be transmitted depending on the hour of the day. In fact, the notes to Article 68 explicitly look to Venezuelan law.

B. Venue for the Exchange of Comment and Criticism

According to the Hutchins Commission study, the press, as a carrier of public discussion, should assume the responsibility as such and should make it a point to print or disseminate messages that are contrary to its own. This is where the idea of objectivity arises, as it is only objectivity that will allow unpopular views to be heard across the country. By having a free press, the media is better able to print ideas belonging to the citizens who do not have sufficient resources to publish their thoughts or do not have the requisite access to news stations that others may have. Venezuela’s law does not allow for any citizen to form and disseminate their messages towards the masses. The only right that a citizen has under RESORTE is that he has the right to complain about the current and future programming on television and radio as well as the messages on the Internet. RESORTE explicitly states what messages can and what messages cannot be disseminated through the media. Prior to RESORTE, there was a broader freedom of expression because more media outlets were available, as evidenced by the fact that the media could be so blatantly anti-government prior to RESORTE. The implementation of RESORTE in Venezuelan society has reduced the number of privately owned media corporations, thereby making it even harder for the common citizen to publicize his views, opinions, or com-

176. Id. art. 7-9.
177. Id. art. 2.
178. Id. art 28.
179. Audiovisual Law, supra note 8, art. 21.
180. Id. art. 68.
181. Id.
183. Id.
184. Id. at 25.
185. RESTORE, supra note 8, at art. 8.
186. Id. at art. 7.
187. Id.
188. Gollinger, supra note 26, at 6-7.
Not only has the number of privately owned media corporations dwindled, but the restrictions in RESORTE have made it impossible for even corporations to express their ideas freely, much less a common citizen. The Audiovisual Law brings about a completely different result. Although Grupo Clarín has criticized President Kirchner's administration, the government is not attempting to stifle the media outlets by imposing regulations or guidelines as to the messages that can be transmitted. By putting a stop to a seeming monopoly, Argentina is attempting to bring about the forum that a free society should foster.

C. PROJECTING A REPRESENTATIVE PICTURE OF THE CITIZENRY

Though similar to the preceding requirements, this requirement demonstrates the importance of a varied amount of ideas so that each constituency has access to information that is relevant to it. "People make decisions in large part in terms of favorable or unfavorable images." For this very same reason, the media coup d'état in Venezuela was unethical and untruthful: the media in this instance was backed by opponents to the Chavez regime and because they had the stranglehold on the media, they were able to mobilize protests against him. Had the country had fair coverage of both supporters and opponents, the coup d'état could have ended with little to no casualties, but deaths did occur because the public was so mobilized and angered by the images with which it was presented. Certain aspects of the Venezuelan law do adhere to this requirement, such as the requirement for certain types of programming to be incorporated into a regular broadcast. But the rigidity of the rules and the stiff penalties associated with them have led to the media outlets themselves practicing prior censorship.

D. PRESENTING THE GOALS AND VALUES OF SOCIETY

The Hutchins Commission, in presenting the goals and values of society, sides very closely with the Venezuelan law. In fact, this is perhaps the only requirement to which RESORTE adheres. Article 1 states that the law was created in order to instill social responsibility on all forms of communication. Article 3 further states that the objective of the law is to "guarantee that all families and persons in general can count with the judicial mechanisms that permits for the adequate role of media and its responsibility" to society as well as the responsibility of the citizens to

189. Id. at 7.
190. See RESORTE, supra note 8, art. 7.
191. See Audiovisual Law, supra note 8, art. 3.
193. Id.
194. Golinger, supra note 26, at 8.
195. Id.
196. RESORTE, supra note 8, art. 3.
197. Id., art. 1.
198. Id. art. 3.
hold the media accountable for what they display.\textsuperscript{199} Clause 4 of Article 3 states that one of the main focuses of the law is to promote the welfare of the youth of Venezuela in that the information presented to them be of social interest that enhances their development, personality, mentality, and physicality.\textsuperscript{200} Clauses 5 and 7 discuss the promotion of national products and Venezuelan culture, and the regulations are all aimed at protecting the youth and the citizenry alike, as well as promoting nationalism.\textsuperscript{201} Similarly, the Argentine law focuses on the importance of fostering common societal goals in its citizens.\textsuperscript{202}

E. FULL ACCESS TO THE DAY’S INTELLIGENCE

Because there is a plethora of information available due to the advances made in technology, it is impossible to imagine a person capable of taking in all the information each day and using it. This is where the Internet becomes such a valuable tool. With information only a fingertip away, the requirement for freedom of ideas via the Internet is more crucial than ever and will continue to be even more important in the future.\textsuperscript{203} RESORTE, as it now applies to the Internet, is one of the most troubling signs of the impediment to freedom of expression in Latin America.\textsuperscript{204} In this respect, Argentina’s judicial system understands the implications to liberty if the Internet is taken away from its citizens.\textsuperscript{205} By not going through with President Kirchner’s order to freeze Fibertel, Argentina is truly championing freedom of expression to such an extent that the international community has taken notice and commended them.\textsuperscript{206}

VI. CONCLUSION

Since the passage of RESORTE in 2004, Chavez has eliminated all but one private media company, Globovisión.\textsuperscript{207} On the other hand, Argentina has yet to fully implement its law because of the fear that implement-

\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
\textsuperscript{202} Audiovisual Law, \textit{supra} note 8, art. 3.
\textsuperscript{203} \textit{Laura Stein, Speech Rights in America: The First Amendment, Democracy, and the Media} 138-39 (University of Chicago Press, 2006).
\textsuperscript{204} See RESORTE, \textit{supra} note 8, art. 1.
ing it will keep the Internet from the Argentine citizenry. There has been no shortage of criticism of these two laws, and the ways in which the international community has attempted to reach out to the governments are overwhelming. After analyzing both the Argentine and Venezuelan laws, it is evident that the more dangerous law to democracy and to freedom of speech is RESORTE, and that the Audiovisual Law, though having a hint of vengeance due to the feud between the media and the current administration, is the better proponent of freedom of speech and to the free exchange of ideas.

Forcing a country to adhere to principles that are found to be of great value in a different country is imprudent and ineffective, as every country’s government is the sovereign in its respective territory. But the Hutchison Commission does shed some light on the ways media can be used in a democratic society, especially with the new technologies that have become available since the 1940s and those that are on the horizon. This is especially important in Latin American countries that have undergone long periods of totalitarian regimes, such as Argentina.

A. Argentina’s Audiovisual Law

According to the Hutchins Commission, Argentina’s Audiovisual Law completes the functions of a working media for a free society. Monroe Price also states that there are four aspects where media law operates: “(1) newsgathering, (2) content-based regulation, (3) content-neutral regulation that has the potential to influence content indirectly; and (4) protection of journalists in their professional activity, including protection against physical attacks.” According to these factors, the Audiovisual Law has the ability to reform the media laws of the country because the decentralization of power allows for newsgathering (from different sources and viewpoints). The law also explicitly states that the media will be divided between the state, the private sector, and the non-profit or civil group sector.

The feud between the current administration and the media is of public interest. But, as it stands now, there is nothing indicative that the Audiovisual Law will bring anything but perhaps fiscal harm to the media con-

211. See generally Park, supra note 114, at 237.
212. See generally Hutchins, supra note 162, at 21-28.
213. Price, supra note 1, at 99.
214. Audiovisual Law, supra note 8, art. 21.
glomerates, specifically Grupo Clarín, or that the Audiovisual Law will be an impediment to freedom of speech to media as a whole. In fact, President Kirchner has implemented other changes that lead one to believe that she and her administration are truly concerned with freedom of speech and the advancement of democratic ideals within their borders. Besides the Audiovisual Law, President Kirchner also encouraged the decriminalization of defamation, a huge feat for a Latin American country. Within the past years, the Argentinean courts have also ruled that civil liability for defamation and for violations of one's image cannot be imposed on internet service providers. As it stands, Argentina is expanding freedom of speech rights to media outlets, and is even garnering the support of journalists and citizens alike.

B. VENEZUELA'S RESORTE

The Venezuelan law, taking into consideration the same factors of the Hutchins Commission, does not allow for a free society and in fact hinders democracy. Not only does it conflate with natural law, but it also contradicts the Venezuelan Constitution and though it may be argued that it is in accordance with certain international law, upon a closer inspection, it can be seen that even the international treaties allow for a broader freedom of expression. With the inclusion of the Internet into RESORTE, it will be much tougher for information to find its way into the country. In discussing exactly why RESORTE is such a danger to a free society, it is important to realize that the media has slowly been losing its freedom since Chavez came to power, beginning when the original RESORTE law was implemented in 2004 after the attempted coup, and again, now.

C. METHODS OF FREEING VENEZUELAN RESTRICTIONS ON FREEDOM OF EXPRESSION

Because of Chavez's rise to power and his history with the media, there is no doubt that attempting to bring about freedom of expression in Ven-
Venezuela will be an arduous and lengthy process. RESORTE has been amended to cover the Internet as a source of information, making authors who post on the Internet and the internet service providers themselves liable for non-compliance.\footnote{RESORTE, supra note 8, at art. 4.} In fact, the Internet with its ability to disseminate information is probably the most important tool that can be used to change Venezuelan law. The problem is that there is no way that the Internet will become available to the citizenry once it conforms to the guidelines and regulations of RESORTE.\footnote{See id.} The intentions of the Venezuelan government must also be questioned when it comes to the implementation of the Internet under RESORTE. According to inter-office memos, one of the provisions that was to be included, but was subsequently removed, was the ability to take \textit{immediate} action against any internet service providers if “illegal” content was found on a website.\footnote{Memo to the Vice President from the Director General (Oct. 27, 2010), \url{available at http://www.espaciopublico.org/index.php/biblioteca/doc_download/275-reforma-ley-resorte}.} Thus, proponents of this provision wanted a mechanism to bypass judicial review, thereby implicating due process rights.

The Venezuelan law has been challenged in the Supreme Court in the past, and although the justices have determined that their court is the proper venue for these lawsuits to be heard, no decisions have been made as to the constitutionality of RESORTE.\footnote{Soto, supra note 10, at 449-52.} Author Angel Luis Olivera Soto brings up an interesting point: because the Venezuelan courts have yet to determine the constitutionality of this law due to their deference to the National Assembly,\footnote{Id. at 452.} perhaps the best venue to bring suit would be in international court.\footnote{Id.} If a press member, such as a member of the Committee to Protect Journalists, were to bring suit for a violation of freedom of expression to the international court, not only would this bring more awareness to the problems arising in Venezuela and other partly-free countries similar to it, but it would also allow a non-biased tribunal to look over the law as it stands and determine whether or not it violates essential human rights.\footnote{Id. at 446.}

As it stands now, the Inter-American Commission on Human Rights and the Organization of American States’ Special Rapporteur for Freedom of Expression have expressed their concern about the possible dangers associated with RESORTE.\footnote{See generally Committee to Protect Journalists, supra note 55; Human Rights Watch, Venezuela: Repeal Measures Aimed at Critics: Censorship and Abuse of Power Are New Setbacks for Free Expression, July 31, 2009, \url{http://hrw.org/en/news/2009/07/31/venezuela-repeal-measures-aimed-critics}.} Human Rights Watch and the Committee to Protect Journalists have also been expressing their opposition to and worry over RESORTE.\footnote{Id. at 446.} It seems that the only way to per-
suade the Venezuelan government is to have pressure come from within the country itself or from external non-governmental organizations because the foreign policy risks associated with a foreign nation stepping in on behalf of the Venezuelan citizenry are too high. In addition to placing pressure on Chavez and his administration, such as Human Rights Watch and Committee for the Protection of Journalists have attempted, one would be remiss if he did not mention the effect of creating organizations with the purpose of traveling to Venezuela in order to teach locals about the free press that is available to foreign individuals in other countries.

The United Nations could also get involved and pressure Chavez to repeal at least the more restrictive provisions of RESORTE, but it does not seem that the United Nations would get involved until it had a reason; the possibility of future dangers would negate any justification for alienating such a powerful figure as Hugo Chavez. The most effective method of having this law repealed would be within the country, but as the international community has seen in previous years, revolution is a last-ditch effort and would not be advisable in this circumstance. For the time being, the most prudent action to take is to help fund organizations like the Human Rights Watch and the Committee to Protect Journalists as they are urging and pressuring the Venezuelan government to repeal RESORTE. The United States could also stand behind the decisions and the criticism made by the international commissions on RESORTE in order to show a solidified front for freedom of speech in the free world.

Author Angel Luis Olivera Soto comes to the conclusion that some of the restrictions laid out in RESORTE are justified because they are for the "protection of children and adolescents, national security concerns, public health, multiculturalism, and moral values," though the law itself ought to be reworked for certain excessive provisions, such as the prohibition of anonymous advertisements or propaganda. Although he offers an alternative to RESORTE, he still finds that a majority of the provisions are justified because of Venezuela's history and the current political climate. But even these goals are unjustified to implement RESORTE, especially with the addition of the Internet as an outlet that would be strongly restricted. Venezuela, if it ever decides to repeal the law, should look to the same balancing tests that countries like Argentina and the United States conduct. It appears that Venezuela is more concerned with the ownership and control of media than it is with the welfare of its public because fostering a paternalistic regulatory scheme is completely antithetical to democratic ideals. Because the media is set up to broadcast governmental viewpoints more than dissenting viewpoints, the Venezuelan government has no incentive to repeal or limit the extent of RESORTE, leaving the only solution in the hands of the Venezuelan people.

231. Soto, supra note 10, at 453.
232. See id.
233. Id.