

## **LAW, SOCIETY AND COMMUNICATIONS: ASSESSING THE AGENDA INITIATIVE OF DEMOCRATIC MEDIA IN BRAZIL**

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### **Abstract**

This article analyzes the dynamics of social movements for democratization of the media in contemporary Brazil, which culminated in the formulation of a proposed law that since the year 2012 has been seeking to collect the 1.4 million signatures it needs to be submitted to the parliament as an agenda initiative. We analyze the strengths and potentially controversial aspects of the proposed law according to two criteria: one determined by the existing normativity given by the Brazilian constitutional framework, and another brought by the comparison with normative aspects existing in the European Union. In summary, the proposed law can be characterized by significant innovations. However, conceptual inaccuracies and potential impacts difficult to be addressed, which could meet great resistance from hegemonic sectors, may hinder support for specific items, both in the phase of seeking support and in the legislative process.

### **Keywords**

Media regulation; broadcasting; agenda initiative; political participation

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### **INTRODUCTION**

The path to the strengthening of social movements for the democratization of communications in Brazil had, in December 2009, a crucial point with the completion of the National Conference of Communications, organized by the Ministry of Communications. Following the process ignited by that conference, the campaign “For freedom of expression”, launched in August 2012 and led by the National Forum for the Democratization of Communication, is still seeking to collect 1.4 million signatures to back the proposition of an agenda initiative to the House of Representatives on the regulation of the issue.

Two years after launch, the campaign coordination estimates that it was already possible to collect about 150,000 signatures, corresponding to slightly more than 10% of the expected total<sup>1</sup>. Once this pace continues, it will take nine years to achieve the goal, a length of time which may not be necessarily compatible with the increasing social demands on the subject.

This article contextualizes the formulation of the proposed law of democratic media and indicates its strengths and potentially controversial aspects in the light of two criteria: one determined by existing normativity according to the Brazilian constitutional framework, and another brought by the comparison with normative aspects existing in the European Union, seen here as a reference due to its significant progress in achieving

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<sup>1</sup> According to Bia Barbosa, communication secretary of the National Forum for the Democratization of Communication, in an interview on 28.10.2014.

social consensus for media regulation. The goal is to provide a balance between factors that can contribute to foster support for the initiative, and factors that can slow it down.

In summary, the proposed law can be characterized by well-timed, relevant innovations, considering the Brazilian constitutional settings and the existing recommendations in the European context. However, conceptual inaccuracies and potential impacts difficult to be addressed, which could face enormous resistance from hegemonic sectors, may hinder support for specific items, both in the phase of seeking support and in the legislative process, once the campaign succeeds and the proposal reaches the House as an agenda initiative.

The article is divided into three parts. The first provides the fundamentals of the theoretical background. The second looks into the six chapters of the proposed law in relation to the selected normative principles and indicates open questions. In the third, conclusions summarize the contributions to the advancement of knowledge on the proposals arising from the social mobilization around the democratization of communications in Brazil.

#### **RELEVANT THEORETICAL INPUTS**

The constitutionalization of public policies is typical of the Brazilian legal system. The Constitution “contains standards called ‘programmatic’ – that is, rules that provide for objectives to be achieved through public policies [...] and commands that explicit values to be pursued by the infra-constitutional legislator” (Coutinho, 2013, p. 190). When supporting the assignment of responsibilities, the division of competences and the articulation of legal relations within the public sector or outside it, the law establishes the institutional arrangement for public policies.

The Constitution (1988) determines rights covering freedom of expression, information, opinion, artistic creation, confidentiality of sources and the right of reply. Besides, it fixes the exclusive competence of the federation to legislate on broadcasting, in order to lay down the grounds of the institutional arrangement to media public policies. The framework is completed by the articles 220-224, which express demands and objectives to be achieved through the public policies of this field: freedom of thought, creation, expression and information; prohibition of censorship, monopolies and oligopolies; priority in the production and programming of radio and television for educational, artistic, cultural and informative ends, and for the promotion of national and regional culture.

But several issues included in the Constitution depend on regulation via infra-constitutional legislation, particularly in the field of communication, which requires attention to legal matters that include: 1. Public amusements and spectacles, which must be subjected to age rating and disclose information on its content, age groups not suited, and appropriate places and times of exhibition; 2. Mechanisms to enable people and families to protect themselves against programs contrary to ethical and social values, and advertising of products, practices and services harmful to health and the environment; 3. Advertising of tobacco, alcohol, pesticides, drugs and therapies; 4. Regionalization of

cultural, artistic and journalistic production; 5. Broadcasting media; 6. Share of foreign capital in the ownership of media companies; 7. Creation of the Media Council, an advisory section of the National Congress.

Three of these seven constitutional tenets were further regulated: the law 9.294/1996 restricts tobacco and alcohol advertising; the law 10.610 / 2002 allows foreign investment to take over up to 30% of the control of companies in the area; and the law 8.389/1991 created the Media Council. One of these three regulations has not generated the expected consequences yet, since the Media Council has not been showing an effective performance (Simis, 2010). Oligopolies and monopolies remain untouched, in the wake of a long way in which broadcasting licenses were a bargaining chip for gaining political support, as widely documented (Intervozes, 2008; Lima, 2011; Pieranti, 2006; Pieranti & Martins, 2008; Ramos & Santos, 2007). This goes on despite the abundant evidence of the positive impact of media regulation to strengthen democracy, coming from sources which include the United Nations via Unesco (Mendel & Salomon, 2011a, 2011b; Unesco, 2008).

Given the lack of regulation of communications, the existing apparatuses, institutions and strategies dedicated to the defence of human rights are eventually deployed in Brazil as a substitute solution by those sectors committed with the search of protection against media contents. That is what happened, for instance, in the case of the suspension of the programming of a TV broadcaster in 2005 and the consequent imposition by the Brazilian Public Prosecutor's Office of the screening of educational programs produced by social organizations, as a sanction for consistently broadcasting a program considered to be a violation of fundamental rights (Intervozes, 2007).

The first version of the National Program of Human Rights, of 1996, devised new perspectives for securing civil and political rights. The second version, of 2002, included economic, social and cultural rights. The third, of 2009, expands the scope towards the consolidation of political structures: despite being published in different governments, the plans can be taken "not only as government measures, but also as state policies" (Adorno, 2010, p. 9), which also confers them constitutionality, according to Piovesan (2010).

The third version of the National Program of Human Rights, in its Directive 22, V (Education and Culture in Human Rights), proposes the state's strategic objective to "promote respect for human rights in the media and accomplish the role of promoting the culture of human rights", by means of the "creation of a legal framework, in accordance with the article 221 of the Constitution, establishing respect for human rights in broadcasting services (radio and television) granted, allowed or authorized" in the form of the decree 7037 (2009).

The National Program of Human Rights adds to the fulfilment of a legal gap denounced by institutions such as political parties and unions in the terms of Direct Actions of Unconstitutionality by Omission, inciting the Brazilian Supreme Court to pronounce unconstitutional the omission of the National Congress in not legislating on the

matters related to the constitutional provision on the subject<sup>2</sup>. There remains a demand for a new law for communications in Brazil, in order to replace the obsolete Brazilian Telecommunications Code – Law 4.117/1962.

This landscape confirms the relevance of the proposal of creating a legal framework, as intended by the agenda initiative, which falls within the recent trajectory of social mobilization and political participation intensified by the National Communications Conference, held by the federal government in December 2009 in Brasília.

The conference was attended by 1.800 delegates, appointed through preparatory phases at state level, representing organizations of corporate sector (40% of total), civil society actors (40%) and the three levels of government – municipal, state and federal (20%) (Ministério das Comunicações, 2010). The sectors engaged in the democratization of communications expected their proposals to be incorporated into the policy-making process, which has not yet occurred (Dantas & Neiva, 2014).

The intensification of pressures to participation is also indicated by the increasing pace of foundation of communications councils at state levels, which have been gradually contributing to distinguish the area as a matter of public policy (Lima, 2013).

In this sense, the pressures to media democratization in Brazil have been inscribed in the trajectory of struggles fueled by social movements that gained momentum with the democratic stability and began to encompass a plurality of demands and express themselves through various identities, not always organized with the typical uniqueness of the movements of the 1980s and 1990s, but seeking to influence the political power (Gohn, 2014).

The sectors pressing for changes in media laws have been organized through social networks that operate as tools to propagate their views on the problems to be faced, performing a symbolic struggle for the dissemination of frames that challenges longstanding stereotypes in a country of recent redemocratization, in which the state censorship was exercised and freedom of businesses takes the place of freedom of the press (Carlos, 2011; Leal Filho, 2006; Nunes, 2013).

Moreover, it should be noted that the search for an environment that ensures the plurality of sources of information and opinion and fight concentration of media in the hands of few groups have been constantly on the agenda of Latin American countries with governments seeking media regulation.

In this context, the approval, in Argentina, of the Law of Audiovisual Communication Services (26.522, of October 10, 2009), known as *Ley de Medios*, is a significant example. The law establishes the regulation, supervision, promotion and diversification of informational and cultural activities, curbing monopolies and oligopolies as it fixes who can hold radio and television licenses and what are the limits to the number of licenses controlled by one single group, and the limits of media cross-ownership (Lima, 2014; Moraes, 2014).

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<sup>2</sup> The processing of claims filed by the National Confederation of Workers in Communications and Advertising and the Socialism and Freedom Party (PSOL) can be found at <http://www.stf.jus.br/portal/processo/verProcessoAndamento.asp?incidente=4003096>.

The constitutionality of articles 41, 45, 48 and 161 of the *Ley de Medios* was called into question in court by the companies most severely affected by legal changes. These articles provide, respectively, on: transfer of licenses; cross-ownership of licenses; inability to explore the “regime of media cross-ownership” and the requirement of compliance with the law by those groups already holding licenses. On October 29, 2013, the Argentine Supreme Court declared the constitutionality of all contested articles (Lima, 2014).

In addition to the *Ley de Medios*, other forms should be considered as instruments to counteract the concentration of media ownership that have been taking place in the last 15 years, such as the Organic Law of Communication of Ecuador, of June 2013, the Organic Law of Telecommunications of Venezuela, adopted in March 2000, the Law of General Telecommunications, Information and Communication Technologies of Bolivia, of August 10, 2011, and the Law of Community Broadcasting and Audiovisual Services adopted in December 2013 in Uruguay. This list should go on with other examples, but this would go beyond the purpose of this article.

#### CHARACTERIZATION AND ANALYSIS OF THE DRAFT BILL

The campaign “For freedom of expression” is presented on its official website as an “initiative of hundreds of organizations of civil society which believe that a new general law of communications is needed” (FNDC, 2012). The campaign initiative started with the FNDC (Brazilian acronym for National Forum for the Democratization of Communication), founded in 1991 as a social movement and institutionalized in 1995 (FNDC, 2014th). On the web page [www.paraexpressaraliberdade.org.br](http://www.paraexpressaraliberdade.org.br), there is information on how to contribute to it. In October 2014, there were 25 points of collection of signatures for the draft bill in six states and the Federal District, usually union headquarters, but also TVs and community associations, book shops and bars. On the web page, a “collection kit” is available, so any volunteer can seek membership in public or private spaces (FNDC, 2014b).

According to the article 61 of the Brazilian Federal Constitution:

The initiative of the people may be exercised by means of the presentation to the Chamber of Deputies of a bill of law subscribed by at least one percent of the national electorate, distributed throughout at least five states, with not less than three-tenths of one percent of the voters in each of them. (Brazil, 2010)

In August 2014, the number of voters in the country was 142,822,046, which requires the collection of 1.42 million signatures for a proposal to join the Chamber of Deputies through this device, once the other requirements of territorial proportionality are fulfilled (TSE, 2014).

The agenda initiative aims to regulate the articles 5, 21, 22, 220-224 of the Constitution, and is divided into six chapters, namely: 1. Definitions on the object of the law; 2. Principles and objectives of the electronic media; 3. Organization of services and

establishment of licensing criteria; 4. Mechanisms to prevent media concentration; 5. Mechanisms to foster diversity; 6. Definition of regulatory bodies and the foundation of the National Council of Communication Policies.

The draft bill can be taken as an attempt to unify the legislation related to the media. The goal of regulating the communication by the object, regardless of the medium, can be noted. This conclusion comes from the reading and interpretation of article 2, paragraph 1, chapter 1, which defines electronic media as all “telecommunications or broadcasting activity to enable the delivery of audiovisual or radio programming in any platform” (FNDC, 2014b), with no distinction in relation to the means of transmission.

This innovation is relevant because it abolishes the multifariousness of laws on the subject in the Brazilian legal system, a problem pointed out by the literature, which would be a result from the “separation (...) between the telecommunications law and the right of broadcasting”, according to Sundfeld (2004, pp. 115-116). Constitutional requirements, the Ministry of Communications, the National Congress and the 1962 Brazilian Telecommunications Code overlap in a landscape to which Anatel – National Telecommunications Agency added later the technical management of spectrum and stations. “There are (...) institutional autonomy and normative regulation of broadcasting in relation to telecommunications: laws and different market structures, incompatible legal concepts, distinct regulatory authority etc.”, according to Sundfeld (2004, pp. 115-116), what makes up a regulatory environment incompatible with convergence and digitization services.

The need of regulating the activity of the media through regulating its content is justified by the fact that, as indicated by Cordeiro (2004, p. 12), “in traditional broadcasting, operated by cable, satellite or the Internet (...), we are, in all of them, facing modalities of a same materiality, with merely quantitative variations”.

Within the European Union, the regulation assumes the same understanding, according to the Directive 2010/13. In order to “avoid distortions of competition, improve legal certainty (...) and facilitate the emergence of a single information area”, it becomes necessary to deploy a “at least a basic tier of coordinated rules” to all audiovisual media services, both “television broadcasting (...) and on-demand audiovisual media services (...)” (Directive 2010/13, p. 95/2), that is, what in Brazil is considered a specialized service on demand, whether marketed by broadcasting, cable or internet, according to the paragraphs 11 and 27 of the Directive.

Chapter 2 innovates when defines, via infra-constitutional law, the concepts related to the complementarity of broadcasting between private, public and state system. The lack of regulation and consequent legal blurring of these concepts can lead to legal uncertainty. The draft bill, once approved, might supply this legal gap.

According to the draft bill, the tripartite system would be defined as follows: the public system encompasses stations of public or associative community character, managed in a participatory fashion, starting with the possibility of citizens playing a role in their governing structures, and subjected to democratic management rules, provided that its primary purpose is not to broadcast sessions of the Executive, Legislative and Judiciary branches. The private system corresponds to stations owned by private entities in

which the institutional and management structures are restricted, whether these entities are for-profit or non-profit. The state system encompasses broadcasters whose primary purpose is to transmit sessions of the Executive, Legislative and Judiciary branches and departments controlled by public institutions subordinated to the power of the state in the three levels of the Federation (municipal, state and federal), which do not meet the management requirements defined by the public system.

The idea of adopting the tripartite system to radio and TV licenses was conceived during the constitutional process (1987-1988). The report of the Thematic Commission on Family, Education, Culture, Sports, Science and Technology and Communication already held that the state control of private activities, which ruled Brazil in the authoritarian period, should be overcome, since “the country intended to make a rapid capitalist development, and it did, however, against his people, at the expense of its people”. In that trajectory, “an almost exclusive destination of the media to capitalist institutions” would have emerged, with “about 95% of licenses in the hands of capitalists and approximate 5% in the hands of the state”, and so the committee rapporteur protested: “well, a democracy has not only capital and state, but also social institutions” (SEEP, 2008, p. 178).

Furthermore, Chapter 2 is consistent with current regulations in the European Union. “Audiovisual media services are as much cultural services as they are economic services”, according to paragraphs 5 and 8 of Directive 2010/13, which places “their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and media pluralism” (Directive 2010/13, p. 95/1) to justify the deployment of specific rules to these services; it is essential to avoid circumstances “which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom (...)” (Directive 2010/13, p. 95/2). It should be noted that such circumstances include the predominance of broadcasting operation by a single system, whether state, public or commercial. That is, the adoption of appropriate regulation is essential to prevent economic power from becoming the dominant force, which would risk democracy itself.

Chapter 3 innovates when assigning the regulatory body Anatel the role of granting and managing licenses, besides supervising bids for licenses of spectrum frequencies to network operators, and assigning Ancine (National Agency of Film) the role of organizing and conducting the bidding process for programs licensing to broadcasters.

It should be noted that regulatory agencies emerge in the mid-1990s, with “the expansion of liberal thinking over the market, and as a consequence of reducing the role of the state as an executive operator of public services”. They aim to “separate from politics the task of deciding and regulate” certain economic sectors (Aguillar, 2006, p. 205).

Constitutional Amendments 8 and 9, respectively of August 15 and November 9, 1995, and legislative innovations such as the law 9472 of July 16, 1997, which created Anatel, aimed at unlocking the “rigidity of the bureaucratic model installed by the 1988 Constitution” (Pacheco, 2006, p. 525). It was, therefore, a policy of transferring the operation of certain public services to the private sector, confining the state to the regulatory

function (Meirelles, 2010, p. 376). The change included as alleged goals depoliticizing decisions, ensuring greater management autonomy and “more efficient implementation of public policies and a better delivery of public services” (Sampaio, 2013, p. 142), besides protecting consumers of services involved in the operational scope of the regulatory agencies (Pacheco, 2006).

Assigning similar roles to two bodies of public administration does not seem reasonable, since it incurs in the current problem of dual powers exerted simultaneously by the Ministry of Communications and Anatel, according to Sundfeld (2004), cited above.

Moreover, removing the jurisdiction of the Ministry of Communications over licensing could be taken as not beneficial, since granting and revoking broadcasting licenses require “a political and discretionary decision, involving the Chief Executive and the National Congress” (Sundfeld, 2004, p. 116). Transferring these activities to Anatel, the regulatory agency created precisely with the intention of depoliticizing the management of licensing policies, could reinforce the influence of private sector over the process, which could increase market concentration.

Chapter 4 of the draft bill creates mechanisms to prevent media concentration. Despite the existence of a constitutional rule that prohibits the monopoly or oligopoly of the media (article 220, 5), the market regulation in Brazil through ordinary legislation is very weak, with no legal limits of media ownership (Lima, 2012; Sankiewicz, 2011).

The only infra constitutional regulation targeting the issue is the article 12 of the decree-law 236 (1967), which imposes a maximum of “10 radio and television broadcasters stations nationwide, with no more than 5 VHF and 2 per state” in the hands of a single holder.

The intent to consolidate the few existing rules under the Brazilian law can be noted in the draft bill, such as the article 12 of the decree-Law 236/67, and to create other rules to preclude concentration in the communications sector, such as the prohibition of granting broadcasting licenses to daily newspaper publishers, a rule also provided for by the article 2, I, of the draft bill 6.667/ 09, proposed by congressman Ivan Valente.

These and other rules contained in the draft bill will shape the actions of the regulatory bodies, as will be the case of Anatel and Ancine, as mentioned above, and the Administrative Council for Economic Defense, federal agency responsible for overseeing free competition in the markets.

Chapter 5 aims at regulating article 221 of the Brazilian Federal Constitution, thus making effective, at least in legal terms, the constitutional text, and following the goals of the National Program of Human Rights.

In this chapter, two important legal innovations are included: the right to broadcast and the infra constitutional regulation of the right of reply, including in this case the right of collective or general response.

The Constitution provides for the right of reply in the article 5, V; yet there has not been regulation of the matter by infra constitutional law since 2009, when the Supreme Court sustained the Claims of Non-compliance of a Fundamental Precept (ADPF 130), proposed by the Democratic Labor Party (PDT), which argued that the law 5.250 of 1967,



known as the Press Law, regulating the right of reply, would be in breach of the Constitution. The Supreme Court decision created a legal loophole<sup>3</sup>.

The provision of broadcasting rights also exists in the article 17 of the Constitution, which nevertheless is limited to political parties. The draft bill extends this right to social groups, which could sustain the diversity of expression in broadcasting, and is in line with the recommendations adopted at international level:

(...) any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. (Directive 2010/13, p. 95/2)

Still according to the article 28 of Directive 2010/13, the “member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions” (Directive, 2010/13, pp. 95/2).

Chapter 6 of the draft bill provides for the establishment of the National Council of Communication Policies and the possibility of states and municipalities creating “agencies to assist the implementation of principles and objectives of the electronic media” (article 32, FNDC, 2014b). This article is in line with the international context of regulation, which recognizes the need for the public to determine clear rules for broadcasting operations. In this regard, the European Commission states, in the Directive 2010/13, paragraph 14, the commitment with the creation and maintenance of a “consistent internal market framework for information society services and media services by modernising the legal framework for audiovisual services” (Directive, 2010/13, p. 95/2).

One of the duties of the federal regulator proposed by the Brazilian draft bill shall be to “monitor and evaluate the implementation of public policies and regulation of the media sector, in order to protect and promote the principles and objectives of the electronic media” (FNDC, 2014b). One aspect remains open: what are the criteria to be adopted for the monitoring and evaluation expected to be carried out, an absence that can generate resistance to the advancement of the project. If such criteria were to be defined after the board installation, the creation of a context of restricted scope for broadcasters could be expected, since they would have only four out of 28 members of the body, according to the article 29. The possibility of conflicts arising from the proposal of creation of a new federal regulatory agency should be pointed out too, since the Constitution designates the existing Media Council as a body assisting the National Congress in the task.

Finally, we point to four aspects not adequately covered or not addressed by the draft bill, namely: a) media education; b) self-regulation; c) product placement; d) advertising regulation.

a) Media education. The article 26 of the draft bill assigns to broadcasting the “adoption of policies to support reading and practices of critical analysis of media” (FNDC, 2014b). Apparently, this is a limited mention to media education practices, which does

<sup>3</sup> On November 11, 2015, the law 13.188 was enacted, providing for the right of reply. However, at the time of writing that law was being questioned by actions claiming its unconstitutionality filed in the Supreme Court (ADI 5415 e 5436, which can be accessed at <http://www.stf.jus.br/portal/peticaoInicial/pesquisarPeticaoInicial.asp>).

not specify the boundaries of the sort of critical analysis which would be required as a parameter for educational actions in contexts of formal and non-formal education.

In contrast, the Directive 2010/13 is explicit about the purpose of media education in the European context. “‘Media literacy’ refers to skills, knowledge and understanding that allow consumers to use media effectively and safely”, according to the paragraph 47 (Directive 2010/13, p. 95/6). “Media-literate people are able to exercise informed choices, understand the nature of content and services and take advantage of the full range of opportunities offered by new communications technologies” (Directive 2010/13, p. 95/6). Although this is, in a way, still polysemic, a satisfactory approach on the subject can be noted, which could be adopted in Brazil.

b) Self-Regulation. The draft bill waives the possibility of laying down an obligation to the media to implement mechanisms of self-regulation, which have been taken as measures capable of anticipating and preventing a significant part of the conflicts arising from ethical violations, bringing efficiency to the system as a whole and providing economy of resources to the regulator, which therefore could concentrate on cases in which self-regulation would prove fault or missing (Puppis, 2008).

Self-regulation does not replace the regulatory action exerted by public authorities, but it adds to it, as it occurs in the European Union, where Directive 2010/13 underlines the role of Member States, which should, “in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislative and judicial and/or administrative mechanisms in place”, according to the paragraph 44 (Directive 2010/13, p. 95/5).

Complementarity should be set in law by European countries, according to the policy, generating what is called by co-regulation: “co-regulation gives, in its minimal form, a legal link between self-regulation and the national legislator” and “should allow for the possibility of State intervention in the event of its objectives not being met”, according to the paragraph 42 (Directive 2010/13, p. 95/5).

c) Product placement. This is another aspect of paramount relevance which is ignored by the draft bill of democratic media. While it is quite common in Brazil – under the label of merchandising – to watch on TV the kind of advertising which is called product placement in the United Kingdom and the United States, where commercial brands of products such as beverages, food and clothing are stealthily shown in soap operas, for example, in other parts of the world the picture is different. The European Union states that member countries should not allow it. “Product placement should, in principle, be prohibited”, although exceptions are possible that allow the broadcasting of programs produced outside Europe, according to the paragraph 92 (Directive, 2010/13, p. 95/10). Yet the “sponsorship and product placement should be prohibited where they influence the content of programmes in such a way as to affect the responsibility and the editorial independence of the media service provider”, according to the paragraph 93 (Directive, 2010/13, p. 95/10). The principle of separation should be respected in this case (paragraph 81), based on the assumption that the public cannot be misled in distinguishing between a fictional plot and the reality of the commercial appeal of advertising.

And, following a strong regulatory move, “this is the case with regard to thematic placement”, according to the paragraph 93 (Directive, 2010/13, p. 95/10). That is, the so-called social merchandising in Brazil, where broadcasters claim the right to include veiled political messages in the plots of soap operas, should be banned by European countries, on the grounds that both products and ideas must be recognised as such and treated properly: products are subject to the limits of advertising regulation and self-regulation, and ideas must be explicitly handled in accordance with the principles of impartiality and journalistic accuracy.

d) Advertising regulation. In Brazil, the advertising self-regulation of drinks with low alcohol content (up to 13 degrees Gay-Lussac, according to the law 9294/96) is the norm in place, whereas in the European Union the Directive 2010/13 states that member countries should adopt measures to restrict advertising. “Television advertising (...) shall not link the consumption of alcohol to enhanced physical performance or to driving”, according to the article 22, “shall not create the impression that the consumption of alcohol contributes towards social or sexual success” and “shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts” (Directive, 2010/13, p. 95/19).

Children’s advertising is also covered by the Directive 2010/13, which in the article 9 considers “inappropriate” the “audiovisual commercial communications accompanying or included in children’s programmes (...) containing nutrients and substances (...), excessive intakes of which in the overall diet are not recommended” (Directive, 2010/13, p. 95/16).

In Brazil, in the absence of specific laws on the subject, the Conanda (Brazilian acronym for National Council for the Rights of Children and Adolescents) published in March 2014 the Resolution 163, according to which “it is considered abusive, under the national policy of children and adolescents social care, the practice of advertising and marketing communication targeting children, with the intention to persuade them to the consumption of any product or service” (Conanda, 2014), using typical gimmicks of the children’s realm, such as music, language, props, cartoon characters etc. The reaction against the Resolution 163 came in the form of an official note signed by the Brazilian association of advertisers, advertising agencies, broadcasters, newspaper and magazines publishers, which claims that the National Congress is the only legitimate forum to legislate on the matter (ANER, 2014).

Facing this impasse, the draft bill of democratic media could have an important regulatory role to play. Yet its formulation by the National Forum for the Democratization of Communication took place prior to the developments led by Conanda. This indicates how the rapid flow of events may contribute to relativize the importance of a project that depends on the collection of 1.4 million signatures to be accepted in the legislative agenda.

## CONCLUSIONS

This article examined one of the achievements of the dynamic organization of social movements in defense of the democratization of communications in contemporary Brazil, which is the campaign “For freedom of expression”, launched in August 2012 with the goal of obtaining 1.4 million signatures to back an agenda initiative to the House of Representatives proposing specific forms of regulation.

The normative principles underpinning the 1988 Brazilian Federal Constitution and the international framework brought by the Directive 2010/13, which regulates the matter in the European Union, were taken as parameters for the assessment of the draft bill.

The results of this assessment of the draft bill suggest that the proposed innovations are well-timed and could foster necessary changes in the Brazilian legal frame, taking into account national and international regulatory frameworks.

Nevertheless, conceptual inaccuracies, articles capable of generating profound changes in the balance between political forces in the Brazilian market of communications and further events developed after the preparation of the text can contribute to generate resistance to the advancement of the project, which maybe for this reason still goes slowly in seeking endorsement from the Brazilian society.

These shortcomings could be addressed in deliberative arenas of Congress, once the phase of signature collection is completed, regardless of how long it takes. The draft bill can be considered to be successful in bringing the issue to public scrutiny and mobilize various sectors, which is, to social movements in a country where the tradition of political engagement is still in construction, a step of such a relevance that cannot be ignored. //

## BIBLIOGRAPHIC REFERENCES

- Adorno, S. (2010). História e desventura: o III Programa Nacional de Direitos Humanos. *Novos Estudos*, 86, 5-20.
- Aguillar, F. H. (2006). *Direito econômico: do direito nacional ao direito supranacional*. São Paulo: Atlas.
- Carlos, E. (2011). Contribuições da análise de redes sociais às teorias de movimentos sociais. *Revista de Sociologia e Política*, 19(39), 153-166.
- Cordeiro, P. J. F. (2004). *Direito de autor e radiodifusão: um estudo sobre o direito de radiodifusão desde os primórdios até à tecnologia digital*. Coimbra: Almedina.
- Coutinho, D. R. (2013). O direito nas políticas públicas. In E. Marques; C. A. P. de Faria (Ed.), *A política pública como campo multidisciplinar* (pp. 181-200). São Paulo: Unesp; Rio de Janeiro: Fiocruz.
- Dantas, M. & Neiva, A. (2014). Da Confecom ao PNBL: balanço e perspectivas do debate sobre Comunicações no Brasil. In M. Dantas (Ed.), *Avances en los procesos de democratización de la comunicación en America Latina* (pp. 167-190). Buenos Aires: CLACSO.
- Gohn, M. G. (2014). A sociedade brasileira em movimento: vozes das ruas e seus ecos políticos e sociais. *Caderno CRH*, 27(71), 431-441.
- Leal Filho, L. (2006). *TV sob controle: a resposta da sociedade ao poder da televisão*. São Paulo: Summus.

- Lima, V. A. (2011). *Regulação das comunicações: história, poder e direitos*. São Paulo: Paulus.
- Lima, V. A. (2012). *Política de comunicações: um balanço dos governos Lula [2003-2010]*. São Paulo: Publisher Brasil.
- Lima, V. A. (2013). *Conselhos de comunicação social: a interdição de um instrumento da democracia participativa*. Brasília: FNDC.
- Lima, V. A. (2014). *Para garantir o direito à comunicação: a Lei Argentina, o Relatório Leveson (Inglaterra) e o HLG da União Europeia*. São Paulo: Fundação Perseu Abramo.
- Meirelles, H. L. (2010). *Direito administrativo brasileiro*. São Paulo: Malheiros.
- Mendel, T. & Salomon, E. (2011a). O ambiente regulatório para a radiodifusão: uma pesquisa de melhores práticas para os atores-chave brasileiros. *Série Debates CI Unesco*, 7, 1-78. Retrieved from <http://unesdoc.unesco.org/images/0019/001916/191622por.pdf>.
- Mendel, T. & Salomon, E. (2011b). Liberdade de expressão e regulação da radiodifusão. *Série Debates CI Unesco*, 8, 1-19. Retrieved from <http://unesdoc.unesco.org/images/0019/001916/191623por.pdf>.
- Moraes, D. (2014). Batalhas pela diversidade: o que aprender com as experiências latino-americanas. In V. A. Lima, J. Guimarães & A. P. Amorim (Eds.), *Em defesa de uma opinião pública democrática: conceitos, entraves e desafios* (pp. 219-237). São Paulo: Paulus.
- Nunes, J. H. (2013). Interacionismo simbólico e movimentos sociais: enquadrando a intervenção. *Sociedade e Estado*, 28(2), 257-277.
- Pacheco, R. S. (2006). Regulação no Brasil: desenho das agências e forma de controle. *RAP. Revista Brasileira de Administração Pública*, 40(4), 523-543.
- Pieranti, O. P. (2006). Políticas para a mídia: dos militares ao governo Lula. *Lua Nova*, 68, 91-121.
- Pieranti, O. P. & Martins, P. E. M. (2008). Políticas públicas para as comunicações no Brasil: adequação tecnológica e liberdade de expressão. *RAP. Revista Brasileira de Administração Pública*, 42(2), 303-325.
- Piovesan, F. (2010). A constitucionalidade do PNDH-3. *Revista Direitos Humanos*, 5, 12-16.
- Puppis, M. (2008). National media regulation in the era of free trade: the role of global media governance. *European Journal of Communication*, 23(4), 405-424.
- Ramos, M. C. O. & Santos, S. (Eds.) (2007). *Políticas de comunicação: buscas teóricas e práticas*. São Paulo: Paulus.
- Sampaio, P. S. (2013). A independência real das agências reguladoras no Brasil. *Revista de Direito, Estado e Telecomunicações*, 5(1), 135-174.
- Sankiewicz, A. (2011). *Liberdade de expressão e pluralismo: perspectivas de regulação*. São Paulo: Saraiva.
- SEEP, Secretaria Especial de Editoração e Publicações. Secretaria de Anais. (2008). *Assembleia Nacional Constituinte – 20 anos: Atas da Comissão da Família, da Educação, Cultura e Esportes, da Ciência e Tecnologia e da Comunicação*. Brasília.
- Simis, A. (2010). Conselho de comunicação social: uma válvula para o diálogo ou para o silêncio? *Revista Brasileira de Ciências Sociais*, 25(72), 59-174.
- Sundfeld, C. A. (2004). A regulação das telecomunicações: papel atual e tendências futuras. In M. Figueiredo (Ed.), *Direito e Regulação* (pp. 111-122). São Paulo: Malheiros

**OTHER REFERENCES**

- ANER, Associação Nacional de Editores de Revistas et al. (2014). Nota pública: publicidade infantil. Retrieved from <http://aner.org.br/nota-publica-publicidade-infantil/>
- Brazil (2010). Constitution of the Federal Republic. Brasília, DF. Retrieved from [http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte\\_en\\_us/anexo/constituicao\\_ingles\\_3ed2010.pdf](http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf)
- Conanda, Conselho Nacional dos Direitos da Criança e do Adolescente (2014). Resolução 163, de 13 de março de 2014. Retrieved from <https://www.legisweb.com.br/legislacao/?id=268725>.
- Decreto-lei 236, de 28 de fevereiro de 1967, República Federativa do Brasil. Retrieved from [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/Dele236.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/Dele236.htm)
- Decreto 7.037, de 21 de dezembro de 2009, República Federativa do Brasil, que aprova o Programa Nacional de Direitos Humanos – PNDH-3. Retrieved from [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Decreto/D7037.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D7037.htm)
- Directive 2010/13/UE of the European Parliament and of The Council, of March 10, 2010. Retrieved from <http://www.gmcs.pt/ficheiros/pt/directiva-201013ue.pdf>
- FNDC, Fórum Nacional pela Democratização da Comunicação. (2012). Apresentação. Retrieved from <http://www.paraexpressarliberdade.org.br/index.php/quem-somos/apresentacao>.
- FNDC, Fórum Nacional pela Democratização da Comunicação. Quem somos. (2014a). Retrieved from <http://www.fndc.org.br/forum/quem-somos/>.
- FNDC, Fórum Nacional pela Democratização da Comunicação. Projeto de lei. (2014b). Retrieved from <http://www.paraexpressarliberdade.org.br/index.php/2013-04-30-15-58-11>.
- Intervozes, Coletivo Brasil de Comunicação Social. (2007). A sociedade ocupa a TV: o caso Direitos de Resposta e o controle público da mídia. São Paulo. Retrieved from <http://www.intervozes.org.br/arquivos/interlivo05asotvdr>.
- Intervozes, Coletivo Brasil de Comunicação Social. (2008). Dossiê Violações do direito à comunicação. Brasília, DF.
- Ministério das Comunicações. (2010). Caderno da 1ª Conferência Nacional de Comunicação. Secretaria de Comunicação Social da Presidência da República.
- TSE, Tribunal Superior Eleitoral. (2014). Estatísticas de eleitorado / Evolução do eleitorado. Retrieved from <http://www.tse.jus.br/eleitor/estatisticas-de-eleitorado/evolucao-do-eleitorado>.
- Unesco (2008). Media development indicators: a framework for assessing media development. Brasília. Retrieved from <http://unesdoc.unesco.org/images/0016/001631/163102e.pdf>

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