

In brief: media law and regulation in Brazil

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Media

Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

Broadcasting services in Brazil are regulated by Law No. 4,117/1962, the Telecommunications Code and Decree No. 52,795/1963, which approved the Broadcasting Services Regulation. Control of broadcasting services is incumbent upon the Ministry of Communications. The National Telecommunications Agency (Anatel) does not regulate these services but has authority concerning the technical aspects of the use of radio frequencies and compliance of equipment used in related activities.

Pay television services, in turn, are called conditioned access services (SeAC) and are deemed telecommunications services, thus being subject to the provisions of the General Telecommunications Law, in addition to those of Law No. 12,485/2011.

Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

The Federal Constitution sets forth that ownership of news and broadcasting companies might only be held by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, or legal entities organised under Brazilian laws, having headquarters in the country. Moreover, at least 70 per cent of the total capital and voting capital of such companies shall be directly or indirectly held by native Brazilians or individuals naturalised as Brazilian citizens for over 10 years, who shall manage the activities thereof and stipulate the programming content.

Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

The provision of broadcasting depends on a concession or permission agreement entered into with the Brazilian government, which has also to be approved by the National Congress. The respective licensing is subject to a bidding process carried out by the Ministry of Communications. The interested parties shall comply with the applicable requirements set forth by the invitation to bid, which includes requirements related to limited ownership. Fees to be paid depend on the bidding process results, and there is no timescale provided for by law for the conclusion thereof.

Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

Broadcasting of foreign-produced programmes is allowed, even with the Federal Constitution setting forth that the production and programming of radio and television broadcasters shall promote national and regional culture, artistic and journalistic production in addition to encouraging independent production.

Law No. 12,485/2011, which deals with SeAC, also allows the transmission of foreign programmes, but imposes that at least three hours and 30 minutes per week of the content transmitted at prime time in certain channels shall be of Brazilian content, half of which is to be produced by an independent Brazilian producer. However, such rules are not applicable to online media or mobile content.

Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Law No. 4,117/1962 provides that no more than 25 per cent of the total time of broadcasting stations' programming might be intended for commercial advertising. The commercial advertising of tobacco, alcoholic beverages, medications, therapies and agricultural chemicals is subject to restrictions according to Law No. 9,294/1996. Publicity is also controlled by a self-regulation code, and the National Publicity Self-Regulation Board (CONAR) is the private entity that settles complaints, claims and disputes related thereto, and that issues guidelines for specific practices, such as the Best Practice Guide for Online Advertising for Children.

Online advertising is subject to the provisions of the Consumer Defence Code, as well as to CONAR regulations on the matter.

Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

Law No. 12,485/2011 sets forth that SeAC providers must make available certain specific channels in all packages offered, such as a channel reserved for the Federal Supreme Court. There is no mechanism for financing the costs related to must-carry obligations, and providers shall bear the expenses related thereto. Notwithstanding, should technical or economic unfeasibility be proven, Anatel might determine that the provider is not subject to the distribution of such channels, whether in full or in part.

Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

There is no regulation concerning new media content and its delivery in Brazil. However, analyses concerning the potential regulation of more recent technologies, such as video on demand, are presently ongoing.

Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

Based on Decree No. 5,820/2006, the switchover from analogue to digital broadcasting began in 2007. More recently, as per Ordinance No. 2,524/2021, the Ministry of Communications instituted Programa Digitaliza Brasil, setting guidelines for the process of digitalisation of analogic television signals, expected to be concluded by 31 December 2023. The resulting freed radio frequencies are allocated to mobile networks.

Digital formats

Does regulation restrict how broadcasters can use their spectrum?

There are no specific provisions regulating how spectrum might be used by broadcasters. However, Anatel regulates the technical aspects related to the use of radio frequencies in Brazil, while the Ministry of Communications is responsible for controlling broadcasters.

Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There are no specific regulations concerning media plurality in Brazil. However, the promotion of cultural diversity and sources of information, production and programmes is one of the principles applicable to SeAC, according to Law No. 12,485/2011.

Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

Discussions on media and digital platform regulation, as well as on the duties and responsibilities of users generating a great amount of traffic in telecommunications networks are being held in Brazil by several interested parties, including public authorities such as Anatel. Bills regarding these subjects are also underway at the National Congress, but it is not possible to estimate whether these bills will, in fact, be approved, or when.

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