



AMERICAS MEDIA SERVICE

Monitors developments in audiovisual regulation
at national level in seven Americas countries

December 2016

SAMPLE

**MEDIA
AMERICAS**



ABOUT CULLEN INTERNATIONAL

Regulation made simple

Cullen International tracks, reports on and benchmarks competition law cases and regulation in four sectors – telecommunications, media, digital economy and postal - covering developments across Europe, the Americas, the Middle East and North Africa.

For almost thirty years, we have been providing comprehensive, neutral, unbiased, timely information that is trusted by industry and official institutions alike. We are widely recognised as the leading regulatory intelligence provider in the field.

Our services consist of a unique range of alerts, reports, benchmarks and enquiry services that are complemented by our training and consulting services. Our outstanding regulatory library contains over twenty-five years of source documents linked to expert analysis of events.

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Cullen International is privileged to serve over 180 key market players and public organisations - all with a serious strategic focus on competition law or regulation in the telecommunications, media, digital economy and postal sectors.

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Strategically situated in Brussels, we are the eyes and ears on the ground for our clients, maintaining essential close links with all EU institutions, national regulatory authorities and our solid network of national regulatory experts in over fifty countries.

Cullen International in the Americas

Cullen International expanded its portfolio of regulatory intelligence services to Latin America in 2010, and to the US and Canada in 2016. Our Americas services, cover regulatory developments in the telecommunications, media and digital economy sectors, providing essential, timely insight into the region's ever-changing communications regulatory landscape.

To learn more about our Americas regulatory intelligence and support services please contact:

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Cullen International

Americas Media Service

Sample December 2016



The service monitors developments in audiovisual regulation at national level in seven Americas countries (Argentina, Brazil, Canada, Chile, Colombia, Mexico and the USA), and provides overview and status information on regulatory and competition frameworks in those countries.

The service includes the following reports:

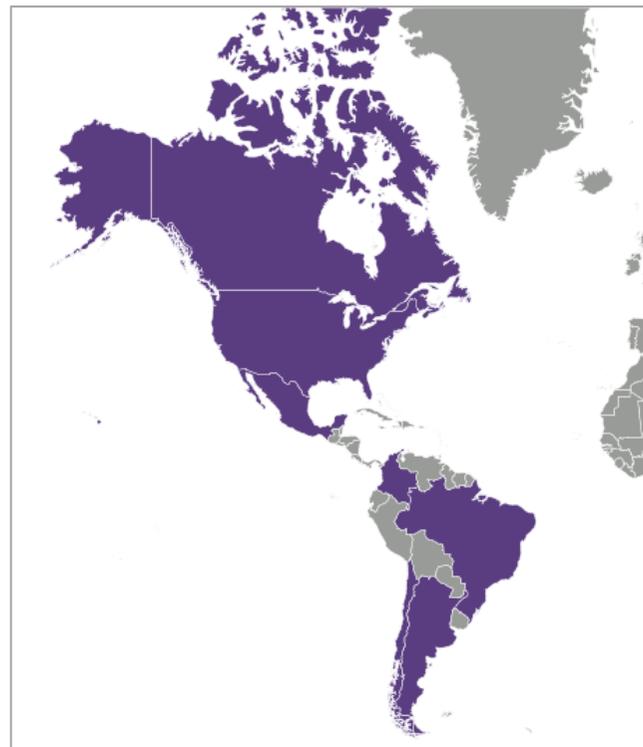
- **Cross Country Analysis:** Comparative tables benchmarking specific regulatory topics in Argentina, Brazil, Canada, Chile, Colombia, Mexico, and the USA. Updated three times per year.
- **Country Profiles:** Tabled summaries and status of regulatory and competition frameworks in the above seven countries. Updated twice per year.
- **Flash messages** – News alerts on recent key regulatory developments. Coverage: the above seven countries, plus, occasionally, other countries in the Americas. Issued shortly after the event has occurred.

Enquiry service - Customised research on specific regulatory questions at no additional cost.

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Cross-Country Analysis

Americas Media Cross-Country Analysis

Covering developments until November 30, 2016



NEW SERVICES

- Over the top (OTT) regulation

TRANSMISSION AND DISTRIBUTION

- Retransmission consent

Must-carry and Must-offer

- Must carry obligations
- Must offer obligations

DTT

- Digital terrestrial television
- Promoting analogue switch-off on terrestrial networks
- Interference between DTT and mobile broadband
- Digital dividend - Spectrum allocation

LICENSING AND AUTHORISATIONS

- TV licensing
- TV licensing fees

COMPETITION AND MEDIA PLURALISM

- Cross media ownership restrictions
- Foreign ownership restrictions
- Restrictions on the offering of triple-play offers
- Recent mergers and acquisitions
- Access and ownership of sports rights

COPYRIGHT

- Piracy - Pay TV subscribers under-reporting
- Television signal theft and decoder/smart card piracy

CONTENT REGULATION

- Broadcasting quotas
- Advertising time limits
- TV advertising restrictions to protect public health or minors
- Protection of pay TV service consumers
- Taxes imposed on audiovisual market players



The table shows if:

- broadcasters are restricted from owning/controlling a TV distribution network (cable, satellite, IPTV, terrestrial, MMDS)
- network operators are restricted from owning/controlling broadcasters
- broadcasters are restricted from owning/controlling other media (such as press, radio, internet).

Situation in Latin America

Brazil is the only country with rules limiting broadcasters from controlling pay TV distribution networks - open TV broadcasters cannot own more than 50% of a pay TV network.

In Argentina there are rules in place that prevent incumbent telecoms operators from controlling open TV broadcasters. In Brazil and Mexico telecoms operators could eventually offer TV services if they comply with related restrictions/limits.

No restrictions exist in the selected Latin American countries on the possibility for broadcasters to control other media such as press, publishing or radio companies.

This contrasts with Europe where countries such as France and Italy have rules to guard against one broadcaster gaining control of a substantial proportion of a sector which is closely linked to its own.

Situation in Canada and the US

In Canada, there are no rules on cross media ownership as such. The only restriction comes from the regulator which decided in 2008 to no longer approve ownership plans which would allow a single person to control different media (radio/TV channels newspaper) in a local market.

In the US, rules also exist which restrict the possibility for broadcasters to control different types of media (press, TV, radio) in local markets.

There is also a restriction which prevents any US market player (broadcaster, network operator) who already owns a broadcaster to acquire a second one, if the market is too concentrated, or if it leads this market player to own two of the largest broadcasters. The objective is not to prevent the creation of vertically integrated groups (i.e. broadcaster and network), but instead to ensure a plural broadcasting scene.

Restrictions to own/control a TV distribution network imposed on broadcasters
(Cullen International)



Restrictions to offer TV services imposed on network operators
(Cullen International)



	Are broadcasters restricted from owning/controlling a network operator?	Are network operators restricted from owning/controlling broadcasters?	Are broadcasters restricted from owning/controlling other media?
AR	<p>No</p> <p>The prohibition for open TV broadcasters to own a pay TV distribution network was eliminated in Dec. 2015 (Flash).</p>	<p>Yes</p> <ul style="list-style-type: none"> • Satellite pay TV operators cannot offer other broadcasting or telecommunications service (art. 45.1(a) of Law 26522/09, modified by Decree 267/15). • Telecommunications operators cannot provide satellite pay TV service (art. 9 of Law 27078). • Telefónica and Telecom Argentina (incumbent telecoms operators) and mobile network operators (MNOs: Claro, Movistar and Personal) cannot provide pay TV services using a physical or radio link (mostly cable TV) until Jan. 2018. This term can be extended by NRA until Jan. 2019 (Decree 267/15, Flash). <p>Before Dec.18, 2014 incumbent operators could not offer TV services, according to their licence conditions (Decree 62/90). The Argentina Digital Law adopted in Dec. 2014 allowed telecoms providers to offer TV services but not satellite TV (art. 9 of Law 27078). In Dec. 2015 the government issued Decree 267/15 that delays the possibility to offer pay TV services until Jan. 2018.</p>	<p>Yes</p> <p>Up to 15 open TV channels or radio broadcasters at national level, and 4 in the same local coverage area. (art. 45 of Law 26522/09, modified by Decree 267/15, Flash).</p>



Access and ownership of sports rights

Nov. 30, 2016 - Ana Carolina da Motta

The table shows:

- the sport with major audience in the country
- who assigns and who owns the transmission rights for such sport
- who holds the transmission rights for the next seasons of FIFA World Cup and International Olympic Games
- platforms for which the rights have been granted.

Access to football rights is unregulated in the selected countries in the Americas region.

Rights are individually negotiated by football clubs in Brazil and Mexico.

In Canada, Colombia, and the US, the respective sports' leagues represent the clubs in the negotiations with the media. In Chile, the federation assigns the transmission rights to a TV channel it mainly owns.

The situation is different in Argentina where it is the government (following an agreement with the football federation) which assigns the rights, through a state-owned broadcaster. There are no auctions or public tender procedures.

Access to FIFA World Cup rights are individually negotiated, either by the entity itself or by a third authorised representative. In Brazil, Canada and the United States, FIFA assigned the rights for the future season directly to a major communication group, and without an auction. In Argentina, Chile, Colombia and Mexico FIFA assigned the rights to a third party, Mountrigi Management Group Ltd., who entered into licence agreements with local companies. Mountrigi Management Group is owned by the Mexican group Televisa.

Access to International Olympic Games rights are individually negotiated. For the 2016 games in Rio de Janeiro, for Brazil the International Olympic Committee (IOC) granted the free TV transmission rights on a non-exclusive basis to three major broadcasters. For Latin America, IOC granted the rights to America Movil, who further sublicensed the rights in individual countries.

For the next games, the IOC has so far signed a non exclusive broadcast agreement with Globo for Brazil, and a US\$7.65bn agreement with NBCUniversal (Comcast group), both until 2032. Rights for Canada have been awarded until 2020 and across all broadcast platforms to CBC/Radio-Canada, Canada's national public radio and television broadcaster.

1. Access and ownership of sports rights

	Access and ownership of sports rights			
	Sport with major audience in the country	Who assigns the transmission rights?	Platforms for which the rights have been granted	Who holds the transmission rights? Any sublicenses?
MX	Football	Football clubs	Open TV Cable	Televisa TV Azteca Fox Sports Grupo Imagen (owner of a new open TV licence (Flash) whose operations started in October 2016). The most popular teams (Chivas de Guadalajara) terminated their contract with Televisa in 2016, and decided to start transmitting directly their games through the internet and a mobile app.

2. FIFA World Cup

	FIFA World Cup		
	Who owns the transmission rights in the country?	For which platforms?	Paid amount for FIFA World Cup Russia 2018
MX	Televisa TV Azteca	Televisa acquired rights for TV, radio, and internet, fixed and mobile TV Azteca for TV and radio	Information not available

3. International Olympic Games (IOC)

	International Olympic Games (IOC)		
	Who owns the transmission rights in the country?	For which platforms?	Paid amount for Olympic Games Tokyo 2020
MX	Transmission rights winner for 2020 not yet announced America Movil for the 2016 Olympics (Flash)	For 2016, all platforms. Since America Movil does not have an open TV Channel in Mexico, the games will be transmitted nationally through a network of public regional channels.	Information not available



Must offer obligations

Nov. 30, 2016 - Ana Carolina da Motta

The table reviews national must offer obligations, i.e. whether broadcasters have an obligation to offer their content to platform/network operators.

The table shows for each country:

- if must offer obligations exist and their legal source (i.e. legislation or media/competition authority)
- who is subject to a must offer obligation and the type of broadcasting activity pursued (i.e. public service, commercial free to air, pay TV)
- in favour of which platforms the obligation is imposed
- the key obligations
- if rules on remuneration exist, e.g. which would allow open TV operators/broadcasters to charge for their content to be carried under the must offer obligation.

Situation in Europe

A mixed situation exists in the EU where some member states have must offer obligations in place while others have not. Where they exist, obligations derive from a number of sources, including from legislation, media regulators' decisions or competition authorities' rulings. Obligations imposed in these countries are usually based on different grounds: the need to ensure access to premium content by competing platforms (e.g. pay TV), the need to ensure the widest availability of public service television to the public, the need to ensure the reception of free-to-air channels in areas not covered by DTT, and/or the need to mirror must carry obligations.

Situation in Latin America

The research shows that must offer obligations exist in Brazil, Colombia and Mexico but not in Argentina or as such in Chile. In Chile national free to air broadcasters are allowed to negotiate the retransmission of their programmes in a given area by pay TV operators, who would have no incentive to carry them otherwise. If a broadcaster negotiates its transmission on a pay TV platform, it must ensure that its programmes can be retransmitted by any other pay TV platform. In Colombia, the future of the rules is uncertain because of a complaint over must carry obligations lodged before the competition authority and yet undecided.

Must offer obligations cover free-to-air TV content in all countries, and content offered by public service providers in countries where public service broadcasting exists, i.e. Colombia and Brazil. There are no obligations covering pay TV content in any country.

Obligations are derived from laws in Brazil. In Mexico and Colombia, obligations come from legislation and the regulator's decision.

On financial compensation, only Colombia foresees that open TV channels can negotiate compensation in certain circumstances for the carriage of their content under the must offer obligation.

Situation in Canada and the US

In Canada, there are must offer obligations: the IPTV, cable and satellite distributors benefit from the local free-to-air TV channels of the commercial and public broadcasters. In the US, no must offer obligations apply.

Summary (Cullen International)

Are there must offer obligations?	
AR	No
BR	Yes
CA	Yes
CL	No
CO	Yes
MX	Yes
US	No

	Must offer obligations				
	Are there must offer obligations?	Who is subject to the obligation?	Who benefits from the obligation?	What are the key obligations?	Are there rules on financial compensation?
CA	Yes	Free-to-air local commercial and public broadcasters	IPTV, cable and satellite distributors (which do not pay for the carriage of channels' signal).	Local free to air channels must be carried on licensed distributors.	Not per se But distributors must ensure that American channels they carry broadcast the commercials of local Canadian channels when both the US and local Canadian channels are broadcasting the same show in the same time slot. This is a practice known as " <i>simultaneous substitution</i> " aimed to protect local broadcast programming rights. (CRTC 2015-25)



Retransmission consent

Nov. 30, 2016 - Ana Carolina da Motta

Retransmission consent refers to the obligation for (cable, satellite) platforms to obtain the authorisation of broadcasters before carrying their channels/programmes.

The table shows for each country:

- if a retransmission consent regime applies
- in favour of which type of TV channels the regime is applicable under which conditions (if any)
- if broadcasters are allowed by law to request a compensation (cash, kind); and
- if compensation is not prohibited, what is the commercial situation in practice.

Situation in Europe

At the EU level, the only relevant provision is contained in the must-carry rules of the Universal Service Directive, which states that where must-carry obligations exist, member states are free to impose remuneration but in a transparent and proportionate manner.

A debate has emerged in the UK (where must-offer rules prohibit the payment of retransmission fees to PSB channels) on whether a deregulated regime allowing FTA broadcasters to freely negotiate with pay TV platform operators conditions of carriage of channels could lead to an additional source of revenues and, in turn, to an increase in spending in original content

Situation in the US and Canada

The US was one of the first countries to introduce retransmission rights system. Every three years, over-the-air TV stations can choose between two sets of rules governing the carriage of their channels on pay TV platforms:

- must-carry, where the operator is obliged to carry the channels signals with no payment flow occurring between the parties, or
- retransmission consent, where the pay TV platforms can retransmit the signals only by mutual agreement.

If broadcasters choose the retransmission consent regime, the law does not oblige platforms to pay fees to the channels they carry. However, broadcasters can refuse to transmit their signal, unless they are compensated (in kind or in cash). When the compensation is in cash, it takes the name of 'retransmission fees', which are usually charged per household, and in addition to copyright fees paid by platforms to rightsholders (related to the content rather than the value of the signal).

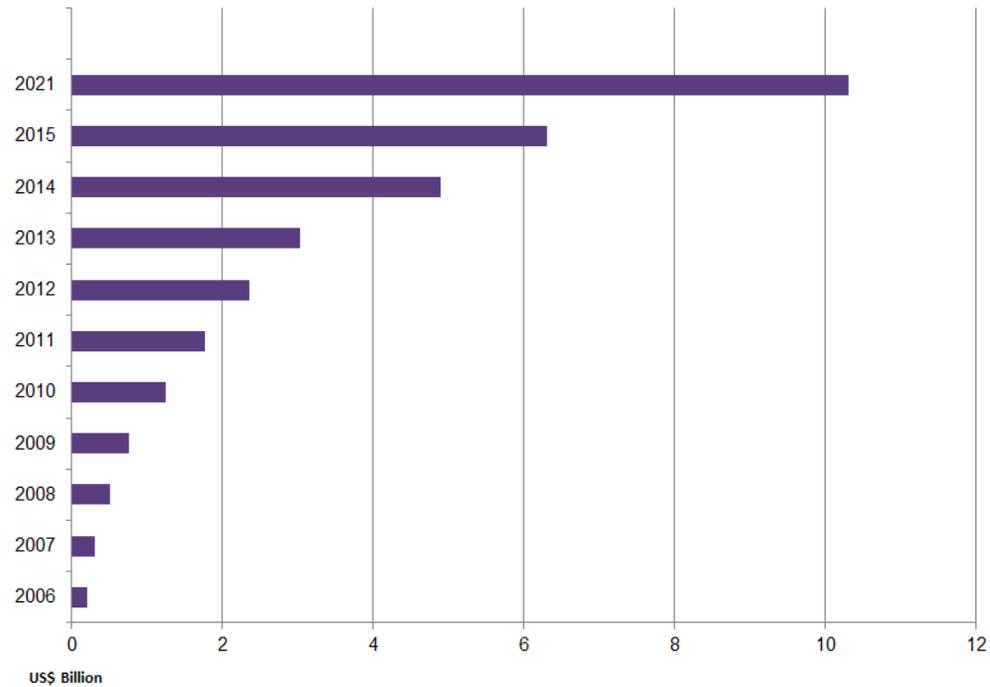
SNL Kagan has estimated (June, 2016) that retransmission fees collected by US broadcasters are now expected to reach US\$11.60bn by 2022, versus the projected level of US\$7.70bn this year, up 20% from US\$6.40bn in 2015. (see Figure).

However, disputes over rising fees have multiplied in the past few years (e.g. between CBS and Time Warner Cable in 2013 or Disney and Cablevision in 2010) leading to situations where some subscribers see their TV channels disappear ('blackouts') on cable networks when no deal is reached. The cable industry is calling on the FCC to reform the retransmission consent process.

In 2014, the FCC took steps in response to reform requests. The first step was the adoption of a rule affecting the negotiation process and aiming to prohibit 'separately owned top-four TV stations (i.e. four stations with the highest audience share in that market) in the same market from jointly negotiating retransmission consent agreements. The second step was a proposal to remove or modify the non-duplication/syndicated exclusivity rules but this proposal was dropped in 2015.

In Canada retransmission consent is applicable to broadcasting distribution and programming undertakings and prices are set commercially.

Total retransmission consent fees paid (and foreseen) to US broadcasters (SNL Kagan)



Situation in Latin America

In Latin America there are different approaches, the retransmission consent mechanism exists in Chile and Colombia in relation to the open TV channels present on the terrestrial network. In both countries, compensation is agreed between operators (commercial negotiation). However, in Colombia the broadcaster can choose one channel technology to be freely carried by pay TV providers (for example, HD signals).

In Brazil and in Mexico, the retransmission consent mechanism exists but only in some cases:

- for digital channels in Brazil (Flash)
- for cases not explicitly covered in IFT regulation in Mexico (for instance in relation to commercial channels other than those with more than 50% of national coverage).

In Argentina, only the must-carry rules apply (Table)

Countries in the Americas have different approaches towards retransmission consent regime (Cullen International)



	Retransmission consent regime applicable?	To the benefit of whom? Any conditions?	Compensation (in cash or kind) foreseen by law?	if compensation not prohibited, what is the commercial situation in practice?
US	Yes (Title 47, §76.64 of the Code of Federal regulations)	Any commercial broadcast TV station Every three years, commercial TV stations that are eligible for benefiting from must-carry obligations on cable and satellite platforms can choose the retransmission consent regime instead. On cable, the must-carry status is the default if they TV stations fail to make a choice by the deadline. (Table). (Title 47, §76.64(a) of the Code of Federal Regulations)	Yes And payment to a satellite or cable system pursuant to a retransmission consent agreement is expressly permitted. (Title 47 §76.60(c) and §76.66(l)(2) of the Code of Federal Regulations)	Commercial agreement between the parties. FCC set rules (including a set of standards) to determine whether negotiations are in good faith. (Title 47 §76.65 of the Code of Federal regulations) SNL Kagan has estimated that in 2015 retransmission fees collected by US broadcasters would amount to \$6.3bn (€5.7bn). Revenues from retransmission fees are expected to increase to \$10.3bn (€9.4bn) in 2021



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