

IV MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

1.1. On April 18, 2011, the RBA Council announced that, in line with the Public Call released on February 10, it had elected, by secret vote, new members of managing boards of the Public Broadcasting Service of Serbia and Public Broadcasting Service of Vojvodina. The elected members of the Public Broadcasting Service of Serbia are Djordje Vozarevic, journalist; Milica Kuburovic, journalist; Predrag Markovic, PhD, historian; Slobodan Markovic, PhD, university professor; Milan Nikolic, sociologist; Zoran Popovic, university professor; Academician Vojislav Stanovic, university professor in retirement; Dusan Stokanovic, economist; and Zarko Trebjesanin, PhD, university professor. The elected members of the Public Broadcasting Service of Vojvodina are: Vanja Barisic, philologist and PR Manager; Ivan Benasic, journalist; Dimitrije Boarov, LL.B., journalist; Dalibor Bubnjevic, economist; and Liljana Lj. Bulatovic, university professor and Boris Kovac, composer.

Pursuant to the Broadcasting Law, managing boards are governing bodies of Public Broadcasting Service institutions at the levels of the Republic (Serbia) and autonomous province (Vojvodina), the members of which are appointed and dismissed by the RBA, from the ranks of journalists and experts and professionals in the field of media, management, law and finances, as well as among other prominent figures. The term of office of Managing Board members is five years. They are in charge of adopting work plans and work and business reports of public broadcasting service institutions, appointing and dismissing general managers and managers of radio and television and programming editors-in-chief, adopting investment plans, reviewing the recommendations of the Programming Board, etc. The election of Dalibor Bubnjevic to the membership of the Managing Board of the Public Broadcasting Service of Vojvodina has stirred the most controversy. The media reminded that Bubnjevic provided marketing services for the release of the book "The Case of Nacionalni Stroj" by Goran Davidovic, a.k.a. "the Fuhrer", leader of that extremist organization. Davidovic was convicted for instigating ethnic, religious and racial hatred and back in 2008, the Republic Public Prosecutor submitted to the Constitutional Court a request for outlawing Nacionalni stroj as a neo-nazi organization. Bubnjevic himself claims that he was subject to false accusations and reminded that, in 2009, the Municipal Court in

Zrenjanin ruled that he had not been in charge of marketing for the aforementioned controversial book. “It is untrue that I have promoted the book ‘The Case of Nacionalni Stroj’. It’s a lie over which I was forced to take the publisher to court for having unauthorizedly used my name. Under the final verdict of the Municipal Court in Zrenjanin, the publisher was ordered to issue a public rebuttal and apology, as well as to pay 501 thousand dinars of damages for mental anguish suffered over tarnished honor and reputation”, the media have reported Bubnjevic saying.

1.2. The RBA Council has also reviewed the annual report for 2010 on compliance with legal and programatic obligations of the Radio Television of Serbia. The Council concluded that the RTS failed to fulfill the legally prescribed quota for independent production programming in that year. The RTS was also reprimanded for the “enormous disproportion” between the poorly represented cultural, artistic, children and educational content on one hand and the predominance of news programs, documentary and entertainment content on the other. The Council found „such disproportion to be a major concern, since it did not provide for content diversity sustaining the democratic values of modern society and particularly the respect of human rights and the cultural, national, ethnic and political pluralism of ideas and opinions“, the statement said. The Council also pointed to a high percentage of rebroadcasts and multiple instances of violations of the Advertising Law. The Council has sent its report to the RTS Managing Board and called for the fulfilment of the obligations defined by the Broadcasting Law.

The report, formulated in the well-known RBA style, contains merely a quantitative analysis of the RTS programming, without delving into the quality of content in the observed period. However, even such report stated the obvious: that in 2010, the RTS’s first channel earmarked 40% of air time to rebroadcasts, while the second channel went even further – 42%. In the same period, the overall share of commercials, TV sales and self-promotion on the first channel amounted to more than 5%; cultural and artistic content 0.20%, science and education 0.41%, religious content 0.68% and programs for children 2.80%. At the same time, the share of news programs was almost 32 %. The content of the second channel was dominated by sports (around 22.55%) and news (18.10%), while the share of cultural and artistic programs was 5.88%, science and education 13.06%, religious content 2.29% and programs for children 5.98% The Law provides for a mandatory quota for independent production of 10% of the overall annual programming time. This quota shall not include rebroadcasts, live transmissions of sport events, prize games, commercial and TV sales and news programs, but does include own news programs. According to the findings of the RBA, the share of independent production was 5.99% on the first channel and 7.36% on the second, namely a combined share of 6.65%.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

On April 20, 2011, the Republic Agency for Electronic Communications (RATEL) initiated public consultations about the draft Decision on determining relevant markets subject to prior regulation, as well as about the reports on the analysis of nine markets proposed for prior regulation. One of these is the media content distribution market. In its analysis, RATEL found an absence of effective competition, namely that the cable operator SBB boasted a share greater than 50%, thus enjoying, in RATEL's opinion, a significant advantage over its competitors. On the other hand, the analysis concluded that there was a tacit agreement between the operators on the distribution market related to their geographic positioning. Under such agreement, RATEL believes that the operators have divided service areas by placing their distribution network in such a way that there cannot be any overlaps. Such positioning by operators has resulted in a situation where, while there are several market participants, there is no genuine competition among them. The price is paid by the end users.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

The Culture and Information Committee of the Serbian Parliament held two sessions in the period covered by this Report. On the April 5 session, Vesna Marjanovic resigned to her post of Committee Chairman, because she was reassigned to a new position. Marjanovic has been elected to the membership of the Belgrade City Council, to be in charge of culture. Two weeks later, Vesna Marjanovic was also elected Deputy Chairman of the Democratic Party Executive Board. Jelena Trival was elected the new Board chairman. The Culture and Information Committee session on April 21 reviewed the Report on the Implementation of Law on Free Access to Information of Public Importance and the Law on Personal Data Protection for 2010. The Report was presented by the Commissioner for Free Access to Information of Public Importance and the Personal Data Protection Rodoljub Sabic. Sabic said that progress was made in the field of free access to information of public importance, but noted there were areas in which improvement was needed, namely regarding the inconsistent implementation of the Law. Sabic said that the authorities and agencies of the government should not regard free access to information solely as the right of the citizens to know, but also as their own obligation to take initiative and to release information of public importance even without citizen's request, unless otherwise provided for by law. At the same session, the Committee also examined its own list of candidates for the election of three members of the RBA Council

and proposed to the Parliament to urgently review that list. The Committee proposed Milos Rajkovic, Slobodan Veljkovic, Bozidar Nikolic, Tamara Skrozza, Bajram Haliti and Ivan Pajdic for the aforementioned membership.

4. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

4.1. On April 5, 2011, the Government of the Republic of Serbia appointed Dragana Milicevic Milutinovic to the position of State Secretary for Information and Media in the Ministry of Culture, Media and Information Society. Dragana Milicevic Milutinovic was born in 1965 in Belgrade, where she completed secondary school and the Faculty of Law – Criminal Law Department. From 1991 to 1997, she worked as a reporter and editor on Studio B, after which she was editor in the independent production company Mreza. From 2002 to 2007, she was the Editor-in-Chief and General Manager of Studio B. From 2007 to 2011, she was the General Manager of the company Jugodrv holding.

4.2. On April 18, the Ministry of Culture, Media and Information Society and six media associations (ANEM, NUNS, UNS, NDNV, Local Press and the Media Association) concluded a Cooperation Protocol laying down the steps for formulating the Draft Strategy for the Development of the Public Information System in the Republic of Serbia by 2016. The Protocol was signed by Minister Predrag Markovic and the representatives of media associations: Sasa Mirkovic, Vukasin Obradovic, Ljiljana Smajlovic, Nedim Sejdinovic, Dejan Miladinovic and Veselin Simonovic. Under the Protocol, the Ministry of Culture, Media and Information Society shall establish a working group that will, by July 1, 2011, propose the Draft Strategy, along with an action plan for the implementation thereof. The working group shall consist of seven members, five of which will be chosen at the proposal of media associations and two at the proposal of the Ministry. An expert consultant from the European Commission will take part in the work of the working group. One representative of the Ministry, civil society, Council of Europe and the OSCE will each be able to attend the meetings as observers. The Draft Strategy, to be tabled to the Ministry by the working group, may also contain alternative solutions, together with detailed explanations, regarding certain issues. The final text of the Draft Strategy shall be determined by the Ministry and released for public discussion. The text proposed by the working group and the final text of the Draft Strategy will be posted on the Ministry's website in the duration of the public discussion. The Ministry shall also be required to inform the public of the existing alternative concepts.

We remind that the drafting of the Media Strategy was requested by journalists' and media associations and it was loudly called for especially after the adoption of the Law on

Amendments to the Public Information Law in the summer of 2009. The basis for the Strategy should have been the Media Study, formulated by the experts hired by the European Commission. Initially, the then Culture Ministry had announced that the Draft Strategy would be worked on simultaneously with the organization of a series of round tables, in September 2010, where the aforementioned Study was discussed. The Ministry also announced that the Draft would be released as early as in late September or early October. When October came, the then Culture Minister Nebojsa Bradic announced the release of the Draft Strategy for early November. Since it did not happen, media and journalists' associations were told by the Ministry that the Draft Strategy was to see the light of day first on November 16 and then on November 22. However, the presentation of the Draft Strategy was once again postponed. At a meeting with the representatives of media and journalists' associations, Council of Europe, the EU Delegation and the OSCE Mission to Serbia held on December 29, 2010, Minister Bradic set a new date for the release of the Draft Strategy – February 20, 2011. A wide public discussion about the Draft was supposed to start on the same day. At the late December meeting, Bradic announced that his Ministry was prepared to cooperate with all stakeholders and particularly with media associations and the media industry. In February, after it became clear that the Ministry still did not have the text it was supposed to be released for public discussion, media and journalists' associations were offered to join the efforts and help the making of the Draft Strategy. The discussions about the modality of their involvement were continued after the reshuffle of Prime Minister Cvetkovic's government and ultimately resulted in an agreement between six media and journalists' associations and the Ministry of Culture, Media and Information Society in the form of a protocol signed on April 18, 2011.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. ORGANIZATION OF PHONOGRAM PRODUCERS OF SERBIA (OFPS)

We remind that the Association of Independent Electronic Media (ANEM) sent a note to the Intellectual Property Office in February, arguing that the acts of the Organization of Phonogram Producers of Serbia (OFPS) were not in compliance with the relevant provisions of the Law on Copyright and Related Rights, as well as that they were mutually contradictory, resulting in the media being unable to adhere to them. The Intellectual Property Office, as the competent supervisory authority, acted on this note and found in late March that several articles of the Rule Book on the notification of broadcast phonograms by the broadcasters were not aligned with the OFPS Tariff of fees; that the manner of entering data about

broadcast phonograms, provided under the Rule Book, was in breach of the Law on Copyright and Related Rights; as well as that the business of OFPS was not conformed to that organization's own acts. The Intellectual Property Office urgently issued a series of orders to OFPS, insisting that it ought to align the relevant provisions of its Rule Book, pertaining to the notification of broadcast phonograms by the broadcasters, with the Law. Upon having received the report from the Intellectual Property Office about the identified irregularities and orders issued, ANEM furnished this report to the stations, against which proceedings were initiated for commercial offenses under the Law on Copyright and Related Rights, so that the stations could use the said report in their own defense. We hereby remind that the OFPS has launched more than two hundred commercial offence proceedings against broadcasters throughout Serbia and their directors, by sending petitions to the RBA, objecting the failure of these stations to furnish lists of broadcast phonograms, namely the failure to furnish them in the proper form requested by OFPS. The RBA declined jurisdiction in this matter and forwarded the said petitions to public prosecutor's offices. The public prosecutor's offices responded by initiating commercial offense proceedings and in several cases commercial courts have already sentenced broadcasters to fines ranging from 100 thousand to three million dinars. It may be reasonably expected that, after receiving the report from the Intellectual Property Office, the competent public prosecutor's offices will renounce prosecution, since the report confirms that the broadcasters are objectively unable to act under the provisions of the OFPS Rule Book on notification of broadcast phonograms. ANEM has also furnished the aforementioned report to the Republic Public Prosecutor's Office, which was supposed to issue the proper instructions to district public prosecutors to act accordingly.

On April 20, the OFPS Managing Board, acting under the instructions of the Intellectual Property Office, amended the Rule Book on the notification of broadcast phonograms by the broadcasters. In a press release published on that occasion, OFPS claimed that the Rule Book were amended in order to enable a more efficient cooperation with the broadcasters and aiming at simplified and more efficient regulation of the way and conditions under which the broadcasters were required to notify OFPS about the broadcasted phonograms. The amendments to the Rule Book foresee submitting of the lists of broadcasted phonograms by post, in the form of an excel sheet burned on a CD; stipulate the elements this sheet must contain and set the deadline for submission; determine who will ascertain the accuracy and completeness of the sheets and how; the manner in which incomplete sheets will be dealt with and what every broadcaster must submit along with the sheet. The press release said that every broadcaster, at any time during the business hours of the OFPS, could obtain all the necessary information about the manner and form of submission, completion of the

sheets by phone, fax or e-mail, from employees working in the department processing the sheets.