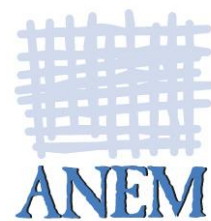




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for December 2012





FONDACIJA ZA OTVORENO DRUŠTVO - SRBIJA
FOUNDATION FOR AN OPEN SOCIETY - SERBIA

*This project is financially supported by
the Foundation for an Open Society*



NORWEGIAN EMBASSY

www.norveska.org.rs

*This project is financially supported by
the Royal Norwegian Embassy in Belgrade*

TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION.....	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS	8
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS	10
IV	MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS.....	15
	REGULATORY BODIES.....	15
	STATE AUTHORITIES.....	16
	COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS.....	18
V	THE DIGITALIZATION PROCESS.....	19
VI	THE PRIVATIZATION PROCESS	21
VII	CONCLUSION	22

I FREEDOM OF EXPRESSION

In the period covered by this Report, there were several cases pointing to possible violations of freedom of expression.

1. *Threats and pressures*

1.1. In early December, the right-wing movement “SNP NASI” called the competent authorities to revoke the national frequency of TV B92, shut down the dailies “Blic” and “Danas”, the weekly “Vreme”, the magazine “Republika” and the “Pescanik” online portal. “SNP NASI” also requested that the Voice of America and Radio Slobodna Evropa (Free Europe) be prohibited from operating on the territory of Serbia. The organization’s press release said that there was “reasonable doubt that certain media in Serbia were funded by dirty money of the Albanian and Croatian mafia”. The press release also demanded the state to investigate “who are the owners of anti-Serbian media”, as well as their financial transactions and operations. “SNP NASI” accused the aforementioned media of “demonizing their own people in the last 20 years through crafty media manipulation and portraying Serbs as a genocidal and criminal nation, responsible for the wars of the ‘90s, for which there is plenty of evidence to back such claims and that is why the general public considers these media as stooges of international power players”. “SNP NASI”’s call came after the Constitutional Court of Serbia had rejected the request of the Public Prosecutor that the organization be banned for activities aimed at violently subverting the constitutional order and violating constitutionally guaranteed rights. The Ombudsman Sasa Jankovic told Radio B92 that the media should refrain from giving too much exposure to the said right-wing organization and its demands. Jankovic said that it was merely an attempt of political advertising, on top of which the request was unrealistic, since the state was obligated to respect human rights and not encourage such behavior. “The state should be more consistent in its work related to the respect of human rights and such consistency would shrink the space for many groups that are encouraged by inconsistency”, Jankovic said. The Independent Journalists’ Association of Serbia (NUNS) called for urgent action of the authorities against “SNP NASI”. “The pogrom-style press release by “SNP NASI” aims at returning Serbia to the recent past, when the citizens and the media were divided into traitors and patriots, where the ‘traitors’ were persecuted, the media banned, journalists fired and their families threatened with financial ruin”, NUNS’ press release said. “SNP NASI” has recently made a list of non-government organizations they wanted banned by the government. According to the daily “Danas”, the Republic Public Prosecutor’s Office (RPPO) believes that the refusal of the Constitutional Court to ban the aforementioned right-wing organization has actually sent a message of encouragement to “SNP

NASI”, by describing its activities as socially acceptable. “Danas” wrote that the RPPO would not react to “SNP NASI”’s list of politically incorrect media. They will instead advise those injured by the said list to file a libel/hate speech action under the Public Information Law, the daily wrote.

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, not yielding to censorship. The same law says that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion. It is also prohibited to put physical or other type of pressure on public media and the staff thereof to obstruct their work. The request by “SNP NASI” has no basis in Serbian regulations, since, according to the Public Information Law, the distribution of domestic and foreign public media shall be free. As an exception, the Law allows the Court, at the proposal of the Public Prosecutor, to prohibit the dissemination of specific information, if such prohibition is deemed necessary in a democratic society in order to prevent: calls for the violent subversion of constitutional order; undermining the territorial integrity of the Republic; inciting to war, direct violence or promoting racial, ethnic or religious hatred that incites discrimination, animosity or violence, while releasing the information itself constitutes direct threat of a grave, irreparable consequence, the occurrence of which may not be prevented in any other way. However, although it would be legally unfeasible to fulfill the request of “SNP NASI”, even if the government would want to do something like that, Serbia’s history has taught us that the attacks by extremist right-wing organizations against the media and the civil sector have typically constituted a prelude to discrimination and continued attacks, including physical ones. The RPPO’s decision not to initiate any fresh proceedings against “SNP NASI” is to a certain extent understandable after the decision of the Constitutional Court, passed on November 14, 2012, to refuse the proposal for the ban of the activities of the right-wing movement. Otherwise, the Criminal Code provides for the criminal offense of violating equality by denying or restricting the rights of the person and citizen, for reasons that include political or other convictions or some other personal attributes. The Criminal Code, however, stops short of expressly saying if calling for someone’s rights to be denied or restricted also constitutes a criminal offense. In the concrete case, “SNP NASI” is doing just that – calling for denying of someone they deem “anti-Serbian”. The rights to freedom of expression and freedom of media, guaranteed by the Constitution and ratified international treaties, are interpreted as the rights of every person to freely and without the need for an approval, establish newspapers and other public media, namely to establish television and radio stations under the Law. At the same time, since the freedom of expression involves the freedom to receive information, calling for the shutting down of media which ideologically do not correspond to the positions of an

extremist organization, amounts to calling for the restriction of the right to freely receive information from these media by all the citizens.

1.2. At the session of the Pirot City Council on December 16, the Mayor of Pirot Vladan Vasic prevented the Editor of "Pirotske novine" Bogoljub Najdanovic to record the debate. Although the session was being transmitted live on TV, Vasic switched off the voice recorder of "Pirotske Novine" and removed it from the speaker's stand. Vasic claims that the voice recorder was placed on the stand after the beginning of the session and that the journalist was obstructing the session. The Mayor was backed by the Speaker of the City Council Milan Popovic, who prohibited the photographer of "Pirotske novine" to take pictures of the session. "Pirotske novine" claim that Vasic has been refusing for years to give statements and interviews to this media. "Pirotske novine" have been engaged in a dispute with the municipality since 2009, when the latter suspended the payments under the contract it had entered into earlier with the newspaper. The reason for such move, according to "Pirotske novine", was the "critical tone in their reports about the work of the local government". According to media reports in November, in the said dispute, the Appellate Court in Belgrade ruled in favor of "Pirotske novine", ordering the municipality to pay to the newspaper the outstanding debt of 500.000 dinars plus interests. In the local council, Vasic dubbed the newspaper "a political party mouthpiece", hinting at the ties with the opposition group "Pirotska nova snaga" (Pirot's New Force) in the municipality's council. Vasic's statement was judged by the newspaper's editors and reporters as a political pressure and an attempt to influence their editorial policy. They claim that the municipality has been earmarking from its budget each year substantial funds for the media (on par with the allocations for agriculture), expecting positive reporting about the local government in return. They also said that "Pirotske novine" were the only media in Pirot not having received any assistance from the budget since 2010.

Under the Public Information Law, local self-government bodies, including the mayors and the councilors in the local councils, are obligated to make the information about their activities accessible to the public, under equal conditions for all journalists and all public media. Switching off a journalist's voice recorder, preventing photographers to take pictures, denying information to a particular media – all that constitutes unacceptable discrimination against media. What makes the case of "Pirotske novine" particularly interesting is the fact that the newspaper had risen against such misuse of the municipal funds allocated to the media as a tool of pressure on editorial policy and was ultimately done justice with the court ruling that the municipality had wrongfully suspended the allocations for the newspaper due to alleged "biased reporting". The misuse of state aid, as a pressure tool against editorial policy, was described in detail in the 2011 report of the Anti-

Corruption Council about the pressures on the media and the attempts to control the same. Bearing that in mind, the Media Strategy has regulated in detail the issue of awarding state aid to the media. Among other things, the Strategy insists on the transparency of the procedure of allocating such funds and on non-discriminatory criteria. The Strategy highlights the need to set up independent commissions that will pass thoroughly explained decisions on the allocations. Unfortunately, nothing has been done so far on this matter.

1.3. The journalists in Valjevo were the target of vicious insults by local councilor Slobodan Gvozdenovic, Deputy Mayor Dragoljub Krstic and several councilors of the ruling coalition at the session of the Valjevo Assembly. The incident happened after the editor of the local station (and ANEM member) Radio Patak, Darija Rankovic, fetched her voice recorder from the speaker's stand. Gvozdenovic, who was at the stand, threatened he would "personally throw out" anyone who dares "remove the microphone" away from him. He was supported by the councilors and supporters of the citizens' group "Pobeda", which blocked the working presidency of the Assembly, while the Deputy Mayor Dragoljub Krstic demanded that the journalists be expelled from the session, calling Darija Rankovic "a scum". The journalists of "Politika", RTS, the weekly "Napred", VTV, Radio Patak, Radio 014, the magazine "Kolubara" and the Beta news agency left the hall in protest, leaving behind only the crews of the public information company Radio Valjevo and the private station TV Mars (which are providing the live transmissions from the session). The journalists were followed by the councilors of the Democratic Party and the Liberal Democratic Party, while the Speaker of the City Assembly Mihajlo Jokic, from the Serbian Progressive Party (SNS), promised better working conditions for the correspondents in order to "prevent similar situations from happening".

Under the already mentioned provisions of the Public Information Law, local self-government bodies are obligated to make the information about their activities accessible to the public, under equal conditions for all journalists and all public media. Freedom of expression also involves the freedom to collect information, which includes the right of journalists to decide on their own which speech at the assembly stand they will record. The pretext that removing one's voice recorder allegedly disturbs the concentration of the speaker is identical to and equally unconvincing as the justification we had heard in Pirot a few days earlier (that placing a voice recorder on the speaker's stand after the start of the session constitutes a disturbance). In any case, in both instances – in Pirot and in Valjevo – it is evident that the attitude towards the media at the local level has not improved, on the contrary.

2. Legal proceedings

2.1. On December 12, the Constitutional Court of Serbia initiated, in relation to the initiative by the Association of Independent Electronic Media (ANEM), a procedure for determining the constitutionality of the provision contained in Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of National Minorities, in the part where that provision says that the state may establish separate radio and television stations broadcasting content in the language of ethnic minorities.

We remind that ANEM tabled the initiative in January 2011. In addition to the aforementioned Law on the Protection of Rights and Freedoms of National Minorities, that provision also encompasses the provisions of the Law on Local Self-Government, the Law on Capital City and the Law on National Councils of National Minorities, which also foresee the possibility of establishing media that would be indirectly or directly owned by the state. ANEM has insisted for years (and particularly in the public debate that preceded the adoption of the Media Strategy) on the complete withdrawal of the state from ownership in media, as well as on amending the regulations whose provisions are in collision with the Public Information Law and the Broadcasting Law. These two laws have provided for the transformation of the state television into a public service broadcaster and the mandatory privatization of all remaining state media. Unfortunately, the privatization was stopped, among other things, by adopted laws that were in direct collision with media regulations. In its initiative, ANEM emphasized that the contested provisions of the Law on Local Self-Government, the Law on Capital City, the Law on National Councils of National Minorities and the Law on the Protection of Rights and Freedoms of National Minorities were in direct disagreement with the principle of the single legal system, as one of the basic pillars of the constitutional and legal order of the Republic of Serbia. In the opinion of the Constitutional Court, which it delivered in several prior decisions, the principle of a single legal system entails that the main principles and legal institutes provided for by the laws, systemically regulating a certain area of social relations, must be adhered to in separate laws as well, unless a particular systemic law expressly stipulates that the same matters may be regulated in a different manner. In the concrete case, the Public Information Law, as a systemic law in this field, stipulates that the state and the territorial autonomy, or an institution, company or other legal person predominantly owned by the state, or partially or predominantly financed from public resources, may not be, directly or indirectly, founders of a public media. The Public Information Law provides for only two exceptions: the first pertaining to the possibility of establishing a public broadcasting service and the second the establishing of a state news agency. In direct contradiction with the aforementioned exceptions, the

Law on Local Self-Government says that the municipality shall be competent for establishing television and radio stations; the Law on Capital City provides for the competence of the City of Belgrade for establishing television and radio stations, newspapers and other means of public information. The Law on National Minorities' National Councils has entitled these councils to establish news and publishing and broadcasting institutions and companies. Furthermore, under that Law, the Republic, Autonomous Province and units of local self-governments, as the founders of public media companies and institutions providing information in the language of a particular national minority, shall transfer their founding rights to the National Council. Under the Law on the Protection of Rights and Freedoms of National Minorities, the state may establish separate radio and television stations to broadcast content in the language of ethnic minorities. In the initiative, ANEM also says that the contested provisions constitute unacceptable interference by the authorities in the realization of the right to freedom of expression, for which there are no legitimate grounds and, even if there were a legal basis, such interference would be disproportionate. ANEM believes that the interest of providing public information of local relevance and reporting in the language of ethnic minorities may also be realized and has already been realized through media that are not owned by the state. Moreover, not a single law the initiative pertained to provides for a systemic mechanism that would ensure the editorial independence of public media founded by the municipality, capital city, namely the national council, from the founders. It will be interesting to see what the position the Constitutional Court will take in the concrete case, especially bearing in mind it has decided not to debate the initiative as a whole, although with regard to all requests voiced by ANEM, the arguments that they are unconstitutional are identical. On the contrary, the Constitutional Court has even refused to debate the same initiative relative to the Law on Local Self-Government and the Law on Capital City. The question that was raised with the initiative was put back into the focus with the current debate about the regulations governing the business of public companies, which will be further elaborated on in the part of this Report dealing with the adoption of new regulations.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

1.1. The implementation of the Public Information Law has partly been elaborated on in the section on freedom of expression.

2. Broadcasting Law

On its session held on December 3, the Council of the Republic Broadcasting Agency (RBA) adopted the Report on the Fulfilling of Legal and Programming Obligations of the Radio-Television of Serbia for the year 2011. That Report will be tabled to the Managing and Programming Committee of the RTS, the Parliament's Culture and Information Committee and the Ministry of Culture and Media. The Report has also been posted on the RBA website. Analyzing the Report, the daily "Danas" said that in the year 2011, the RTS had failed to fulfill its obligation provided for by the Law to broadcast independent production content. The Report says that content made by independent production companies accounted for 6.27% of the RTS channel 1 and almost 7.4% on channel 2, which remains below the legally prescribed minimum of 10% of content made by independent production companies in the overall annual programming. In terms of genre, newsprogram remains the predominant content on RTS channels, accounting to almost half of the overall programming on RTS1 and close to one third on RTS2.

Under the Broadcasting Law, the RBA is competent, among other things, for overseeing the work of broadcasters and controlling the consistent implementation of the provisions of the Broadcasting Law. The Law also stipulates that the RTS Managing Board shall, inter alia, adopt plans and reports about the work and business of the public broadcasting service and inform the public, the RBA and the Parliament about it. Unfortunately, the RTS Managing Board has pretty much failed in this field. In that sense, the report prepared by the RBA's Oversight Department and the Program Analysis Department is aimed at filling the holes in the exact data pertaining to the programs of the public service broadcaster. The key problem with this report is that it was unable (in the absence of publicly available programming plans) to show the extent to which the programming plans of the RTS had been accomplished through the actually aired content of this media. Therefore, the report deals merely with the mandatory programming quotas and concludes that they have indeed been fulfilled in relation to content produced in Serbian language, as well as in relation to own production content, but not in relation to independent content. In all fairness, the report could be criticized for neglecting the issue of quality, while focusing on the quantity aspect alone. It seems, however, that it is primarily a problem of the closed nature of the RTS and the absence of permanently open channels of communications between the public service broadcaster and the public, through which one would be able to see the measure to which (from the standpoint of the intended recipients of the program) the RTS has performed its function. The report was also untimely. Its adoption by the RBA, in the period when the Agency should have already summed up the results for 2012, can hardly yield the proper effect on the programming plans for 2013, since it

is probably already too late for that. In any case, such reports could have a far greater effect if released with a lesser delay relative to the period they pertain to and if they were merely the first step of a process involving a public debate about the programming plans for the following years. In the contrary case, they will have a limited reach.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, several laws were adopted with substantial implications for the media sector, namely the initiated public debate about several new laws, also relevant for the position of the media.

1. Law on the Amendments to the Law on Copyright and Related Rights

The Law on the Amendments to the Law on Copyright and Related Rights was passed on December 15, 2012 and will be applied as of the beginning of 2013. The amendments primarily concern the system of collection of special fee from the import and the sales of technical equipment and sound, picture and text carriers, for which it may be reasonably presumed they will be used for the reproduction of music works. The Law foresees the grounds for exceptions from paying the dues and provides for the repayment of the same in the case of forwarding imported equipment and carriers outside of Serbia. Furthermore, the amount of the fee is limited to no more than 1% of the value of the equipment and 3% of the value of empty carriers. The Law also introduces the minimum wage in the Republic of Serbia, without taxes and benefits, as the main criteria for determining the fee for the public communication of music works, interpretations and phonograms. Additionally, the Law stipulates that the fee for the public communication of music works, interpretations and phonograms will be charged by one organization only – the one protecting the rights of authors – while the funds that organization will collect shall be allocated according to the agreement reached between the collective organizations. The Law also exempts sole proprietorship businesses (small crafts shops) from paying the fee. The amendment that may affect the media in the most direct way pertains to the revoking of the Copyright and Related Rights Commission. The competences of the Commission, to issue an opinion about the proposed tariff and exceptionally to pass the tariff on its own in tariff-related disputes between the collective organizations and associations of users, have been transferred to the Intellectual Property Office.

We remind that in July 2012, in its address to the Government of the Republic of Serbia, the competent Ministry of Education and Science and the Intellectual Property Office, ANEM was the first to propose a concept of transferring competence of the Commission onto the Intellectual Property Office. Hence, that part of the Amendments may be credited to endeavors of ANEM as a representative association of broadcasters. ANEM's second proposal, to change the rules for determining the tariff contained in Article 170 of the Law on Copyright and Related Rights as to ensure the adequacy of the tariff relative to users in the broadcasting sector by analyzing the broadcasting market and related markets relevant for the income generated by the users by performing the activity of production and broadcasting radio and television program (such as, for example, the advertising markets and media content distribution markets), was entirely ignored. Article 170 of the Law on Copyright and Related Rights has created the situation where it is possible, simultaneously with the downturn of the advertising market in Serbia, to have the tariffs paid by radio and TV stations, for authors' music rights and related rights of phonogram producers and performers, skyrocketing. By ignoring ANEM's proposal to amend Article 170 of the Law on Copyright and Related Rights and the exemption of sole proprietorship businesses from the duty to pay the fee for the public communication (which have also been affected by the crisis, just like the media, but definitively not more than small, local broadcasters), the media have been discriminated against once again, compared to other sectors of the economy, small craftsmen in this case.

2. Law on Public Enterprises

The Government's Proposed Law on Public Enterprises, which was tabled to the members of the Parliament in early December, has defined a public company as one performing an activity of general interest, founded by the Republic of Serbia, the autonomous province or unit of local self-government. Furthermore, in Article 2 (itemizing the specific activities of general interest in terms of the Law on Public Enterprises), the Law cites the activity of provision of information. Such a concept would allow for the possibility of survival of old state-owned media, namely the establishment of new state-owned media in the form of public company, which is in direct contradiction both with the Media Strategy and the applicable laws on public information and broadcasting. More than 10, namely 9 years ago respectively, these laws prescribed mandatory privatization of state-owned media, except for the public service broadcasters and the news agency, while excluding the possibility for the state to establish a media, both indirectly and directly. The Media Coalition, consisting of the Association of Independent Electronic Media (ANEM), Independent Journalists' Association of Serbia (NUNS), Journalists' Association of Serbia (UNS), Independent Journalists' Association of Vojvodina (NDNV) and Local Press – the association of local

print media – have voiced their strong disagreement with such a solution and furnished the Ministry and the Parliament’s Committee concrete amendments to the Proposed Law, which were supported also by the Media Association (an association regrouping the largest publishers of print media in Serbia). These amendments stipulated, firstly, the deletion of the “activity of information” from the list of activities public companies may be established for and secondly, stipulated in the interim and final provisions, that the provisions of the Law on Public Enterprises should apply to the existing public media companies until these companies were privatized. These amendments were ultimately accepted, with a change in the wording (the word “privatization” was replaced with a more neutral concept – “ownership transformation”). The situation with the Government’s Proposed Law on Public Enterprises reminds of the adoption of the Law on Local Self-Government and the Law on Capital City in late 2007. The then government managed, in spite of the protests by media and journalist’s associations, to push controversial solutions through Parliament that had ultimately put media privatizations to a halt. The concern in this case is how could anyone in the Government, in late 2012, think about passing laws that would enable the establishment of state-owned media in the first place? On the other hand, the good news is that all the relevant media and journalist’s associations stood up as one for a single cause and made their voices heard, which ultimately produced a positive outcome.

3. *Law on Amendments to the Criminal Code*

In late December, the Serbian Parliament adopted the amendments to the Criminal Code. These amendments have finally decriminalized defamation; the second significant achievement for the protection of freedom of expression was the deletion of the criminal offense unlawful public commenting on legal proceedings. Prior to the said amendments, it was punishable by Law to give statements in the media aimed at breaching the presumption of innocence or violating the independence of the Court in the duration of legal proceedings, prior to the passing of the final verdict. The decriminalization of defamation was achieved harder than expected. Namely, in the working text of the Law on Amendments to the Criminal Code, prepared by the working group of the Ministry of Justice and State Administration (which text was subject to a public debate that ended in early November) defamation was not decriminalized. Moreover, the same text proposed the deletion of Article 138, paragraph 3 of the Criminal Code, providing for stricter penalties for threats against journalists, where these journalists were targeted due to their work. ANEM participated in the public debate with the proposal to decriminalize defamation, while retaining stricter penalties for threats against journalists in the Code. In the text that the Government had sent to the Parliament for adoption, the proposal for the decriminalization of defamation was

accepted, but it kept insisting on deleting Article 138, paragraph 3 of the Criminal Code. With its partners from the Media Coalition (NUNS, UNS, NDNV and Local Press), ANEM proposed to the Ministry of Justice and State Administration and the Parliament an amendment to Article 13 of the Proposed Law on Amendments to the Criminal Code, under which it would retain stricter penalties for threats against journalists. The Parliament finally voted in favor of the decriminalization of defamation and the decriminalization of public commenting on legal proceedings. It also voted for retaining stricter protection of journalists from threats in cases where they were targeted due to their work, whereas the maximum penalty was reduced from eight to five years.

4. Law on Amendments to the Law on Local Self-Government; the Law on Amendments to the Law on Capital City

The public debate on the Draft Law on Amendments to the Law on Local Self-Government lasted until December 15. In cooperation with its partners from the Media Coalition (NUNS, UNS, NDNV and Local Press), ANEM participated in the debate with written comments and suggestions, which were sent to the Ministry of Regional Development and Local Self-Government. In its comments and suggestions, the Media Coalition pointed to certain provisions of the applicable Law on Local Self-Government that were in disagreement with the adopted strategic laws from the field of public information, as well as the applicable regulations from that domain. The Media Coalition suggested the deletion of part of Article 20, paragraph 1, subparagraph 34 from the current Law on Local Self-Government, which enabled local self-governments to establish television and radio stations. It also suggested that the competences of the municipalities in the media sector be limited to taking care about public information of local relevance and ensuring conditions for the same, both in the Serbian language and in the languages of national minorities used on the territory of the municipality, to the extent it would be in accordance with regulations governing the field of public information and state aid control. The rationale is identical to the one according to which the Constitutional Court have already initiated, on ANEM's initiative, the proceedings for assessing constitutionality of the provision of Article 17, paragraph 2 of the Law on the Protection of Rights and Freedoms of National Minorities. We remind that, under the Public Information Law as the systemic law in this field, the state and the territorial autonomy, or an institution, company or other legal person predominantly owned by the state or partially or predominantly financed from public resources may not be, directly or indirectly, founders of a public media. The Media Coalition believes that the interest of public information of local relevance may be realized and is already being realized through non-state-owned media. Furthermore, by leaving the possibility for municipalities to establish media, such media would be devoid of any systemic mechanism that

would ensure the editorial independence of their newsrooms from local government. Since the Parliament, as mentioned in this Report, has already adopted the amendment to the Public Companies Law tabled by the Media Coalition, which excluded the possibility for the state to establish public media companies, the Parliament is expected, by using the same rationale, to adopt this amendment too.

Believing that all stated in relation to the Law on Local Self-Government also applies to the Law on Capital City (which is also in direct contradiction to both applicable media laws and the Media Strategy), the Media Coalition has also tabled to the Ministry of Regional Development and Local Self-Government the initiative for initiating a procedure for amending that Law. That amendment would consist of deleting subparagraph 5, paragraph 2 of Article 8 of the Law, in the part referring to the competence of the City of Belgrade to establish television and radio stations, newspapers and other similar means of public information.

5. *Advertising Law*

The Action Plan for the implementation of the Media Strategy provided for assessment of possibility of amending certain regulations, including the 2005 Advertising Law, no later than 10 months after the adoption of this document. ANEM called on the Ministry of Culture and Media, urging it to inform the public about the activities it had taken to meet that obligation from the Action Plan. ANEM also requested the Ministry of Foreign and Domestic Trade and Telecommunications to have a new Advertising Law passed. The Association said that the current Advertising Law did not constitute an adequate legal framework in the current changed business conditions on the media market, that it had failed to recognize new trends in advertising on electronic media, as well as that it was not synchronized with European practice and regulations in this field. Moreover, more than seven years have passed since its adoption. In the meantime, the new EU Directive on Audio-Visual Media Service has been passed, introducing new rules on advertising on electronic media, especially regarding TV advertising in Europe. Furthermore, the hitherto implementation of the Advertising Law has shown that the unclear formulations contained in the Law have opened space for different interpretations and created serious problems in the very enforcement of the Law. ANEM particularly stressed it was necessary to regulate matters with the new Advertising Law that were neglected by the previous one, such as the issue of advertising on foreign channels rebroadcast in Serbia, as well as other problematic issues in the work of broadcasters.

IV MONITORING OF THE WORK 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. We have already elaborated on the activities of the RBA in the part of this Report pertaining to the implementation of the Broadcasting Law.

1.2. At the session of the RBA Council, held on December 17, 2012, the RBA's financial plan for 2013 was adopted. Under the Broadcasting Law, the financial plan shall determine the total income and expenditures of the Agency, the reserves for unforeseen expenditures, as well as the elements for a complete overview of the policy of wages and employment in the Agency. The financial plan shall be adopted no later than by December 15 of the current year for the following year and it will be approved by the Government of the Republic of Serbia. The RBA traditionally releases its financial plan only upon approval of the Government and hence it is difficult now to analyze or comment on the plan. Much more interesting than the plan itself are the reports about the work of the RBA. The latest report about the work of the RBA in 2011 was released in last August. The newsletter about the work of the RBA for 2012, which is available on the website of the Agency, said that, since January 1, 2007, the RBA had generated revenues solely from the fee charged to broadcasters for the obtained right to broadcasting, namely that the Agency was not using budget funds – on the contrary, it channeled the difference between revenues and expenditures into the Republic's budget. However, the extra revenues have been decreasing by the year. Hence, the extra profit amounted to 82.175.825 dinars in 2010, only to drop to 52.294.346 dinars in 2011. The RBA explains the plummeting revenues and surplus by pointing to the lower broadcasting fees, in line with the amendments to the Rulebook on the Criteria for Determining the Amount of the Fees for Radio and/or Television Broadcasting for 2009. It also reminds that many broadcasters have failed to pay the fees and that many of them had their licenses revoked for failure to pay. If we recall that, in September and October 2012 only, the RBA initiated 67 proceedings for revoking the broadcasting license for non-payment of the broadcasting fee, it is logical to expect a further decrease of the revenues, which could, in turn, force the independent regulator to switch to budget financing for the first time since early 2007. If we bear in mind that the non-payment of the broadcasting fee is not merely an issue of broadcasters' lack of discipline, but the outcome of the

systemic collapse of the media market, we will conclude there are no simple solutions for this problem. Announcements that the Ministry of Finance is preparing the Draft Law on Fees for the Use of Public Resources, which would entrust the collection of broadcasting fees to the Tax Administration, could jeopardize the independence of the independent regulator by enabling the authorities to directly affect its work and decision-making, rendering its existence futile.

STATE AUTHORITIES

2. *The Parliament of the Republic of Serbia*

On December 29, the Parliament of Serbia elected nineteen members to the RTS Programming Committee. Seven members were elected from the ranks of MPs, while 12 candidates were elected from the list proposed by the RBA, from the ranks of professional associations, scientific institutions, religious communities, citizens' associations and NGOs. We wrote about the RBA-proposed candidates in the Monitoring Report for November, when we noticed that, judging from the candidates list, there was not too much interest for membership in this body. Not a single candidate was proposed by media or journalist's associations, or by a scientific institution and religious community for that matter. The proposers included the National Council of the Hungarian National Minority, the Association of Drama Artists, the Association of Music Artists, the Association of Jazz, Pop and Rock Musicians of Serbia and several NGOs. The proposers of several candidates remained unknown, while many were proposed by private persons. From the ranks of the MPs, the Parliament elected Marija Obradovic from SNS, Djordje Milicevic from SPS, Mira Petrovic from PUPS, Milica Radovic from DSS, Jelena Trivan from DS, Snezana Stojanovic Plavsic from URS and Bojan Djuric from LDP. At the proposal of the RBA, the following candidates were elected for membership in the Programming Committee: graduate psychologist Jasmina Lekovic, composer Nenad Milosavljevic, graduate graphic designer Marko Vukomanovic, journalist Katarina Ostojic, LL.B. Istvan Bodzoni, senior undergraduate Aleksandra Grkinic, graduate economist Tanja Santrac, professor of the Singidunum University Zoran Vujovic, graduate philologist Tanja Dojcinovic, graduate philosopher Dragoljub Kojcic, scientific advisor and professor Zoran Avramovic and journalist and consultant Bratislav Grubacic. The Programming Committee of the RTS has a three-year term of office, while the term of office of its previous members expired on December 11. That body is reviewing the realization of the programming concept of the RTS and sending recommendations and suggestions to the General Manager and the Managing Board.

3. *The Ministry of Culture and Media*

At the session of the Parliament's Culture and Information Committee on December 6, the Assistant Minister of Culture and Media Dragan Kolarevic said that the Media Strategy would not be implemented selectively and that all deadlines contained in it would be respected. He said that the Ministry of Culture and Media was preparing five media laws provided for by the Media Strategy, which would be introduced to the MPs prior to the public debate. The said laws are the laws on information, electronic media, unlawful concentration of media ownership, public service broadcasting and foreign means of information, the latter being a technical law pertaining to the issuance of accreditations. Kolarevic also said that the Head of the EU Delegation to Serbia Vincent Deger had proposed to the Ministry to launch an initiative in order to sort out the contradictions between the Broadcasting Law and the Information Law with the Law on Local Self-Government and the Law on Capital City. Kolarevic also commented the opposing of the Media Coalition and MPs representing the opposition to have the field of Information governed by the Law on Public Companies Enterprises. He said that the amendment, providing for the deletion of information from the areas in which the state could establish public companies, was the outcome of negotiations between the Culture Minister Petkovic and the Minister of Finance and Economy Mladjan Dinkic.

The declaration of the Assistant Culture and Media Minister Dragan Kolarevic has confirmed that the Government has given up on "redefining the Media Strategy". The announced redefining caused the concern of many that the Government was once again buying time and trying to avoid the obligations assumed in the document that was one of the prerequisites for obtaining EU candidate status. On the other hand, since many were not overly satisfied with certain concepts provided for by the Strategy (for example the part providing for the establishment of regional public service broadcasting) the announcement that a set of media laws is going to be directly prepared (the adoption of which is prescribed by the Strategy) does not mean that all solutions suggested by the Strategy will actually be implemented. Professional associations continued with activities aimed at anticipated amending of the legislations. Hence, the Association of Independent Electronic Media (ANEM) sent to the Ministry of Culture and Media its opinion about what the professionals expected to see in the laws on electronic media and public service broadcasting. First, ANEM is insisting on the independence of the regulatory body, which must be ensured through the system of funding. ANEM has supported the concept under which the work of the regulatory body will be financed from the fees charged to the media. The fees must be determined in such a way to enable normal operation of the regulatory body, not to be excessive and not to obstruct normal functioning of media. Independence must also be guaranteed through a system for electing members to the

regulatory body, while the procedure of their election must be simpler, more democratic and transparent than it is currently the case. Moreover, ANEM insists on the transparency of the work and control of the regulator. The new Law on Electronic Media must guarantee the freedom of receiving and rebroadcasting media services from other states, as well as prevent irregularities on the advertising market. The Law must be technologically neutral – both in the principles of license issuance and obligations the media service providers must adhere to (relative to the content of their services). Finally, the Association called for the strengthening of the capacity of sector regulators in the fields of electronic media and electronic communications; to prevent pirate broadcasting, namely unauthorized provision of media services. Concerning the announcements that a separate law on public service broadcasting would be passed, ANEM told the Ministry that this was not necessary and that the law dealing with electronic media might regulate the relevant issues. Instead of establishing new, institutionally organized public service broadcasters, ANEM believes the focus should be on the content aspect of the public service broadcasting. ANEM is also advocating for a more transparent procedure for electing the bodies of the existing public service broadcasting institutions. Furthermore, it insists on the bookkeeping separation of commercial and public functions of the existing public service broadcasters, as well as on the TV subscription fee as the main source of financing of the public service broadcasting. Furthermore, the increase of the collection rate thereof must be accompanied by the narrowing of the rights of public service broadcasters to compete with commercial media on the advertising market. Also needed is the full and consistent application of European standards of state aid control. ANEM announced to the Ministry of Culture and Media that it planned to take an active part in the public debate about the announced drafts of new media laws, with the goal to contribute to having the best possible concepts adopted, which would be in the interest of both the media sector and the citizens.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *The Organization of Musical Authors of Serbia (Sokoj)*

In early December, the Croatian capital Zagreb hosted the regional meeting of organizations for the collective realization of music rights, regrouping the representatives of copyright organizations from Croatia, Slovenia, Serbia, Montenegro and Bosnia-Herzegovina. Apart from boosting regional cooperation and reviewing the proposed new regulations in the EU in this domain, the participants also considered the possibility of creating a single regional music market, as a prerequisite for the arrival of large international digital services. “Big markets are the priority of large music

companies. The Croatian market has merely 4.5 million people – it is too small to be interesting to them. The idea was, together with other colleagues in the region, to offer to these large digital music services to come to a common market,” the Director of the HDS ZAMP Nenad Marcec said. The Director of SOKOJ Aleksandar Kovacevic said that the biggest problem in Serbia was the low level of awareness about the importance of respecting authors’ rights and other forms of intellectual property. “The biggest problem is the state television RTS, which has been entangled for six years in a court dispute with SokoJ, after the latter sued it for unauthorized use of the repertoire”, Kovacevic said.

5. *The Organization of Phonogram Producers of Serbia (OFPS)*

The Record Labels Union of Serbia, a non-government and non-profit organization, whose membership is almost identical to that of OFPS, has sent to the Ministry of Education, Science and Technological Development and to the Parliament (Committee for Education, Science and Technological Development and Information Society) the proposed amendment to the Law on Amendments to the Law on Copyright and Related Rights. The amendment has proposed the introduction of an obligation for broadcasters to broadcast, at annual level, no less than 50% if their music program produced in Serbian language (of the total music program aired annually). In a statement conveyed by the daily “Informer”, the Secretary General of the Record Labels Union of Serbia Rodoljub Stojanovic explained the Union’s intention was to preserve and develop domestic production. “We do not want to have Serbian producers discharging their employees; on the contrary, they should be able to invest in their business”, Stojanovic said. The Record Labels Union of Serbia tried to compare its proposal and the provisions of the Broadcasting Law prescribing that, out of the total annual broadcast time, broadcasters ought to air no less than 50% of content produced in Serbian language. At the present time, the proposal has not been included in the law, but the Record Labels Union of Serbia is expected to put it forward during the debate on the new Law on Electronic Media.

V THE DIGITALIZATION PROCESS

In the Ministry of Foreign and Domestic Trade and Telecommunication say that the realization of the project of digitalization is a priority, the results of which are expected by April 2013. The last deadline for completing the digitalization process in Europe is June 17, 2015. “We will do our best

for the switchover to happen slightly earlier, but 2015 is the most realistic target date for completing that process,” the State Secretary in the Ministry of Foreign and Domestic Trade and Telecommunication Stefan Lazarevic said in an interview to RTS. He added that the biggest obstacle in the process was the absence of the distribution network project, which should include several sub-projects. “We will center all our energy and strength towards the coordination and realization of these projects in the coming period and I expect them to be completed by early May,” Lazarevic said. He also pointed out that the warranty trademark was made in cooperation with international consultants. “Our idea is to stick the warranty trademark on the devices that are able to support the digitalization process, as foreseen by our government. The warranty trademark is the key when it comes to the overall promotion of digitalization and we expect it will start in the first quarter of this year,” Lazarevic said. He added that the support of the social inclusion team had been ensured; that team is working on a study about the vulnerable groups the state must help so that they are not left without a source of information after the digital switchover. “We hope there will be enough money in the budget in the coming years to provide assistance to socially vulnerable people. However, this is not merely about providing them assistance – we must organize teams that will help our fellow citizens to install the set-top boxes,” Lazarevic said.

On December 27, the Intellectual Property Office registered the Digital TV warranty trademark, whose holder is the Ministry of Foreign and Domestic Trade and Telecommunications. The trademark is registered for class 9 of international classification, which involves devices for picture transmission and reproduction. The Law on Trademarks stipulates that the warranty trademark means a trademark that is used by multiple companies under supervision of the trademark holder, as a warranty of quality, geographic origin, manner of manufacturing or other common characteristics of the goods and/or services provided by such companies. The holder of the warranty trademark allows any company to use the warranty trademark for goods and/or services which have common characteristics prescribed by general act on the warranty trademark.. In the concrete case, the Digital TV trademark shall serve as a warranty that the set-top boxes (carrying the trademark), receivers and digital television sets comply with the minimum technical requirements foreseen in the minimum technical requirements specification for the devices indented for the reception of the digital terrestrial signal in the Republic of Serbia, adopted by the Ministry of Foreign and Domestic Trade and Telecommunications. Compliance with the said requirements will be checked pursuant to the Guidelines about the manner and procedure of device testing (STBs and digital TV receivers), with the goal to assess the compliance with the requirements for the reception of the digital terrestrial TV signal in the Republic of Serbia, also adopted by the Ministry of Foreign and Domestic Trade and Telecommunications. The purpose of

the trademark, which will be placed by the manufacturers and vendors on the technically compliant devices, is helping the citizens recognize technical equipment that will enable them to receive digital signal after the digital switchover. Similar mechanisms were used in other states that have already gone through the digitalization process. The only innovation is the fact that the trademark to be used in Serbia is protected not as a traditional trademark, but as a warranty trademark, which facilitates the logistical requirements of the whole process. Namely, instead of entering into license agreements with each individual manufacturer (that would transfer on these manufacturers the right to use the protected trademark), the state merely prescribes the criteria and itemizes the devices for which the manufacturers have provided evidence of compliance with these criteria. The manufacturers will directly mark these devices with the Digital TV trademark, while the state reserves the right to perform additional checks in order to prevent misuse.

VI THE PRIVATIZATION PROCESS

As reported by the daily “Politika” on December 24, the Secretary of the working group for drafting media laws of the Ministry of Culture and Media Aleksandar Avramovic told the Tanjug news agency that the privatization of state media ought to be carefully prepared, in order to avoid a situation where Serbia would be completely devoid of such media. “The interests of the public and society as a whole must be the priority,” Avramovic said, adding that the essence was that the state must not be the direct financier of the media, which, again, did not mean that it should not finance media content of public interest. “With a diligent and responsible attitude towards the currently state-owned media, the latter will survive and keep serving the people in the future”, Avramovic said. “Therefore, the provision of information to the people is indispensable and must be provided for, including from state resources. It must, at the same time, be transparent, clear, based on clear criteria and professional, independent and competent decisions, without any kind of fixing or undue influence by owners’ groups, political groups or any particular interests”. According to Avramovic, privatization must be carefully prepared and “what has been done by now, has been done wrongly”. Therefore, “the best model must be found for state, regional or local media, in order to preserve the media from disappearing in the future”. In his view, in some cases, the value of assets must be assessed, shares must be distributed to employees and pensioners free of charge. As an alternative, the choice of a strategic partner should be well prepared. Avramovic announced that the working group for drafting media laws would “finish the job by the end of March at the latest”, in accordance with the deadlines from the Media Strategy. He also said that, under the Law on

Public Enterprises, “public companies from the field of information will continue to work as such until they are privatized”.

The statement by the Secretary of the working group for drafting media laws of the Ministry of Culture and Media is significant, bearing in mind that the officials of the new government have typically avoided giving straight answers about the issue of privatization. They have avoided using the word “privatization”, replacing it with ambiguous and vague terms. In his statement, Aleksandar Avramovic merely reiterated what is written in the Media Strategy – the state will withdraw from the ownership of media and such withdrawal involves the privatization or the conversion of the state’s stake into shares and the distribution of these shares free of charge. This is in line with the statement (we have already mentioned in this Report) by the Assistant Minister Dragan Kolarevic in the Parliament’s Culture and Information Committee that the Media Strategy will not be changed, but merely implemented in keeping with the deadlines prescribed in the Action Plan.

VII CONCLUSION

The good news in December is the accelerated legislative activity on regulations, whose adoption is foreseen by the Media Strategy, as well the repeated statements by the officials of the new Government that the Strategy will be adhered to and will not be changed, the substance of it at least. Unfortunately, in complete disagreement with the public support to the Media Strategy, the Government nonetheless tabled the Proposed Law on Public Enterprises to the Parliament for adoption, which retained a provision enabling, once again, the formation of state media at various levels of government, in the form of public companies. Fortunately, this time journalists’ and media associations were decisive, quicker and more united than in late 2007, when similar provisions were pushed through the laws on the capital city and local self-government. Nevertheless, the efforts of government officials in implementing the media reforms and the readiness of MPs to listen to the protest voiced by media professionals and to adopt the amendment proposed by the Media Coalition to the Law on Public Enterprises are still insufficient. The same government officials and MPs of the ruling majority remained silent after the right-wing extremist organization “SNP NASI”, reminiscent of times long gone by, had started making lists of politically inconvenient media and throwing around accusations against those having different opinion (that they were “financed by Albanian and Croatian mafia money” with an emphasis of “Albanian” and “Croatian”, since it seems that “SNP NASI” does not have a problem with mafia, as long as it is not Albanian and

Croatian; that they are “enemy stooges” demonizing the Serbian people, etc.). A government that stays silent when media are attacked and accused of treason may not be a partner to media professionals, in spite of giving lip service to media reforms.