

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.