

#### **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)***

On November 19, the RBA released the list of candidates for 12 members of the Programming Committee of the Serbian Broadcasting Institution (SBI). The Programming Committee is an advisory body of the RBA, representing the interests of the viewers and listeners as a whole. It reviews the realization of the programming concept of the SBI and sends recommendations and suggestions to the General Manager and the Managing Board. The Programming Committee has 19 members elected by the Parliament – seven MPs and 12 members proposed by the Agency from the ranks of professional associations, scientific institutions, religious communities, citizens' associations, NGOs and the like. Ineligible for membership in the Programming Committee are persons elected or appointed in the Government or state bodies. The term of office of members shall be three years and they may not be reappointed. The conclusion after reviewing the list of candidates is that there is visibly no major interest for membership in that body, which could, again, mean that the recommendations and suggestions it sends to the General Manager and Managing Board of the RTS are not viewed as something that is taken seriously or a factor of success. No media or journalists' association have proposed a candidate. There are no representatives of scientific institutions or religious communities either. The proposers include the National Council of the Hungarian Ethnic Minority, the Association of Film Artists, the Association of Music Artists, the Association of Jazz, Pop and Rock Music Artists of Serbia and several non-governmental organizations. The proposers of certain candidates, however, remain unknown, while the proposers of many of them are natural persons. In some cases, the proposers themselves are more interesting than the candidates they proposed. For example, one of the proposers is Suzana Vasilijevic, Special Media Advisor to the First Deputy-Prime Minister and Defense Minister Aleksandar Vucic.

## 2. *Electronic Communications Agency (RATEL)*

2.1. RATEL posted on its website the press release of the Body of European Regulators for Electronic Communications (BEREC), expressing concern over the “influence of certain national legislative initiatives on the efficiency of the regulatory bodies for the field of electronic communications in performing regulatory functions and hence on their independence thereof”. The press release has not mentioned any country in particular, but has pointed to the necessity of having competent bodies – possessing the proper financial and human resources – performing the tasks entrusted to national regulatory bodies. BEREC said that, in some countries, initiatives were taken, resulting in revoking the authority of national regulators for part of regulatory tasks that became direct functions of the government. The press release has highlighted the necessity to have independent national regulatory bodies in the operational, organizational and budgeting sense, which includes their ability to recruit and keep qualified personnel for the performance of complex and sensitive technical tasks. BEREC understands that national regulatory bodies, as holders of public competencies, should not be exempted of austerity measures in the current economic downturn. However, those measures need to ensure that the capacity of the independent regulatory bodies to efficiently regulate the electronic communications market, in keeping with the goals guaranteed by the regulatory framework, is not diminished in any way whatsoever. Although RATEL has not commented on the reasons for publishing that press release, it might perhaps be associated with the announcements that the Government, namely the Ministry of Finance, is preparing the Proposed Law on the Fees for Using Public Goods. Under the version of the drafts that have leaked, the fees for the use of the numeration, radio frequencies, as well as the fees for performing the activity of electronic communication, shall be paid directly into the budget. Such concept is completely contrary to the provisions of the law on Electronic Communications, under which the said fees constitute the income of RATEL (a source of financing for that agency), while the difference between the revenues and the expenditures of the Agency shall be used for the improvement and development of the field of electronic communications and information society. BEREC’s statement, though it was not necessarily pertaining to the situation in Serbia, points to several key problems that might happen if the Proposed Law on the Fees for Using Public Goods is adopted and primarily to the issue of the “brain drain” – the departure of qualified personnel due to the limited capacity of RATEL to pay them adequately. Independent Journalists’ Association of Serbia (NUNS) voiced its concern in early November over the hints that the aforementioned Law on the Fees for Using Public Goods, which draft is being prepared by the Ministry of Finance, could compromise the position and independence of RATEL and the RBA. “We do not consider such concept to be good or acceptable. Such kind of control would allow the government to directly affect the activity and

decision-making of independent regulatory bodies, which would essentially render their existence meaningless,” NUNS said. The association said it would be a step towards greater influence of the state on the media sector in Serbia.

2.2. “The best way to prevent illegal broadcasting of radio and television program would be to seize technical equipment”, said the Director of RATEL Milan Jankovic in the discussion on ANEM’s round table “Measures for Efficient Prevention of Illegal Broadcasting of radio and television program”, held on November 29 in Belgrade. Jankovic said that greater efficiency in preventing the operation of pirate broadcasters was enabled by the cooperation with the department of the prosecutor’s office for fighting high-tech crime and the police administrations. “With joint efforts, we managed a couple of days ago to shut down the station “Narodni radio”, which was one of the major pirates on the territory of Belgrade. In the same vein, we expect “Radio Balkan” will soon be switched off the air”, RATEL’s Director said. Estimating that some progress was made in this field, Jankovic reminded that in late 2011, there were 55 radio stations operating without a license, which number was reduced to 48 in late October this year. Moreover, RATEL filed in 2011 ten misdemeanor and 42 criminal charges, while this year that number plummeted to 2 and 6, respectively. The Deputy Chairman of the RBA Council Goran Karadzic said on the same round table that pirate stations made unbelievable profits, since they were not paying the fees charged to licensed radio stations. In his words, the problem of piracy in Serbia is a problem of competences. Karadzic stressed that the legal competences of each of the present participants were merely partial and therefore, under the new media laws that ought to be adopted as soon as possible, the competent institution should be vested in all the necessary competences/authority in order to effectively tackle piracy. Karadzic revealed that there was only one inspector in charge of this field, but was unable to work effectively due to a huge caseload. The Head of the Special Department for High-Tech Crime of the Public Prosecutor’s Office Branko Stamenkovic said that the penalties for that criminal offense were relatively low, since it was subject to no more than 2 years in prison. According to Stamenkovic, the regulatory bodies and inspectorates are vested with the proper authority for these activities, with the assistance of the MUP where appropriate. In his words, the Prosecutor’s Office has filed 47 charges, there are 16 final verdicts and equipment was seized in three cases.

### **3. *The Press Council***

At a round table on November 7, held to mark the first anniversary of the inception of the work of Commission for Complaints, the Secretary General of the Press Council Gordana Novakovic

presented the statistics collected by the Commission to date. The Commission was submitted a total of 38 complaints for suspected violations of the Code of Conduct of Serbian Journalists. The Commission ruled on 24 complaints and in 9 cases, it was established that the Code had been breached. In five cases the Code was violated by the daily “Pres”, twice by “Vecernje Novosti” and once by “Blic” and “Politika” each. In one case, the Commission failed to pass a decision, while one case was settled by mediation. The complaints were mostly filed by NGOs (14 times), while ten private persons also complained against the media. In eight cases, the complaints pertained to the truthfulness of the reporting and journalistic due diligence, while four complaints concerned defamation and insult. The Chairperson of the Complaints Commission Filip Svarm said that the journalists had wronged against ordinary citizens, minorities and marginal groups much more often than against public persons. Attorney at law Bozo Prelevic said that one of the key achievements of the Commission was the fact that the plaintiffs had found sufficient satisfaction in the decisions of the Commission. The work and decisions thereof pertain solely to print media, which have engaged in the self-control of their adherence to the Journalists’ Code of Conduct. The dailies “Danas”, “Kurir” and “Informer” have still not joined the Commission. The Editor-in-Chief of “Informer” Dragan Vucicevic said his newspaper would “engage in the self-control of adherence to the Code.

In late November, the Complaints Commission dealt with two more cases. More specifically, it ruled upon the second complaint filed by Bozidar Mitrovic against the weekly “Nin”, over the text by columnist Mileta Prodanovic. The second complaint was filed by Zoran Todorovski, a specialist in medical psychology, against “Vecernje Novosti”. The Commission found Mitrovic’s complaint to be unfounded, namely that Prodanovic did not, by voicing his opinion about the scientific merit of the exhibition “The Infinity of the Art of Lepenski Vir and Vinca”, violate the obligation to provide truthful information. “The published text”, the decision says, “is not a report from an event, but the author’s personal view about the exhibition. Since the appearance of the text clearly suggested it was not a report, but an essay, this was in accordance to the provision of the Journalists’ Code of Conduct, saying that a clear difference must be drawn between facts that are reported and comments, which allow the author to freely voice his/her opinions.” Nonetheless, Zoran Todorovski’s complaint was accepted. The Commission found that in two texts published on October 18 and 23, respectively, “Vecernje Novosti” violated the provisions of Journalists’ Code of Conduct pertaining to the truthfulness of reporting, journalists’ due diligence, as well as the duty of the journalist to respect the presumption of innocence. In the text “Confession of a Psychologist’s Victim: They Mess up with your Brain”, a former patient accused Todorovski of “mental and sexual harassment” and “Novosti”’s reporter conveyed her account without any reservations.

## STATE AUTHORITIES

### 4. *The Ministry of Culture and Media*

At a conference marking 15 years of the development of independent media in Serbia, organized by USAID and IREX, the Culture Minister Bratislav Petkovic said that the Media Strategy was being redefined and that the issue of media ownership would be dealt with in the scope of media laws. Petkovic said that in the process of the state's withdrawal from the media, specific solutions were being considered for "Radio Jugoslavija" and "Jugoslovenski pregled", while the management of the Tanjug news agency was ready to have the agency transformed and do business according to market rules. "We must now opt for some of the models, which may be applied in the present conditions. The solution will be such that Tanjug will not compromise the work of private agencies", Petkovic said. The Minister added that a working group was formed with the task to redefine the Media Strategy adopted by the previous government. Petkovic's statement that the Media Strategy would be "redefined" has caused major concern. Without doubt, the Strategy has not made everyone happy and some of its segments – particularly the one pertaining to the establishment of regional PSB – have drawn major criticism. However, in spite of all shortcomings, the Strategy currently constitutes the only document the media professionals may invoke when calling for a change to the existing legal framework. Any hints that it will be redefined, without a clear goal and scope, is interpreted by many as the intent to revoke it or change its essence. The adoption of the Strategy was one of the conditions for receiving a positive opinion of the European Union on Serbia's bid for the candidate status and hence any "redefining" could affect the European integration process. Minister Petkovic later changed his rhetoric, not mentioning "redefining" anymore, only announcing that the deadline for preparing new media laws was March 31, 2013.

## COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

### ***5. The Organization of Musical Authors of Serbia, The Organization of Phonogram Producers of Serbia, The Organization for the Collective Realization of Performers' Rights***

In cooperation with the Intellectual Property Office, the organizations for the collective realization of music rights in Serbia – SOKOJ, OFPS and PI – together with the Union of Record Companies of Serbia and the Cultural Education Community of Serbia, organized the Forum on the Value of Music Rights on November 10 in Belgrade. The goal of the meeting was to draw attention of the public to the problems faced by these organizations in the protection of copyright and related rights in Serbia. The Forum was attended by government representatives, those of the competent ministry, as well as officials from the judiciary, the Ministry of Internal Affairs (MUP), professional associations, representative associations of users and media, as well as many music authors, record companies and performers. The collective society said that they would be open for cooperation with everyone in their strive to defend the rights of authors, performers and producers to work and make a living. The collective society insist there is a serious financial potential in the creative industry and that both the state and the citizens should benefit from it.

The initiative of collective organizations should be viewed in the context of the Government's Proposed Law on Amendments to the Law on Copyright and Related Rights. As we have already said in this Report, the Proposed Law gives advantage to certain categories of beneficiaries of copyright and related rights, more specifically craft shops and importers of technical equipment that may be used for the copying of authors' work and objects of related rights. These categories of beneficiaries have seen the highest amounts of their fees limited and even scrapped in some cases. Unfortunately, the restricted attitude of the collective organizations towards the users and the insensitivity to their problems have led to the situation where the state is reacting with amending the law by directly restricting the fees. It seems that, at least for a group of users the Government has decided to put in a privileged position, the call on cooperation from collective organizations has come too late. The Government is obviously not considering the media and the media industry as a sector that deserves to be helped by limiting the fees. It remains to be seen if the new calls of collective organizations on cooperation and their fresh, self-declared openness will result in a more favorable agreement with the media.