

## **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)**

In the period covered by this Report, the RBA Council has held two regular sessions, this time in full composition after a quite a while, since the sessions were also attended by three new members elected on May 5, 2011. At the first session, the Council gave the green light for amendments to the Statute of the Radio-Television Vojvodina, in the segment concerning the competitions criteria to apply to the candidates for the position of General Manager, which is within the RBA Council's powers pursuant to Article 89 of the Broadcasting Law. The session was also attended by the newly-elected members of the RTS Managing Board, who informed the RBA Council about their view of the situation in broadcasting. The following session saw the adoption of the audit report of the RBA for 2010, as well as the report on the realization of the RBA's financial plan for 2010. However, these reports have not been released publicly and hence we are unable to comment on them. We remind that, according to the Broadcasting Law, the Agency shall release a financial plan and revenue and expenditures report. Pursuant to the Law, the revenue and expenditures report must be published no later than three months after the expiry of the financial year.

At the Council's session held on May 18, Radio Fokus was reprimanded for having violated the provisions from the Broadcasting Law concerning hate speech, provisions banning political advertising outside of the election campaign, as well as provisions of the Broadcasters's Code of Conduct concerning the ban on favoring in one's program, or expressly discriminating against of lawfully established political parties, namely the obligation to suppress offensive speech. The decision containing the reprimand is yet to be posted on the RBA's website. Radio Fokus is a station with national coverage that is often mentioned in the public as an unacceptable example of a media outlet that has placed itself completely at the service of one political party, namely the Serbian Progressive Party (SNS). Such bias program reached its peak during the events following the rally of the SNS and several others opposition parties on April 16, 2011 and the ensuing hunger strike by SNS leader Tomislav Nikolic. In view of the above, in addition to the fact that the explanation of the reprimand has not been published, such measure is completely understandable and most probably too lenient.

## 2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

On May 24, 2011, the Republic Agency for Electronic Communications initiated public consultations about the draft decisions on determining the operator with significant market strength on relevant markets, subject to prior regulation. We remind that one of these markets is the one of media content distribution. In the draft of one of the decisions, subject to public discussion, the cable operator SBB is appointed as operator with significant market strength on the retail media content distribution market. The draft decision lays down for SBB the obligation to release certain information, non-discrimination, accounting separation and control of prices and application of cost-based accounting.

The Law on Electronic Communications stipulates that, in order to foster competition on the market, operators with significant market strength shall be imposed special conditions under which they will perform electronic communications activities. The operator has significant market strength on the relevant market if it enjoys, on its own or together with other operators, a dominating position, enabling it to act, to a considerable extent, independently from its competitors, subscribers and consumers. Under the Law, when RATEL determines, on the basis of a prior market analysis, an absence of effective competition on the relevant market, it will enact a decision determining the operator with considerable strength and imposing such operator certain obligations, namely conditions under which it will operate. The obligations that may be imposed are provided for by the Law. If the draft decision pertaining to SBB is adopted as proposed, SBB would be obliged to release certain information, which would first and foremost concern accounting data and the standard retail offer. SBB would also be required to refrain from discriminatory practice in comparable circumstances, as well as to pursue separate accounting oversight of business activities pertaining to the service of media content distribution, relative to the operator's other business activities. Finally, SBB would bear the burden of proof i.e. to demonstrate that the price of its retail media content distribution services stem from the costs, while RATEL would be entitled to order that these prices be adjusted, if found they were not cost-based. Such decision, if passed, would replace the incumbent RATEL decision, which has placed SBB's prices under control as of February 2007. The same decision from 2007 has also bound SBB to keep separate accounting of revenues and costs and hence, the draft decision does not represent anything new in that respect. In practice, the majority of smaller operators have adjusted their prices to those of SBB. It remains to be seen if the new concept would contribute to solving the problems highlighted by the media and whether SBB will provide the same media content distribution services to various media under different conditions.

## STATE AUTHORITIES

### 3. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On May 16, 2011, the Ministry of Culture, Media and Information Society issued a press release saying that, in accordance with the Protocol, signed together with six media associations (NUNS, ANEM, UNS, NDNV, the Media Association and Local Press) an expert working group had been formed, tasked with proposing a Draft Strategy for the Development of the Public Information System in the Republic of Serbia by 2016, along with an action plan for the implementation of that Strategy, by June 1, 2011. The working group has seven members, of which three were proposed by NUNS, ANEM, UNS, NDNV and Local Press, while two each were proposed by the Media Association and the Ministry itself. We remind that the Protocol on Cooperation, detailing the steps for making the Draft Strategy for the Development of the Public Information System in the Republic of Serbia by 2016, was signed on April 18.

On May 26, 2011, the State Secretary of the Culture Ministry, Dragana Milicevic-Milutinovic, confirmed in an interview for the daily Danas that the Draft Media Strategy would be completed by June and that it was expected to be tabled to the Government as early as in mid-July. After that, she said, it would be up to the Government to decide when to put the Media Strategy on its agenda and decide about the adoption thereof. The State Secretary did not elaborate on the content of the future Draft Media Strategy, but stressed she personally thought it was impossible to set up 15 regional public service broadcasters in the manner that was provided by the Media Study, drawn up by experts hired by the European Commission. “My personal opinion is that this is unfeasible, because the question would be how to fund 15 regional public service broadcasters on top of the existing two. They may not be funded from the subscription fee, which is already difficult to collect and you cannot cut back resources from the Public Service Broadcaster. On the other hand, we may ask if it is appropriate to deny the citizens in these regions the right to be informed about issues relevant for their local communities. I hope that the working group will have a quality proposal and that we will reach a relatively equitable solution through the public discussion”, Milicevic-Milutinovic said.

#### **4. COMMISSION FOR COPYRIGHT AND RELATED RIGHTS**

In early May, ANEM, as a representative association of broadcasters users of musical author works, received the conclusion sent by SOKOJ, the organization of musical authors of Serbia that had asked ANEM to state its written opinion about SOKOJ's Proposal of the tariff of fees. In this way, after almost one year after SOKOJ and ANEM failed to reach an agreement on the tariff and after SOKOJ requested opinions about its Proposal of the tariff of fees, the procedure has entered the phase in which the Commission has sent the proposed tariff to the representative association of users for opinion. The delay was caused, on one hand, due to the feet dragging of the Government in appointing the Commission for Copyright and Related Rights and, on the other, the slow work of the Commission which, although it was established late last year, has only now called the representative association of users to submit an opinion about the proposed tariff.

However, ANEM has not received, along with the Proposal, SOKOJ's explanation as to why the proposed tariff is supposed to ensure an amount of the fees that will be proportionate to the relevance of the protected object from SOKOJ's repertoire to the revenues of the users; what is the rationale for SOKOJ to justify the proposed lowest amount of the fees for the exploitation of the protected objects; or as to the question if SOKOJ, in proposing the said tariff, has taken into consideration the tariffs of collective organizations of states with a GDP similar to the one of Serbia. Namely, the percentage of the fee allocated in SOKOJ's proposal ranges from 2.20% of revenues for television and 2.50% of the revenues for radio, to 4.20% of revenues for television and 4.50% of the revenues for radio. The currently applicable tariff ranges from 2.50% to 3.50% of revenues for television and radio, i.e. the proposed new tariff is actually less favorable than the current tariff. In line with the Law on Copyright and Related Rights, ANEM must, within one month, submit its opinion about SOKOJ's Proposal for the tariff.

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

#### **5. ORGANIZATION FOR COLLECTIVE ADMINISTRATION OF PERFORMING RIGHTS (PI)**

Organization for Collective Administration of Performing Rights (PI) from Belgrade, one of the three organizations holding a license of the Intellectual Property Office for the collective

realisation of copyright and related rights (the remaining two are the Organization of Phonogram Producers of Serbia - OFPS and Serbian Music Authors' Organization - SOKOJ) announced that it was admitted to the Societies' Council for the Collective Management of Performers' Rights -SCARP on the regular annual session of that organization's assembly, on May 17, 2011 in Washington, as an affiliate member.

Article 186 of the Law on Copyright and Related Rights stipulates that the organization for the collective realisation of musical performers' rights, under an agreement with the relevant foreign organizations, shall provide for the collective realization of the rights of domestic holders abroad, as well as of foreign holders in Serbia. The organization shall fulfill this obligation within five years from acquiring the first permit for the performance of its activity. Organization for Collective Administration of Performing Rights (PI) obtained its first permit on the basis of Intellectual Property Office decision no. 6737/07-2 dated June 6, 2007, among other things, for the realization of the right to a fee for the broadcasting and rebroadcasting of an interpretation from the recording issued on a sound carrier, the public communication of the interpretation broadcast from the recording issued on a sound carrier and the public communication of the interpretation broadcast from the recording issued on a sound carrier. According to the information that are currently available on the webpage of Organization for Collective Administration of Performing Rights (PI), in the first years since the issuance of its first work permit, it has concluded merely four bilateral agreements with the relevant foreign organizations, namely those from Cyprus, the Russian Federation, Kazakhstan and Ukraine. Since the main goal of SCARP is the development and improvement of bilateral organizations between collective performers' rights organizations, the consequence of PI's membership in SCARP could have been new bilateral contracts. SCARP members are collective organizations from Argentina, Austria, Brazil, Bosnia-Herzegovina, Canada, Chile, Croatia, the Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, the Netherlands, Iceland, Ireland, Japan, Latvia, Lithuania, Malaysia, Norway, Poland, Portugal, Korea, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, Great Britain and the United States. From the short news posted on the website of Organization for Collective Administration of Performing Rights (PI), one may not deduce why that organization was admitted only as an affiliate member, or what is the difference between full-fledged membership and affiliate membership.