

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

1.1. On March 9, 2011, the Republic Broadcasting Agency (RBA) issued the lists of candidates for members of managing boards of the Public Service Broadcasting Institution of Serbia and the Public Service Broadcasting Institution of Vojvodina. The list for the Public Service Broadcasting Institution of Serbia contains 52 candidates, while there are 35 candidates on the list for the managing boards of the Public Service Broadcasting Institution of Vojvodina.

The Law stipulates that the managing bodies of public service broadcasting institutions shall be the managing boards, which have nine members that are appointed and dismissed by the Agency. The members of the managing boards are appointed from the ranks of the journalist profession, as well as among reknown experts from the field of media, management, law and finances, as well as other distinguished persons. Their tenure is five years and one person may be appointed to the managing board no more than two consecutive times. Managing boards shall adopt workplans, including investment plans, work and business reports, as well as periodic and annual statements. After a public competition, they appoint and dismiss the general managers. Furthermore, at the proposal of the general manager, after a public competition, they appoint and dismiss the directors of radio and television and the editors-in-chief and responsible program editors. Otherwise, the procedure, under which the RBA elects the members of managing boards, is regulated by the Agency's statute. That statute stipulates that the candidates shall be registered on the basis of a public call released no less than 15 days prior to sending the initiative for the election of members to interested organizations, institutions and citizens. The received proposals are consolidated into a list of candidates that is released to the public. The time limit for lodging objections shall be no less than 15 days prior to the vote for candidates. The vote shall be secret and a candidate shall be elected if he/she receives the votes of no less than five members of the Council.

1.2. On a session held on March 30, the RBA Council passed a binding instruction on the conduct of broadcasters related to programming content that may harm the physical, mental

and moral development of minors. At the same session, in accordance with Article 87, paragraph 2 of the Broadcasting Law, the Council passed the decision to dismiss Predrag Markovic from the RBA Managing board, who has handed over his resignation.

In the part of this Report concerning the implementation of the Broadcasting Law, we have written about the Binding instruction on Broadcasters' Conduct related to reality programs, which was published in the Official Gazette of the Republic of Serbia no. 17/2011 that came into force on March 23. That instruction introduced a ban on live transmissions of reality programs. By the end of the month, the RBA Council went a step further and prescribed that programs categorized as content that might harm the physical, mental and moral development of minors, regardless of their age, which must be labelled "18", might be broadcast only from midnight to 6 a.m. We remind that the ratified European Convention on Crossborder Television (Official Gazette of the Republic of Serbia – International Treaties, no. 42/2009), in its Article 7, paragraph 2, stipulates that all programming content that may adversely affect the physical, mental and moral development of children and youth, shall not be aired at times where the probability exists that it might be watched by children. Article 19 of the Broadcasting Law says that the RBA shall particularly see that programs that may adversely affect the physical, mental and moral development of minors are unavailable on radio or television, except if, by a technical procedure or time of broadcast, it is ensured that minors are unable to see or hear such programs. The Broadcasting Law also stipulates that programs representing a serious threat to the physical, mental and moral development of minors shall be prohibited. The obligation to air a special warning or label programs that may be harmful for children and youth is provided for by the Broadcasters' Code of Conduct. However, there are no clear rules and guidelines as to the classification of programs. The Broadcasters' Code of Conduct says that broadcasters shall be free to classify programs at their own discretion, but that the RBA shall be entitled to warn or punish broadcasters that fail to put the proper labels on programs unsuitable for children, fail to label such programs at all, or systemically set the wrong age limit for programs. If they have any dilemmas, broadcasters may address the RBA for an opinion about the classification and labelling and the RBA shall, in due course – the Code fails to set a precise deadline – provide its opinion to the broadcasters. It is also unknown under which criteria the RBA shall proceed if a broadcaster requests its opinion. In any case, although the aforementioned restriction, which was introduced by the Binding instruction on Broadcasters Conduct in relation to programming content that may harm the physical, mental and moral development of minors, is completely legitimate – guided by the legitimate interest to protect the rights of minors – the absence of clear rules and guidelines pertaining to the classification of programs as suitable or unsuitable for minors, opens the door to various interpretations and definitely does not contribute to the protection of minors or the legal security of broadcasters.

1.3. On March 31, 2011, pursuant to its powers under the Broadcasting Law, the Serbian Parliament elected Goran Petrovic from Kragujevac to the membership of the RBA Council. Goran Petrovic was elected at the proposal of the Conference of Serbian Universities, to the vacancy created after the death of Professor Svetozar Stojanovic on May 7, 2010.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

2.1. On March 31, 2011, the Republic Agency for Electronic Communications (RATEL) announced to have paid, pursuant to Article 27, paragraph 6 of the Law on Electronic Communications, the amount representing the difference between the revenues and expenditures laid down in the Agency's annual financial report, on the account determined for the payment of public revenues of the budget of the Republic of Serbia. According to that report, the said amount is 1.248.736.000 RSD, i.e. more than 12 million Euros.

2.2. At the first session of the first regular sitting in 2011, held on Thursday, March 31, 2011, the Serbian Parliament passed a decision on the election of the Chairman, Deputy Chairman and members of the Managing Board of RATEL. Under that decision, the Chairman is Professor Jovan Radunovic, PhD; the Deputy Chairman is Zdravko Stanimirovic, PhD, while Professor Miroslav Djukic, PhD, Professor Vlade Milicevic, PhD and Vuk Vujovic, MA were elected to the membership of Managing Board. Jovan Radunovic was already the Chairman of the Agency's Managing Board in the previous mandate and will continue to chair the MB.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

3.1. As previously indicated in this Report, the Parliament of the Republic of Serbia has adopted several regulations relevant for the media sector. It has also decided about the appointment of new members of the RBA Council and the Managing Board of RATEL.

3.2. On March 22, 2011, the Secretary General of the Parliament Veljko Odalovic announced, after the meeting with the representatives of four of six TV stations with national coverage (RTS, Avala, Prva and B92), that talks would be held separately with each national TV station about the live broadcasts of parliamentary sessions. This is practically the

consequence of the fact that not a single station has applied for the tender called by the Parliament. “We have informed them that we have earmarked 80 million dinars in the budget and that the contract will be signed for the period of one year”, Odalovic explained. “Under the contract, the station shall be required to broadcast the parliamentary sessions, as well as certain extraordinary events. The representatives of stations objected that the fee for the live broadcasts is too low, while the technical requirements are high, that banking guarantees are increasing the cost...”. Regardless of these complaints, Odalovic said that the aforementioned fee was not going to be raised. The position of RTS, which was from day one mentioned as the most serious candidate to be awarded the contract, has remained unchanged. “We will not talk about future cooperation until we are repaid by the Parliament the 3.3 million Euros they owe us”, Aleksandar Tijanic told Novosti.

The insistence of the Parliament on live broadcasts of all plenary parliamentary sessions, regardless of their duration and the relevance of the topic of the sessions, as well as the request for these broadcasts to be performed on terrestrial channels, is in obvious contradiction with the principle of reasonable and efficient use of the radio-frequency spectrum as a limited natural resource – one of the basic postulates the Broadcasting Law is founded upon. The tender called in mid-January was doomed from the start, in view of the aforementioned conditions imposed by the Parliament. During the meeting with the representatives of stations with national coverage, the Parliament reportedly offered to give up from certain unrealistic technical conditions (e.g. one of the conditions of the tender was that the station must possess several outside broadcast vans with HD technology). However, the Parliament continues to insist on the broadcasts to be made on terrestrial channels, regardless of the duration of the sessions. The Parliament would reportedly be prepared to consider the possibility, in the event that a plenary session is continued after 6 p.m. – when, at least officially, the working hours of the Parliament expire – to air these parts of the session in deferred transmissions. However, the latter was the last concession they were prepared to make. The Parliament did not seem to want to understand the arguments voiced by commercial stations that it was impossible for them to find an economically viable way to broadcast all the session, especially when it is impossible to predict the duration thereof and when the viewers are not exactly interested in watching all the sessions. With the Parliament standing firm on their position, it is unrealistic to expect the separate talks with individual stations to yield a different result than the outcome of the failed tender procedure.

4. THE MINISTRY OF CULTURE, INFORMATION AND INFORMATION SOCIETY

4.1. On March 17, 2011, the Assistant of the Culture Minister for the media Natasa Vuckovic Lesandric died in Belgrade after a long illness. On the commemoration held on March 21 in the Belgrade City Hall, the President of the Journalists' Association of Serbia (UNS) Ljiljana Smajlovic said that Natasa was all but haughty. "Even when she did not respect someone's opinion, she always respected the person and that person's humaneness", Smajlovic said, adding that "Natasa was the proof that a different policy is possible, a policy that did not stamp on everyone in order to prove that it has the power". Natasa Vuckovic Lesandric was born in 1966. She graduated at the Belgrade Faculty of Philosophy. She was a consultant and trainer of the World Press Association in Paris; she was hired as a consultant in Ukraine for the top-selling daily "Segodnya" in Kiev, as well as in Afghanistan, Armenia, Belarus and Mongolia. She also worked for the marketing department of the daily "Blic", was the director of the distribution network APM Trans Pres, established in the late 90s to support independent media. Finally, she was the director of the printing house of the Association of Private Media "Print" from Belgrade. She was appointed to the post of Assistant of the Culture Minister for the media in mid-February 2009, at the proposal of the political party G17 Plus.

4.2. On March 15, 2011, Predrag Markovic took over the duty of Minister in the newly-merged Ministry of Culture, Information and Information society. A week later, the new minister told the Beta news agency that "journalists' associations and media associations will be invited to a discussion about the continuation of the drafting of the Media Strategy." He confirmed that the "Media Strategy is a priority from day one". In an interview for the Tanjug news agency on March 27, the Minister announced the quick appointment of the state secretary who would handle the field of information within the Ministry. "The Ministry will put at a disposal everything that is necessary in order to speed up the development of the Strategy", Markovic said.

5. PROVINCIAL INFORMATION SECRETARIAT OF VOJVODINA

On March 15, 2011, the Provincial Information Secretariat of Vojvodina called a competition for the co-financing of media with a doubled budget compared to last year. The Government of Vojvodina has earmarked 48 million dinars for helping media in the province; the biggest difference is that the competition will not be open for only two weeks – it will be possible to apply with quality projects until November 15. "We respect the needs of the media and we are

ready to assist them through this competition, which is fully conformed to the Law on State Aid Control”, said the Vice-President of the Vojvodina Government and Secretary for Information Ana Tomanova-Makanova. “At the same time, we are monitoring the expenditures in order to ensure that the funds awarded to media are spent reasonably. Those who failed to submit a report on that on time – about ten percent of the media – will not be eligible for this year’s competition”. The media from Vojvodina will be able to compete for 23 million dinars allocated for the co-financing of public information projects, namely projects aimed at the improvement and expansion of the existing programming content in print and broadcast media, as well as for internet portals. The second competition, with a budget of also 23 million dinars, concerns the co-financing of the technical and technological equipping of primarily broadcast media, in view of the statutory time limits for the coming digital switchover. At that, according to Ana Tomanova-Makanova, advantage will be given to underdeveloped local self-governments. The third competition pertains to projects for the improvement of professional standards, with a budget of two million dinars. However, Tomanova-Makanova stressed that it would be possible to apply for certain journalist training projects in the scope of the second competition. All options are open – the possibility for the Province to organize seminars in cooperation with journalists’ associations, the option to help media that want to implement such project, as well as to help individual journalists in relation to entrance fees for quality seminars in other countries.

The competitions were called pursuant to Article 62, paragraph 1, subparagraph 1 of the Law on Determining the Competences of the Autonomous Province of Vojvodina. The applications will be reviewed by a commission to be appointed by the Provincial Secretary for Information.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6.1. On March 26, 2011, the regular annual meeting of the Assembly of the Organization of Phonogram Producers of Serbia (OFPS) was held in Belgrade’s Hotel Crystal. In addition to the representatives of 41 publishing companies, a representative of the Intellectual Property Office also attended. In a press release issued after the meeting, the OFPS said that it posted in 2010 a 35% increase in the collection rate year-on-year. The press release went on saying that the increase resulted from greater awareness that it was important to pay the fee for using music for commercial purposes if the music industry was going to survive.

The information about the 35% increase in the collection rate comparing to the previous year was provided under the financial statements for 2010. It is difficult to logically explain how, in the situation where the tariff, at least under the Law on Copyright and Related Rights, is typically determined as a percentage of the revenues the user is generating in the performance of an activity involving the utilization of the objects of protection (i.e. music) and where the advertising market is stagnating or declining, the OFPS has managed to raise the collection rate for as much as 35%. If we recall that in mid-last year, the organization of musical authors of Serbia SOKOJ announced that their budget intended for authors and copyright holders had been increased by 23%, it will become clear why collective organizations are reluctant to negotiate new tariffs with broadcasters. They want to see the existing tariffs remain as long as possible, enabling them to earmark more funds for the copyright holders, which is, nonetheless, completely disproportionate to the difficult financial situation which the users have found themselves in.

6.2. The agony continues for dozens of media throughout Serbia, which have been sued for commercial offences under the Law on Copyright and Related Rights. If found guilty, they will be ordered to pay fines ranging from 100.000 to 3.000.000 RSD. We remind that the OFPS has pressed charges against more than one hundred stations throughout Serbia and their managers, by sending petitions to the RBA, complaining about the failure of the said stations to deliver lists of broadcast phonograms or failure to deliver these lists in the proper form. The RBA declared itself incompetent to deal with these petitions and forwarded them to public prosecutors. The latter are now initiating commercial offence proceedings and in certain cases commercial courts have already issued fines against media.

After ANEM objection lodged with the Intellectual Property Office, pointing to the non-conformity of OFPS' acts with the relevant provisions of the Law on Copyright and Related Rights, which also highlighted the mutual contradictoriness of these acts, the Office has ascertained the irregularities in the work of OFPS and ordered the organization to remedy these irregularities. The notice about these irregularities was sent to OFPS on March 31. The Office also ascertained the non-conformity of the OFPS Rules about the notification of broadcast phonograms by the broadcasters with the Tariff, as well as the fact that the manner of entering data about broadcast phonograms – as provided for by the Rules about the notification of broadcast phonograms by the broadcasters – is not laid down as prescribed by Article 187 of the Law on Copyright and Related Rights. Such findings of the Intellectual Property Office have only confirmed that the proceedings against the broadcasters and the fines issued in certain cases are legally completely groundless.