

## **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)**

The Republic Broadcasting Agency (RBA) adopted in December a list of events of national interest for the citizens in the Republic of Serbia for 2011. This list is relevant for broadcast media, since Article 71 of the Broadcasting Law stipulates that the exclusive right to broadcast events from the list may be awarded only to a broadcaster whose coverage zone encompasses the entire territory of the Republic of Serbia, in other words, only a broadcaster possessing a license for national coverage. The Law also stipulates that such broadcaster must allow and enable all other interested broadcasters to record and air short reports from such an event. The list contains twenty cultural events, as well as certain sports events related to football, basketball, volleyball, handball, water polo, tennis, track and field, swimming and cycling.

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

The Republic Agency for Electronic Communications (RATEL) presented in December a Feasibility Study and conceptual design of radio coverage with digital TV signal on the territory of the Republic of Serbia. The Study was produced by the Telecommunications and IT Department of the Faculty of Electrical Engineering of the Belgrade University and the companies Konsing Group d.o.o. and Gisdata d.o.o. from Belgrade, in cooperation with experts from the Ministry of Telecommunications and Information Society, RATEL and the public company "Broadcasting Equipment and Communications".

The Study has analyzed the situation on broadcasting sites of the main grid and concluded that most sites were unable to fulfill technical criteria for reception, unobstructed and safe operation of the digital network, while certain sites did not have any facilities at all. Accordingly, the Study envisages that adapting the existing sites will cost almost four million Euros, while the costs of purchasing and assembling the equipment for the existing emission sites were estimated at more than 16 million Euros. On the other hand, the costs of building new emission sites were estimated – depending on which of the two alternative solutions

would be opted for – to 3,5 and 4,2 million Euros, respectively. Along with the costs of purchasing measuring equipment and personnel training, this ultimately amounts to more than 26 million Euros. Nonetheless, the Study has concluded that the project is profitable and low-risk. In fact, it has been foreseen that the public company “Broadcasting Equipment and Communications” would generate an annual revenue of more than 20 million Euros. It remains unclear, however, on the basis of which estimate of broadcasting costs for content providers, radio and television stations with valid broadcasting licenses, have the authors of the Study concluded that the said revenues would be so high. We remind that according to the last available financial reports of the RTS concerning the year 2008, the national broadcasting service has generated merely slightly more than five million Euros from the provision of services on emission facilities, which have been assigned to the public company “Broadcasting Equipment and Communications”. It remains to be seen how this company will generate four times more revenue in a situation where, in the estimate of the authors of the Study, the broadcasting costs for content providers are supposed to go down after digitalization, as foreseen in the Digital Switchover Strategy.

## **STATE AUTHORITIES**

### **3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA**

As indicated earlier in this Report, in the monitored period, the Parliament of the Republic of Serbia did not discuss any laws of particular relevance for the media sector. Two sessions of the Parliament’s Culture and Information Committee have been held. On the session held on December 23, the Committee reviewed the Draft Law on the Budget of the Republic of Serbia for 2011 – compartment 28, pertaining to the Ministry of Culture. The proposed budget for the Ministry, which will amount to 6.31 billion dinars in 2011, was explained by the Culture Minister Nebojsa Bradic. According to the Draft Budget, the subsidies for media shall amount to 378.8 million dinars. The members of the Committee have judged that the budget for culture for the year 2011 was not a small one and pointed to the need to address the issue of transformation of state media.

### **4. THE MINISTRY OF CULTURE**

At a meeting held at the Ministry of Culture on December 29, dedicated to the drafting of the development strategy of the public information in Serbia and attended by the representatives of journalists’ and media associations, representatives of the Council of Europe Belgrade

Office, the EU Delegation and the OSCE Mission to the Republic of Serbia, the Minister Nebojsa Bradic announced that the Draft Media Strategy would be proposed by February 20, 2011, followed by a public debate. Bradic said that the Strategy was expected to be adopted in mid-2011 and stressed that the Ministry was ready to cooperate with all stakeholders and especially with media associations and the media industry. In Bradic's words, the goal of the Ministry of Culture is to make a strategy that will be in line with the highest European standards, as well as with the needs of the Serbian media market and Serbian society as a whole.

We remind that, after the release of the Media Study – produced by experts hired by the European Commission and declared a basis for drafting the Media Strategy, on a series of round tables in September it was announced that the Draft Strategy would be simultaneously worked on and that on each subsequent round table the Ministry would release the conclusions from the previous one. These conclusions, we have been told, were supposed to be aggregated into a document that would actually represent a Draft Strategy. The said Draft was supposed to be released in late September or early October. In October, the Minister of Culture Nebojsa Bradic announced that the Draft Media Strategy would be issued in early November. Again, it had not happened and the Ministry of Culture told the journalists' and media associations that the Draft Media Strategy would be released first on November 16 and then on November 22. However, the release was again postponed and the end of January was mentioned as a possible release date. In the meantime, the Ministry of Trade and Services opened the public debate on the Draft Advertising Law, which we discussed in our November report. This document completely ignores all the input that was heard at the above mentioned round tables. Moreover, the Vojvodina Secretary for Information Ana Tomanova-Makanova said on December 23 that the Province had finished the Draft Media Strategy in the part concerning Vojvodina, emphasizing that the provincial strategy would be an integral part of the republic strategy. It remains to be seen to what extent the said Draft, which has not yet been publicly presented, takes into consideration the positions of media professionals voiced at the round tables about the Media Study. The fact remains, however, that further postponements make the entire process of adoption of the Media Strategy, as well as the potential scope thereof, increasingly uncertain.

## COLLECTIVE ORGANIZATIONS

### **5. OFPS – the collective organization for the protection of phonogram producers' related rights and PI – the Organization for the collective realization of performers' rights**

In our October 2010 Report, we wrote about the objections voiced by the Intellectual Property Office (IPO) regarding the business cooperation agreement between PI and OFPS signed on June 21, 2010. The IPO said that the agreement was not fully in line with the Law on Copyright and Related Rights. Namely, according to the said Law, the phonogram producers' fee for broadcasting, rebroadcasting and public communication, as well as the performers' fee for broadcasting, rebroadcasting and public communication, is to be charged as a single fee. The single fee shall be collected by a single organization, determined by an agreement entered into between the performers' organization and the phonogram producers' organization. According to the said agreement, these organizations must also determine the amount of the costs of collection of the single fee and the frequency of disbursement of part of the single fee to the other organization.

On December 29, 2010, the PI and OFPS signed, in keeping with the objections of IPO, an annex to their business cooperation agreement. Among other things, the annex changed the name of the agreement, now entitled "Agreement on Business Cooperation in Collecting the Single Fee". The single fee awarded to phonogram producers and performers will be charged by OFPS and the annex also stipulates that the OFPS shall in that regard enter into agreements with the users, register users on the ground and in the user database, invoice the fee and present the invoices to the users, perform administrative tasks, organize and control representatives on the ground, perform accounting and bookkeeping tasks related to the collection of the single fee, regulate the payment of VAT for the presented invoices, pay court and attorney fees, inform the IPO in accordance with the Law, perform the transfer of the collected amounts and prepare the cases for initiating legal proceedings.

The most serious changes concern the expert working bodies provided for by the main agreement, as well as the competencies of these bodies. Namely, instead of a common collection department, the Council of Phonogram Producers and Performers and the PI Coordinator as expert bodies, the annexed agreement provides for "instruments for the conciliation of positions of the contractual parties" – the Council for Supervision and Performance of the Agreement and the PI Coordinator. Both the Council and the Coordinator act only between the contractual parties and without direct effects for third parties and in particular the users.

The Council for Supervision and Performance of the Agreement shall bring into line the positions the contractual parties with regard to the performance of the Agreement and oversee performance on their behalf. The Council will also oversee the process of collection of the single fee, as well as the process of allocation of the fees between the organizations. It will be bringing into line the positions of the contractual parties with regard to initiating legal proceedings against users that are not paying the single fee, as well as the positions related to the hiring law offices, agencies and similar professionals and legal persons and oversee the work of the latter. The Council will also reconcile the positions of the two organizations regarding public relations, marketing campaign and activities to promote the obligation of payment of the single fee. The Council shall oversee the obligation to regularly update the RBA about broadcasters that are not submitting the list of broadcast objects of protection, broadcasters that are not paying the single fee regularly and do not have an agreement concluded with OPFS.

The PI Coordinator shall be entitled to receive all necessary information regarding the collection of the single fee, except for confidential information. It shall have access to the entire documentation related to the collection of the single fee, as well as the right to hire an external expert to analyze the findings he finds disputable or unclear.