

## **IV MONITORING OF 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. Certain questions concerning the activity of the Republic Broadcasting Agency (RBA) have partly been elaborated on in the part of this Report dealing with the implementation of the Broadcasting Law.

1.2. On September 15, 2010, the Republic Broadcasting Agency called the operators that have been issued approvals by the Republic Agency for Electronic Communications (RATEL) for the provision of radio and television broadcasting services through the cable distribution network to furnish, within 30 days, a list of all channels they are distributing, as well as to file requests for the issuance of licenses for domestic cable channels.

According to the Broadcasting Law, the RBA shall issue a license for cable broadcasting without public competition, at the request of the cable operator. The operator is obliged to meet beforehand the conditions prescribed by a separate law governing telecommunications with regard to the possession of the proper licenses, fulfillment of technical requirements and standards for the network it uses, as well as other conditions prescribed by the law and the regulatory body. The operator also has to obtain the rights for broadcasting a certain program from the broadcaster of that program. The obligation to obtain a license for cable broadcasting does not apply to programs subject to RBA licenses for terrestrial broadcasting in the area for which such license was issued and provided that the operator is distributing at the same time free of charge the program of public service broadcasters. The obligation to obtain a license for cable broadcasting also does not apply to programs that may be received by free (unencoded) satellite broadcasting on the territory of the Republic of Serbia. However, concerning the licensing of cable channels, the Law has not released from that requirement foreign channels whose licenses have been issued in their mother countries (except for unencoded satellite channels), although Serbia has ratified the European Convention on Transfrontier Television, which has committed our country not to restrict on its territory the rebroadcasting of programming services harmonized with the provisions of the said Convention. Furthermore, the Law stops short of responding to questions pertaining

to the localization of foreign channels, the insertion of localized advertisements in foreign programs for the Serbian market which is taking place on cable. Otherwise, according to the publicly available Register of Issued Approvals of RATEL for the distribution of radio and television programs through the cable distribution network, there are currently 88 such operators in Serbia.

In any event, although by having extended the above call to cable operators – more than eight years after the Broadcasting Law came into effect – the RBA has practically made the first step in the direction of regulating the cable offer in Serbia, which is in itself necessary and long awaited, the authors of this Report believe that the Agency will not manage to tackle all the problems present on this market by the above described manner of licensing cable channels. The key problem is not the RBA itself, but the Broadcasting Law that is out of step with contemporary developments. The Broadcasting Law namely provides insufficient flexibility to the Agency in this area, which is needed in view of the constant technological progress and occurrence of new business models and new services in cable broadcasting, which are unknown to the said Law. All this is yet again pointing to the necessity to promptly introduce the long-discussed Amendments to the Broadcasting Law. The RBA tried to tackle some of these problems by passing the Rules on Issuance of Licenses for Cable Broadcasting. However, it didn't receive a positive opinion from the Ministry of Culture regarding the constitutionality and legitimacy of these Rules. Namely, according to the provisions on the Law on Public Agencies, the RBA is required, as any other public agency, to obtain, prior to the release of any regulation, the opinion of the ministry competent for the affairs of the Agency (in the concrete case the Ministry of Culture) about the constitutionality and legitimacy of the regulation in question. On the other hand, if it believed the regulation to be unconstitutional and/or illegitimate, the Ministry should have furnished to the Agency a reasoned proposal as to how to put the regulation in line with the Constitution, Law, regulation or other general act of the Parliament and the Government. The nature of the Ministry's objections and whether it has put forward a proposal for harmonizing the rules remains unknown.

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

2.1. On September 8, 2010, RATEL's Managing Board called a public competition for the election of RATEL's Director, pursuant to Article 19 of the Law on Electronic Communications, Article 16, paragraph 1, subparagraph 10) of the Statute of the Republic

Agency for Electronic Communications (RATEL) and the decision of the Managing Board on calling a public competition.

The Law on Electronic Communications says that RATEL's bodies are the Managing Board and the Director. Under the Law, the Director is responsible for ensuring the lawfulness of the Agency's activities; he represents the Agency, runs the operation and business thereof, passes decisions related to the rights, obligations and responsibilities of Agency employees, prepares and implements the decisions of the Managing Board, ensures the transparency of the agency's work and performs other duties provided for by the Law and the Statute of the Agency. The Director is elected for a five-year term of office, as well as is dismissed, by the Managing Board, on the basis of a public competition, pursuant to the Law. The Director reports to the Managing Board for his work and submits to the Managing Board an annual and periodical reports. The conditions for the appointment of the Director are the same as the conditions for electing members of the Managing Board of the Agency. The Director must be an expert with high academic education from an area relevant to the Agency's work and in particular in the area of electronic communications, economy and law. He shall have achieved as well noteworthy and acknowledged works or practice in the area of electronic communications and he must enjoy a high reputation in professional circles.

2.2. RATEL representatives have participated in a series of round tables organized by OSCE. The aim of the round tables was to promote a debate about the recently adopted Media Study, which would serve as a starting point for drafting the Media Strategy of the Republic of Serbia. RATEL representatives have pointed to the necessity of urgently amending the Broadcasting Law, so as to enable the digitalization of terrestrial broadcasting.

We hereby remind that, pursuant to the existing Broadcasting Law, an integral part of the broadcasting license is the radio station (transmitter) license, which is issued, at the request of the Agency, by the regulatory body competent for the sphere of telecommunications, in accordance with a separate Law governing telecommunications, on the basis of the Radio Frequencies Distribution Plan enacted by the ministry in charge of telecommunications. The Strategy for the Switchover from Analog to Digital Broadcasting in the Republic of Serbia provides for a different architecture of the digital broadcasting chain, in which broadcasting licenses will not include a radio station license (license for use of the spectrum), but only licenses for accessing the multiplex in terrestrial digital broadcasting, which are unknown to the Broadcasting Law. Consequently, the Broadcasting Law needs to be urgently amended and RATEL's objections may be considered totally justified.

## STATE AUTHORITIES

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

In the period covered by this Report, the Parliament of the Republic of Serbia did not discuss any law of special relevance for the media sector. On a session held on September 30, the Culture and Information Committee laid down the list for the election of a member of the RBA Council, at the proposal of the University Conference of Serbia. The list included Natasa Gospic PhD and Goran Petrovic. Such list with the said two candidates will be tabled by the Committee to the Parliament for opinion. Natasa Gospic PhD is an Associate Professor on the Telecommunications Traffic Department of the Faculty of Transport and Traffic Engineering in Belgrade, while Goran Petrovic is a graduated lawyer from Kragujevac. We remind that one of the nine members of the RBA Council is elected by the Parliament of the Republic of Serbia at the proposal of the University Conference of Serbia. The election is carried out in order to fill the vacancy created by the death of the former member elected at the proposal of the University Conference, Mr. Svetozar Stojanovic, Ph.D.

### 4. THE MINISTRY OF CULTURE

4.1. As we have already mentioned herein, the Ministry of Culture has organized, in cooperation with OSCE and the European Union Delegation in Serbia, with the support of the British Embassy in Belgrade, a series of round tables. The aim of the round tables was to encourage debate about the recently adopted Media Study, which would serve as a basis for drafting the Media Strategy of the Republic of Serbia. The Culture Minister Nebojsa Bradic said that Media Strategy would be a turning point in the development of the Serbian media scene. "This first Media Strategy of Serbia will ensure the proper conditions for the successful fight for all, a civilized news media environment, better conditions for journalists and quality, objective and truthful reporting", Bradic said. Assistant Culture Minister Natasa Vuckovic-Lesendric said that many laws would have to be amended if the recommendations from the Media Study were accepted.

The Ministry of Culture did not meet the expectations of the participants of the round tables and fell short of fulfilling its own promises related to laying down the conclusions from the discussions led on the round tables and from the work on drafting the Media Strategy that took place simultaneously with the round tables. We remind that the Ministry released in late August a public call for submitting projects that would contribute to improving the public

information system. This call pertained to the drafting of the media strategy proposal, on the basis of the Media Study and the discussions of representatives of media and professional organizations on the above mentioned round tables. Following the said public call, the Ministry reportedly opted for PricewaterhouseCoopers (PWC) as the consulting company that should have developed the Draft Media Strategy. PWC representatives attended the round tables, but the representatives of media and professional organizations weren't told how their presentations would be considered. Furthermore, there was no explanation as to the course of the Draft Media Strategy, in view of the contradictions between certain recommendations from the Study and the positions voiced in the discussion by the representatives of the above mentioned associations. The Ministry of Culture had initially merely announced that it would furnish the first draft of the Media Strategy to the representatives of media and professional organizations prior to the last round table, which was scheduled for early October. However, in September already, the Ministry told the participants that it would need much more time for developing the said first draft of the Strategy, while the last round table initially scheduled for October was cancelled. This points to the unpreparedness of the Ministry for this task and for the process of drafting the Media Strategy. This lack of preparedness could have been observed at the round tables, where the representatives of the Ministry, as well as the international experts, failed to answer to many objections and proposals of alternative solutions for developing the Media Strategy voiced by the participants.

## **COLLECTIVE ORGANIZATIONS**

### **5. OFPS – the Collective Organization for the Protection of Phonogram Producers' Related Rights**

OFPS has informed the public that a session of the Phonogram Producers and Performers Council was held on September 27, 2010. The Council's Rules of Procedure were adopted and the participants discussed joint ideas related to the coming marketing campaign.

Article 127 of the Law on Copyright and Related Rights says that the fees the producers of released phonograms and the performers respectively are entitled to shall be charged from the users as a single fee. The single fee shall be collected by a single organization, determined in the contract entered into between the performers' organization and the phonogram producers' organization. Under that contract, the said organizations are required to also determine the level of collection costs related to the single fee and the frequency of payment of part of the fee to the other organization. The contract shall be published in the Official

Gazette of the Republic of Serbia at the cost of these organizations. The Phonogram Producers' Organizations of Serbia OFPS and the Organization for the Collective Realization of Performers' Rights PI have signed that contract and agreed that the OFPS would be the organization that would be collecting the single fee. The Phonogram Producers and Performers Council is an expert working body established by the said contract, which manages the collection and apportionment of the fee and oversee and control the contract concluded between two collective organizations.