

## **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. On July 13, 2010, the RBA announced that it had filed fifty criminal charges with the Special Prosecutor's Office for Cyber Crime against radio stations in a procedure of closure for unauthorized broadcasting. The Agency stressed that the aim of the charges was to effectively curb radio piracy. The RBA's press release said it was a regular activity of the agency in shutting down illegal radio and TV stations, involving also the Special Prosecutor's Office for Cyber Crime, since it has more efficient legal powers for clamping down on this type of offences. The RBA announced that such actions would continue and that the Agency would, in cooperation with the Republic Agency for Telecommunications, identify the offenders and then deliver the information to the Special Prosecutor's Office for Cyber Crime.

In the situation where radio piracy is seriously threatening the survival of commercial broadcasters in Serbia, every effort aimed at curbing piracy is to be comended. However, RBA's statement falls short of revealing the expectations of the Agency from the Special Prosecutor's Office for Cyber Crime or how the latter might act upon the charges filed. Namely, according to the Law on the Organization and Competence of State Authorities in the Fight Against Cyber Crime, which has established the said Prosecutor's Office as a separate department for fighting cyber crime within the High Public Prosecutor's Office in Belgrade, its competence is clearly laid down. The Special Prosecutor's Office for Cyber Crime is competent in cases of criminal offences against the security of computer data, criminal offences against intellectual property, the economy and legal transactions. In the said criminal offences, the object or the means of the crime are computers, computer systems, computer networks or computer data, as well as the products thereof in hard copy or electronic form. Products in electronic form shall involve software and author's works that may be used in electronic form. Additionally, the Special Prosecutor's Office shall prosecute criminal offences against the freedoms and rights of citizens, sexual freedoms, public order and peace and constitutional order and security of the Republic of Serbia, which, due to the manner in which they have been committed or the means, may be considered cyber criminal acts. Most of the offences that could be committed by engaging in radio piracy do not have for their object or means of commission computers, computer systems, computer networks and

computer data, at least not directly. ANEM had in the past proposed to the Ministry of Interior that the police, using information obtained from the Republic Telecommunications Agency, should file criminal charges with ordinary prosecutor's offices for the criminal offence of obstruction of broadcasting, provided for in Article 149, paragraph 2 of the Penal Code, - particularly in cases where the pirates are obstructing the operation of legitimate broadcasters by airing harmful interference – as well as for the criminal offence of unauthorized performance of activity provided for in Article 353. According to information obtained by the authors of this Report, ANEM proposal was put into practice and has yielded results. It remains to be seen if the initiative of the RBA will be successful and how the Special Prosecutor's Office for Cyber Crime will act in relation to the charges filed.

## **2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)**

2.1. On a session held on July 7, 2010, the Republic Agency for Telecommunications passed fifteen decisions barring the activities of radio stations (transmitters, namely signal delivery microwave radio relay links). Part of the decisions are pertaining to pirate broadcasters and provide for a permanent ban, while the rest apply to legitimate broadcasters, which have been using radio relay links in disallowed bands for the signal delivery to transmitters, namely the broadcasters that have been putting their transmitters into operation without undergoing technical inspection. At the same session, RATEL Managing Board also passed four decisions concerning irregularities in the operation of legitimate broadcasters. Such irregularities include broadcasting from a location that differs from the location of the transmitter indicated in the broadcasting license, namely broadcasting with higher power than allowed.

## **STATE AUTHORITIES**

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

In the period covered by this report, no law relevant for the media sector was discussed at the sessions or in the committees of the Serbian Parliament.

#### **4. THE MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY**

4.1. According to information from the website of the Ministry for Telecommunications and Information Society posted on July 9, 2010, the Ministry called a public competition for the election of the President, Deputy President and members of the Managing Board of the Republic Agency for Electronic Communications. The candidates are required to have high university education from the areas of relevance for the activities of the Agency and particularly from the area of electronic communications, economics and law, as well as to boast valuable and acclaimed works or experience in the area of electronic communications and high reputation in the professional community.

Article 142 of the recently adopted Law on Electronic Communications stipulates that the Ministry for Telecommunications and Information Society shall, within 30 days, call a public competition for the election of members of the Managing Board of the Republic Agency for Electronic Communications, whose term of office has expired. The Managing Board of the Agency has five members; the term of office of four of them has expired, while the fifth member – President of the Managing Board, Professor Jovan Radunovic – resigned on June 14. After the announcement of the competition and the expiry of the 30-day period for submitting applications, the Government shall, pursuant to the Law, be obliged, within 30 days, to lay down a proposal for President, Deputy President and members of the Managing Board that are meeting the criteria for appointment and furnish such proposal to the Parliament, which will decide upon the appointment by voting. Pursuant to Article 141 of the Law on Electronic Communications, on the day when that Law comes into force, the Republic Agency for Telecommunications (RATEL) shall continue to operate as the Republic Agency for Electronic Communications, while the members of the RATEL Managing Board shall resume their activities until the appointment of the members of the Managing Board of the Republic Agency for Electronic Communications, thus ensuring RATEL's continuity.

#### **5. THE MINISTRY OF CULTURE**

5.1. On July 1, 2010, the Ministry of Culture called four competitions from the area of public information: the competition for the co-financing of the production and/or distribution of content of relevance for the public interest; the competition for the co-financing of audio and audiovisual works on regional or minority languages; the competition for the co-financing of projects and/or programs in the area of information for the Serbian people in countries of the region, as well as the competition for the co-financing of projects

and/or programs in the area of information of disabled persons. The total amount earmarked for all four competitions is slightly over 30 million dinars.

The grounds for calling the competitions are Article 21 of the Law on Ministries, which provides for the competences of the ministries in the furthering creative activities in the area of audiovisual media, namely Article 5 of the Law on Public Information, providing that the state shall supply part of the funds or other conditions for the operation of public media broadcasting in the language of national minorities and ethnic communities, as well as part of the funds or other conditions for the unhindered enjoyment of the rights to public information of handicapped, disabled persons or other persons with special needs.

5.2. The Ministry of Culture has presented some of its most significant achievements in the previous two years. In a press release published on July 9, the Ministry said that it has embarked in a process of streamlining the media scene in keeping with the requirements of democratic development and international professional and technical standards. The Ministry claims to have ensured the transparency of ownership by introducing a Register of Media Organizations as part of the Business Registers Agency, as well as to have protected objective reporting by penalizing violations of the presumption of innocence and infringements of juvenile rights in media reports. The Ministry also boasted that in the previous two years, Serbia joined the Council of Europe's Convention on Cross-Border Television.

Unfortunately, the authors of this Report may not agree with the self-satisfied tone with which the Ministry describes its achievements in the previous two years. Firstly, the transparency of ownership has not been ensured with the introduction of the Register of Media Organizations, as evidenced by the row over "Novosti" and the controversial takeover thereof by the WAZ media group. The penalties claimed by the Ministry to have protected objective reporting – contained in the Law on the Amendments to the Law on Public Information from 2009 – were declared by the Constitutional Court to be in disagreement with the Constitution and the European Convention on Human Rights and Fundamental Freedoms merely a couple of days after the Ministry had published its press release. Finally, Serbia has ratified the CE's Convention on Cross-Border Television, but with a 20-year delay, since the said Convention was passed in 1989 and EU countries have in the meantime replaced it with a new Directive on Audiovisual Media Services, which means that Serbia is, once again, lagging behind.

## COLLECTIVE ORGANIZATIONS

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

6.1. On July 3, 2010, an agreement on business cooperation was published in the Official Gazette of the Republic of Serbia no. 45/2010 concluded between the Organization of Phonogram Producers of Serbia and the Organization for the Collective Exercising of Interpreters' Rights. The Decision of the Intellectual Property Protection Office of Serbia, which renews the license of the Organization of Phonogram Producers of Serbia for performing the activity of collective exercising of related rights, was also published in the same Official Gazette. The constitutive session of the Council of Phonogram Producers and Interpreters, as the body envisaged in the above business cooperation agreement, was held on July 19, 2010. In addition to the constitution of the Council, the Co-President thereof was also elected at the same session.

We have written in our previous reports about the business cooperation agreement between the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Collective Exercising of Interpreters' Rights (PI). Entering into such agreement was the obligation of collective organizations imposed by the Law on Copyright and Related Rights and its text was available on the webpage of the Organization for the Collective Exercising of Interpreters' Rights even before it was published in the Official Gazette. The Decision of the Intellectual Property Protection Office of Serbia, renewing the license of the Organization of Phonogram Producers of Serbia for performing the activity of collective exercising of phonogram producers' related rights, itemizes the scope of phonogram producers' rights that the OFPS is collectively exercising, which excludes any dispute about the scope of rights protected by that organization, namely: a) the exclusive right to prohibit or allow the copying of phonograms in any form and marketing such copies; b) the exclusive right to prohibit or allow the lease of phonogram copies; c) the exclusive right to prohibit or allow interactive sharing of phonograms with the public by wire or wirelessly so as to enable a person to have individual access to the phonogram from the place and in the time of his choosing; d) the right to a fee for the airing of a phonogram; e) the right to a fee for public communication of the phonogram; f) the right to a fee for public communication of a phonogram that is aired; and g) the right to a special fee from import and/or sales of technical devices and blank sound, picture and text carriers which are reasonably believed to be intended for copying phonograms for personal, non-commercial needs. OFPS' license has been renewed for five years.

## **7. SOKOJ – Collective Organization for the Protection of Musical Authors' Copyrights**

7.1. On July 3, 2010, the Decision of the Intellectual Property Protection Office of Serbia, which renews the license of SOKOJ for performing the activity of collective exercising of related rights, was published in the Official Gazette of the Republic of Serbia no. 45/2010.

As in the case of OFPS, SOKOJ license has been renewed for a period of five years, starting from March 26, 2010. The decision pertains to the collective exercising of the following property rights of musical authors, with or without text: a) the right to recording or copying works; b) the right to market copies of works; c) the right to lease copies of works; d) the right to a transmission of performance or presentation of the works; e) the right to broadcast works; f) the right to re-broadcast works; g) the right to public communication of the works, including the interactive sharing of the works with the public; h) the right to public communication of the works that are broadcast; i) the right to public communication of a carrier of sound or picture; k) the right to a special fee from import and/or sales of technical devices and blank sound, picture and text carriers which are reasonably believed to be intended for copying phonograms for personal, non-commercial needs; and l) the right to lend phonograms. As in the case of OFPS, the users now clearly know for protection of which rights they are paying a fee to SOKOJ.

7.2. According to media reports in late July, the Trade Court in Belgrade has passed a first-instance ruling according to which the RTS must pay SOKOJ's authors a fee for airing musical works in the amount of 136 million dinars, including interest, as of 2007 until present. SOKOJ's legal representative Milos Pejovic told the Beta news agency that it was the highest ruling awarded in the area of copyrights in Serbia, sending a clear message that laws ought to be observed. Pejovic added that, when the ruling became final, RTS would have to pay more than 200 million RSD to SOKOJ. He added that the RTS had not been paying the fee for a long time. The General Manager of RTS Aleksandar Tijanic said to be appalled by the verdict of the Trade Court. "The RTS has been suggesting for two years that music be divided into traditional folk music and newly-composed music, namely harmful and quality music and all television and radio stations to be charged different fee tariffs for different music. I am appalled by this decision and the attempt of a private association SOKOJ to tap into the subscription system and obtain several million euros per year of Serbian citizens' money. I must stress that I support charging fees for small authors' rights, but I also think that there should be an institution in this country that will stringently punish the fakers of so-called folk music," Tijanic said.

The RTS has failed to pay fees for the use authors' music works, a fact that was confirmed by SOKOJ's legal representatives, but also through the information about the amount SOKOJ is now owed by the RTS after the ruling of the Commercial Court in Belgrade. Consequently, the national public broadcaster can be deemed the largest user of authors' musical works among electronic media. All of this paints a clear picture of the excessively high fees for the use of musical works. Namely, as SOKOJ revealed last month, they have distributed 23% more fees to the authors year-on-year, which is even more stunning since the biggest user has not been paying them anything for a long time. On the other hand, Tijanic's reasoning, if accurately conveyed by the media, is completely out of sync with the law and it will be a poor argument for the RTS in trying to have the ruling scrapped in the second instance. Namely, in accordance with the Law on Copyright and Related Rights, the tariff is determined as a percentage from the revenues generated by the user in performing the activity in the scope of which it exploits the protected musical works. The issues raised by Tijanic might be of relevance for the manner in which SOKOJ distributes the funds collected, but not for the very right to charge the fee. Furthermore, Tijanic's request for all television and radio stations, to be obliged to pay for music at different tariffs, is tantamount to knocking on an open door. At the present time, there are already two tariffs, of which the higher one applies to commercial stations and the lower, more affordable fee, is charged to the public broadcasting service – RTS.