

IV MONITORING 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. In April it was announced that the Republic Broadcasting Agency (RBA) had lost the case against journalist Miodrag Popov. The RBA had namely pressed criminal charges against him for libel. Popov, a former journalist and editor of BK Television, has publicly criticized the RBA, claiming that the Agency has illegally revoked BK Television's license and that it has „degraded“ the media in Serbia by the manner in which it has allotted the frequencies. The court estimated that Popov's claims were value judgments for which the defendant had provided sufficient proof.

We shall be looking into this case in the section pertaining to the monitoring of the activities of the Republic Broadcasting Agency and not in the part about legal proceedings, because we believe it represents a case in point for understanding the modus operandi of the RBA in the previous period. Namely, the Agency tended to take any case of public criticism of its activities as a violation of Article 26, paragraph 3 of the Broadcasting Law and unwarranted influence on the RBA Council. The said article of the Law prohibits any influence whatsoever on the activities of Council members; it also says that Council members are not obliged to comply with anyone's instructions in their work, save the decisions of the competent court in the proceedings of controlling the work of the Council. This has resulted in a paradoxical situation in which a regulatory body, obliged by law to perform its regulatory competences taking into account civil rights and freedoms and especially freedom of expression and pluralism of opinions, is actually stifling freedom of expression by pressing charges against its critics; moreover, the RBA passes its decisions on issuing broadcasting licenses by taking into account, amongst other things, whether a particular applicant has publicly commented or not on the decisions of the Council. Truth be told, such behavior of the Council is today less the case than in the past and it is expected that the outcome of the Popov case will result in a more tolerant stance of the Council towards potential criticism.

1.2. On a session held on April 30, 2010, the RBA Council passed a General Binding Instructions about the conduct of television and radio stations (broadcasters) in covering

elections for national minorities' national councils, to be held in 2010. The Instructions were published in the Official Gazette of the Republic of Serbia no. 30/2010.

The Instructions define the set of broadcasters that are not allowed to air election program (broadcasters of specialized content that have not included news and political programs in their program study submitted along with the application for the public competition); the manner of airing election program, the prohibition to implicitly or indirectly recommend election lists or candidates from such lists; the manner of informing the public about electoral activities of the proposers of election lists and the results of opinion polls about the elections; advertising in the election campaign, the presentation of election lists or candidates on the channels of the state broadcaster; stations or local or regional communities and the civil sector; the presentation of election lists or candidates from these lists; as well as the airing of pre-election party advertising in paid time slots on commercial stations. The fact is that the RBA has a considerable experience with general binding instructions pertaining to the way in which electronic media handle various elections, which represent the bulk of general binding instructions passed by the Agency. What should be highlighted and commended is the fact that this particular general binding instructions exceed all previous regulatory activities of the Agency in terms of the degree of details and regulatory technique, which may be point to the strengthening of the RBA's regulatory capacity.

2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

In the period covered by this report, the Republic Agency for Telecommunications adopted 14 decisions prohibiting the work of certain radio and TV stations (transmitters). These decisions were passed within the competences of RATEL and apply to several pirate broadcasters, broadcasters that had their broadcasting licenses revoked by the RBA and one broadcaster possessing a license that was broadcasting on an unlicensed frequency.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

On April 14, 2010, the members of Parliament ended a debate in principle about four laws from the area of telecommunications aimed at providing the grounds for the transition from analog to digital television broadcasting. Among these four laws was the Draft Law on the Ratification of the Acts of the Regional Conference on Radio Communications for the

Planning of the Digital Terrestrial Broadcasting Service in Parts of the Region 1 and 3 in the 174-230 MHz i 470-862 MHz frequency bands (RRC-06), as well as the Draft Law on the Ratification of the Protocol about Amendments to Certain Parts of the Regional Agreement for the European Broadcasting Zone (Stockholm 1961) with Resolutions (RRC-06-Rev.ST61), which are of significance for the coming broadcasting digitalization. Telecommunications Minister Jasna Matic reminded the MPs that the transition from the analog to the digital signal was in accordance with the recommendations of the International Telecommunications Union and the European Commission to carry out the transition by 2012 and enable unhindered reception of television signal for the citizens. In addition to the said laws, the Parliament also discussed the Draft Law on Amendments to the Law on the Day of Mourning on the Territory of the Republic of Serbia, which shall introduce the obligation of the Republic Broadcasting Agency to oversee the application of the said Law by the broadcasters. By the end of April, the Parliament of the Republic of Serbia failed to adopt any of these laws.

4. THE MINISTRY OF CULTURE

The Ministry of Culture of the Republic of Serbia, together with the Delegation of the European Union in Serbia and the French Embassy, supported the Regional Broadcasters' Conference "TV Media as a Tool of Intercultural Exchange" organized in Belgrade on April 22-23 by the Independent Association of Journalists of Serbia. The objective of the conference was to identify the reasons for the lack of cultural exchange of television content on the territory of the former SFRY, especially between those republics whose citizens spoke the language that used to be called Serbo-Croatian. The conference also aimed to find the way to remedy such state of affairs. At the opening of the conference, Culture Minister Nebojsa Bradic said that television as a media was the fastest road for culture cross borders, representing the link between people who wanted to exchange cultural content, experiences and knowledge. He stressed that everyone knew that television was a powerful media, which had "caused a lot of evil, hatred and hostility when in the hands of the wrong people".

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of related rights of phonogram producers

On February 2, 2010 a call was published in the Official Gazette of the Republic of Serbia, addressed to representative users' associations and individual users for participation in the negotiations about the single tariff of the fees for broadcasting, rebroadcasting and public communication of phonograms and interpretations recorded on these phonograms. The call was jointly made, in accordance with the Law on Copyrights and Related Rights, by the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Protection of Performers' Rights (PI). As a result, two meetings were held in April with the representative associations. The status of representative association of users of commercial broadcasters was recognized to the Association of Independent Electronic Media (ANEM), which has engaged in the negotiations together with the Professional Broadcasters Association of Serbia (APRES) and in consultation with the Serbian TV Network. The topic of the discussion was the principles of the future tariff. The parties failed to reach an agreement in the 60-days period from the announcement of the call and hence the negotiations were continued, in consultation with the Intellectual Property Office of Serbia, within the period (90 days from the announcement of the public call, expiring in May) provided for by the Law on Copyright and Related Rights for the submission of the proposal of the tariff to the Commission for Copyright and Related Rights. The negotiations were marked by conflicting expectations of the users that their participation in the tariff negotiations would automatically mean, on one side, that the tariffs would be reduced, as well as by the ambitions of the two collective organizations to increase the overall payments on the other. The parties were close to reaching an agreement about the revenues that would be encompassed by the base for calculating the fee. They failed, however, to agree upon the concrete amount of the fee determined as a percentage of this base, as well as upon the proposed division of the broadcasters in different payer groups, depending on the scope of the exploitation of the object of protection.

According to the new Law on Copyright and Related Rights, the tariff shall be determined by a mutual agreement between the collective organizations and the representative users' association, which would contain the amount of the fee for the use of author's works, the conditions of use thereof, the period and manner of payment, as well as the circumstances of utilization due to which the amount of the fee may be increased or reduced. In addition, the fee charged by the phonogram producers (OFPS) and the performers' fee (PI) are charged as

a single fee and hence the negotiations need to reconcile the requests of these two organizations. Only if such an agreement is not reached, the proposed tariff shall be determined by the management board of the organization and tabled to the Commission for Copyright and Related Rights for opinion. In case the Commission finds that the proposed tariff does not include the rights that this organization is entitled, to collectively exercise in keeping with its permit, or if the fee is not determined in keeping with the rules for determining the tariff provided for by law, the organization shall repeat the negotiations with the representative users association or submit a new tariff proposal to the Commission. If the Commission again finds that the fee has not been set according to the rules provided for by law, it will itself determine the tariff. By the time this report was completed, the Government failed to appoint the members of the Commission for Copyright and Related Rights.

6. SOKOJ – the collective organization for the protection of musical authors' copyrights

Just like the OFPS and PI, the SOKOJ – the organization of musical authors of Serbia – has published, pursuant to Article 173 of the Law on Copyright and Related Rights – a call to representative associations of users of musical works, as well as to individual users – if they are the only ones engaging in a particular activity in the Republic of Serbia according to the nature of their business – to take part in the negotiations about the author's fee for the use of musical works, including the broadcasting thereof. ANEM has again seen its representative status of user of musical works recognized (among commercial broadcasters) and it has joined the negotiations together with the Professional Broadcasters Association of Serbia (APRES) and in consultation with the Serbian TV Network. In the course of the month of April, two meetings were held between SOKOJ and ANEM and APRES to discuss the principles of the future tariff. The parties again failed to reach an agreement within 60 days from the announcement of the call and the negotiations were continued in consultation with the Intellectual Office of Serbia until the expiry of the May deadline, provided for by the Law on Copyrights and Related Rights, for the submission of the tariff proposal to the Commission for Copyrights and Related Rights. The negotiations were again marked by conflicting expectations of the users that their participation in the tariff negotiations would automatically mean, on one side, that the tariffs would be reduced, as well as on the other side, by the ambitions of SOKOJ to have the overall payments increased or, at worse, to keep them at the current level. As in the case of OFPS and PI, in this case too, the parties were close to reaching an agreement about the revenues that would be encompassed by the base for calculating the fee, but not about the amount of the fee determined as a percentage of this

base, as well as upon the matter of dividing the broadcasters in different payer groups, depending on the scope of the exploitation of musical works.

All the above, in relation to the concepts provided in the Law on Copyright and Related Rights about the determining of the tariff in the section of this Report pertaining to the collective organization for the protection of phonogram producers' related rights, also applies to the determining of the tariff of the collective organization for the protection of musical authors' copyrights.