

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

Certain activities of the RBA have been elaborated on in Section II of this report, namely in the part concerning the monitoring of the implementation of the Broadcasting Law.

During August 2009, the press reported on the issue of illegitimate broadcasting of TV and radio program in the South of Serbia. According to the reports of several newspapers, TV Presevo, established by the local self-government, has restarted to broadcast illegitimately on the frequency obtained by the private TV station "Aldi" after its transmitters were sealed for lack of broadcasting license. TV station "Aldi" has informed the public about that, as well as the RBA and RATEL, requesting that the competent authorities enable it to broadcast its program unhindered. In mid-August, the open letter of the owner of RTV "Spektri" from Bujanovac drew special attention. In that letter, the owner informed the public that he had decided to illegally broadcast the signal of his radio station (he holds a license for the TV station), in protest over the non-compliance with broadcasting laws in the South of Serbia, namely because of the renewed illegitimate operation of TV "Presevo". The press also reported that, according to the representatives of this regulatory body, most illegal broadcasters were located in Novi Sad and Pozarevac, that they even had their associations and that the hands of regulatory bodies were tied, for they were neither entitled to seize equipment, nor did they get adequate help from the police.

Article 64a of the Broadcasting Law stipulates that the RBA Council shall pass a decision to prohibit broadcasting, which will be furnished without delay to the natural or legal person who illegitimately broadcasts the program. That person is required to suspend broadcasting immediately after the decision becomes final (after the expiry of the time limit for filing an objection or rejection of the objection as groundless). If that person fails to comply, the RBA Council's decision shall be enforced forcibly, with the authorized RBA officer sealing the premises where the telecommunications equipment is held, as well as the radio station (transmitter) used by the illegal broadcaster. On the occasion of the said forcible enforcement, the authorized officer is entitled to request the assistance

of the police. One of the reasons for the ineffectiveness in shutting down “pirate” broadcasting outlets is the slow and complicated procedure, preceded by the procedure conducted by RATEL for identifying illegitimate broadcasting. The representatives of regulatory bodies say, another reason is their insufficient powers in the procedure of shutting down illegal stations, which should be, in their view, boosted with a new right – to temporarily seize the broadcasting equipment of the person broadcasting without a license. Regulatory bodies could also benefit from and they are proposing the introduction of a new criminal offense – unauthorized possession of a radio station. The third reason is the lack of assistance by the police, as representatives of RBA and RATEL state.

Notwithstanding the reasons, there is no doubt that regulatory bodies are yet to clear the air from illegal broadcasting. As this is one of the main reasons for the non-functioning of the media market and thus for the poor economic situation of legal broadcasters, an urgent and coordinated action is needed both by regulatory bodies and competent state authorities in order to solve this problem.

2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

RATEL has published on its website information dated August 14th, 2009, on the digital broadcasting Service, explaining whom the transition from analog to digital broadcasting (scheduled for completion for April 04th, 2012) applies to. The information says:

„The digital terrestrial broadcasting service, in line with the Geneva 2006 Agreement (GE06), involves digital television (DVB-T) in the ranges 174-230 MHz and 470-862 MHz and digital radio (T-DAB) in the range 174-230 MHz.

The introduction of the digital broadcasting service in the frequency range 87,5-108 MHz (VHF-FM) was not the subject of the Geneva 2006 Agreement (GE06) and we want to inform the users of radio frequencies from this range (radio broadcasters) that the planning of frequencies and use of this range are still done in accordance with the Final Acts of the Regional Agreement pertaining to the use of the range 87,5-108 MHz for FM sound broadcasting, Geneva, 1984 (GE84).

The Strategy and the Action Plan for the transition from analog to digital broadcasting of radio and television program in the Republic of Serbia, which have been published in the Official Gazette of the Republic of Serbia (no. 52/09) have determined that the Analog Switch-Off (ASO) will be on April 04th, 2012. We hereby underline that the cessation of

operation of the analog service solely pertains to television, namely in frequency ranges 174-230 MHz and 470-862 MHz.

That means:

- 1) Digital broadcasting of television program shall begin on 04.04.2012, in the frequency ranges 174-230 MHz and 470-862 MHz.**
- 2) Digital broadcasting of radio program in the range 87,5-108 MHz is still not considered and there aren't any plans for it."**

The digitalization issue is a narrowly specialized one and the general public, as well as the broadcasters, are not sufficiently familiar with. The process of transition from analog to digital broadcasting in Serbia – although the Strategy, along with the Action Plan, has already undergone public discussion – is still visibly causing confusion among broadcasters. Therefore, it is good that RATEL, although it is not obliged to, has provided the basic information explaining whom digitalization applies to.

Our opinion is that other competent authorities participating in this process should already start informing or educating those broadcasters to whom the cessation of analog broadcasting and transition to digital broadcasting applies. That would significantly contribute to their better preparedness for the coming changes.

STATE AUTHORITIES

3. THE PARLIAMENT OF SERBIA

a) After the summer recess, the Parliament resumed its work on August 31st 09. The 11th extraordinary session of the Parliament in 2009, which started on July 16th, 2009, was resumed.

On voting day, August 31st, the members of Parliament addressed the items on the agenda in principle and in detail. Among other things, the Members of Parliament (MPs) adopted with the required majority of votes the Draft Law Amending the Law on Public Information and the Draft Law on National Minorities' National Councils.

The same day, of all the laws adopted on the said Parliament session, the President promulgated by passing a decree only the Draft Law on Amendments to the Public Information Law, which is the only law from adopted that day, that has been published in the Official Gazette of the Republic of Serbia no. 71/09 dated August 31st, 2009.

The legal effects of the adoption of these two laws have been elaborated on in Section III – Monitoring of the Process of Adoption of New Laws, as well as in the same section of the previous edition of the Monitoring Report available at ANEM web site here

<http://www.anem.org.yu/admin/article/download/files/III%20%20MONITORING%20OF%20THE%20PROCESS%20OF%20ADOPTION%20OF%20NEW%20LAWS.pdf?id=166>

b) The Parliament has, in the section *Activities of the Speaker* on its website, posted the information dated August 03rd 09, that “the Speaker of the Parliament of the Republic of Serbia, Prof. Dr. Slavica Djukic-Dejanovic has made a public call for the submission of a proposal of a candidate list for membership to the RBA Council. The call was made to authorized proposers who have nominated candidates whose mandates are to be expired: the Parliament of the Autonomous Province of Vojvodina, the Conference of Universities and traditional churches and religious communities. Each of the authorized proposers is required, no later than within two months from the public call, to furnish the competent parliamentary committee with a proposal of the list containing two candidates for filling the vacancies in the Council. Each of the authorized proposers shall submit a proposal of the list with two candidates, by mutual agreement and harmonization. The Speaker of the Parliament shall, no less than 10 days before deciding upon the election of the members of the Council, publicly announce in an appropriate manner the candidates lists that the authorized proposers have submitted, along with the basic information about the candidates. The call will be published in the Official Gazette of the Republic of Serbia and the daily “Politika”.

Article 27 of the Broadcasting Law stipulates that members of the RBA Council are elected for a term of six years. But, as an exception, when Council members are elected for the first time, three of them will be elected for a six-year term, three for a five-year term and the remaining three for a four-year term. This call was sent to authorized proposers (the Parliament of the Autonomous Province of Vojvodina, the Conference of Universities and traditional churches and religious communities) that have proposed candidates whose term of office expires on February 17th 2010, five years after their election to the first composition of the RBA Council.

The public call was published in the daily “Politika” on August 03rd, 2009 and in the Official Gazette of the Republic of Serbia not until on August 27th 2009 (no. 70/09). The period for the submission of lists is no later than within two months from the public call and hence it remains unclear on which day this period will start, which may be

important, because the submission of lists by mutual agreement, through the process of mutual harmonization, requires more time.

4. THE MINISTRY OF TELECOMMUNICATIONS AND INFORMATION SOCIETY

The activities of this Ministry shall be elaborated in Section V – the Digitalization Process.

5. THE MINISTRY OF CULTURE

a) The Ministry of Culture has announced on its website a statement dated August 25th, 2009, setting of a working group for the drafting of the media strategy, which would consist of representatives of the journalist profession and the media industry. Stressing that independent media are indispensable for creating and developing a democratic culture in each country, the Ministry has said that the media strategy involves the determining of long-term goals and tasks, defining the courses of action and allotting the resources necessary for their realization, aiming at regulating the media, legislation and practice. You may download the entire statement (available only in Serbian) at <http://www.kultura.sr.gov.yu/?jez=sc&p=4617>

b) The Ministry's statement dated August 27th, 2009, says that media associations have supported the proposal for drafting the media strategy and that all invited participants attended the meeting held on that day: IJAS (NUNS) President Nadezda Gace, JAS (UNS) President Ljiljana Smajlovic, ANEM President Sasa Mirkovic, Executive Director of the Media Association Zoran Papic and the President of the Association of Local Independent Media "Local press" Vladan Filipcev. At this meeting it was agreed that, in less time, each association should choose two of its representatives who will work, together with the representatives of the Government of Serbia, on the drafting of this document. The working group will soon start working after the appointment of the members and the starting point will be the existing documents of UNESCO, OSCE and the Council of Europe. Furthermore, it was proposed that the representatives of universities and other expert institutions join the activities of drafting the strategy.

The drafting of the media strategy is the main precondition for the further development of the media sector. As it was shown by the 4-month monitoring conducted so far, a

lack of strategy is one of the causes of the halted reforms in this area. Many have been pointing to that for a long time, with ANEM among the first. As it became evident, without a strategy, partial solutions to certain media issues were poor and at the same time, many other solutions remained incomplete. In view of the importance of the media for the development of democracy in society, the strategy should be the result of a wider social consensus and not merely the outcome of the work of just one Ministry, in order to be respected and contributed to by everyone. The strategy would have to be comprehensive and to provide for effective solutions to all relevant media issues.

According to the information of the monitoring team, the terms of office of the working group members should be verified by the Government, which thereby wants to show that it is its priority in the media sector and that it will support it. In view of the inconsistency of the Government towards the media, one should be cautious and wait to see how serious the intentions it has proclaimed will be.

c) In the same statement from August 27th, 2009, the Ministry said that, after the summer recess and on the said date, a meeting had been held with the representatives of the Ministry and the Working Group for the Drafting of the Broadcasting Law, also attended by the representatives of OSCE and the Council of Europe. Among other things, the statement said that “...the Working Group informed the representatives of the Ministry that two thirds of the Broadcasting Law has been completed so far. The Ministry of Culture and OSCE have called on the Working Group to complete the drafting of the said Law as soon as possible. It was agreed that, at the meeting next week in the Ministry of Culture, to be attended by all members of the Working Group, the timeline and manner of completion of this Law would be agreed upon in more detail.”

According to the information of the monitoring team, the drafting of the Broadcasting Law will not be continued under the auspices of the Ministry of Culture, but under the OSCE. The reason is the discontent of members of the Working Group over the fact that they were not consulted about and at the occasion of amendments to two very important media laws – the Broadcasting Law (from May 2009) and the Public Information Law, which, in their opinion, was an omission by the Ministry. The members of the Working Group believe they were responsible towards OSCE, which has funded their activities in one part, to finish their draft of the new Broadcasting Law.

d) The Ministry of Culture published in August the results of the competition for co-financing projects/programs in the area of public information in minority languages. The competition was called back on January 17th, 2009, and the deadline for application was by February 06th, 2009. The explanation of the Decision on allotting funds for projects, passed by the Minister of Culture on July 31st, 2009, says that the grounds for passing his decision was the proposal of projects that should be supported, which the expert commission of that Ministry unanimously laid down on July 17th, 2009. The proposal of the decision consists of programs that are significant for the exercise of citizens' rights to be objectively, adequately and timely informed in their own language about everything they need to know, as well as for the development of a culture of dialogue. The funds earmarked in the budget of the Ministry of Culture for this competition amounted to 33.000.000, 00 dinars. A total of 17.578.604, 00 dinars have been allotted and 48 projects of the applicants – public media founders/publishers and legal and natural persons registered for the production of TV and radio program, excluding the media founders/publishers of print media in minority languages that are funded from the budget - have received support. The Ministry is co-financing the projects with up to 90% of the project value and with up to 50% of the project value in the case of public enterprises' projects. The approved projects must be realized through a public media. The entire Decision on the allotment of funds is available (only in Serbian) at <http://www.kultura.sr.gov.yu/dokumenti/Mediji-na-jezicima%20manjina,-31.07..doc>.

According to Article 5 of the Law on Public Information, for the purpose of realizing the right of national minorities and ethnic communities to information in their own language and cherishing their own culture and identity, the Republic, namely the autonomous province and the local self-government, shall provide part of the funds or other conditions for the operation of public media in minority and ethnic community languages. The Ministry of Culture, as the competent authority for media and information, has planned the funds for this purpose and by the means of a competition for supporting the projects from this area, has allotted these funds, in accordance with competition results.

COLLECTIVE SOCIETIES

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

In August 2009, OFPS invited in the period from August 10th, 2009 to August 25th, 2009 every interested participant in the procedure of allotment of fees generated from the use of phonogram for the year 2008, to examine the documentation related to the said allotment procedure.

Although this decision does not concern broadcasters, the publication of such a call indirectly shows that this organization has started to work much more transparently than it was the case until recently.

According to the information of the monitoring team, this organization has demonstrated its readiness to continue the talks with broadcasters, namely with ANEM. These talks will pertain to improving the broadcasters' position before this organization, stimulating measures, as well as tariffs that apply to broadcasters.

7. SOKOJ – collective organization for musical authors' copyrights protection

Since the leading people of SOKOJ were on study trips and holidays, there wasn't much activity by this organization in August, especially not preparedness to talk with broadcasters.

IMPLEMENTATION OF EMERGENCY GOVERNMENT MEASURES TO ASSIST MEDIA IN CONDITION OF CRISIS

a) One of the measures from the Government's package of emergency measures to help media in the economic crisis, passed back on June 25th, 2009, was the prohibition of operation for broadcasters not possessing a license. The Government committed to providing help and assistance via its competent ministries – the Ministry of Telecommunications and Information Society and the Ministry of Internal Affairs – to RBA and RATEL in implementing the measures preventing the operation of illegal broadcasters. However, judging by the media reports and unofficial statements of regulatory bodies' representatives, but also the information of legal broadcasters, it is clear that this measure has not been implemented at all and that regulatory bodies are

still lacking the appropriate assistance of the competent bodies in shutting down “pirate” broadcasting stations. In the meantime, the economic decline of many broadcasters continues, with broadcasting “piracy” being one of the main reasons. Article 64a of the Broadcasting Law stipulates that the RBA is entitled to solicit the assistance of the police in sealing the premises and radio equipment (transmitters) used by the illegal broadcaster. The Government measure should have meant that police assistance will be provided, which is, however, still not the case. Moreover, according to that measure, all other competent government authorities need to be more effective in their tasks and thus to contribute to a successful battle against “piracy” in the broadcasting area, but this is still not happening.

The failure to implementation of this measure points to the insufficient readiness of the state to prevent further economic ruin of electronic media. By failing to provide the promised assistance, the Government has also brought into question the seriousness of its intent to help the media, as well as the capability of the competent regulatory bodies to discharge their statutory functions. Both are bad for the media sector.

b) Back on July 21st, 2009, the Managing Board of RATEL adopted the Decision on the temporary reduction of fees for the use of radio frequencies by 5%, which applies to 2009, after which it was submitted to the Government for approval. The Government failed, both in July and August, to consider giving approval to this Decision.

c) Beside two measures cited in the July report (reduction of the RBA fee and earmarking 60 million dinars for the co-financing of project in the area of information), there is still no concrete information or proof that the remaining measures from the Government Conclusion are being implemented. On the contrary, it is evident that they are not.

Therefore, the monitoring findings about this issue remain unchanged relative to the previous report. The fact is that, two months after the adoption of the Government measures, most of them have not been implemented. Paradoxically, independent regulatory bodies have shown more respect for the Government and its measures than the ministries or the Government itself. Namely, the said bodies have immediately undertaken activities so as to put in practice the Government proposals. By such omissions, the Government is bringing into question the sincerity and the purpose of its measures.