

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)

a) Part of RBA activities have already been elaborated in section II of this Report concerning the implementation of existing laws (see subparagraph 2 – Broadcasting Law).

b) On December 1, 2009, the RBA published on its website a press release about the issuance of licenses for radio stations. The notice was aimed at broadcasters that won licenses for local and regional broadcasting and for broadcasting in the area of the City of Belgrade on December 29, 2008, and whose decisions are final – advising them to address the RBA to take part in the radio station license issuance procedure.

c) During December, the media were reporting that the RBA had made a Draft of the Rules that would govern the broadcasting of TV program in cable systems. According to RBA representatives, the text has been delivered to the Association of Cable Broadcasters and major cable companies and negotiations were to ensue. Talks will also be held, in the continuation of the process of adoption of the said Rules, with journalists' associations and the civil sector. The result will be the adoption of the Rules by the RBA Council, to be tabled to the Government for approval. The media reported that the Draft Rules stipulate a form, as well as the manner of issuance of the license for all channels that are not in possession of a broadcasting license, but want to be part of a cable distribution system. The Rules also contain information about the license issuance procedure: the cable operator must first apply for a license with the RBA in order to air a particular program in its system; the RBA will then directly communicate with the company that has produced the said program, study its program schedule and everything that is required for the issuance of a license. By the time of the closure of this Report, December 31, 2009, there was no information about whether the talks between the RBA and cable operators had been held at all or about the results of such talks.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

a) On December 3, 2009, RATEL published on its website the notice on the deadline for producing technical documentation and issuance of licenses for radio stations pertaining to

broadcasters holding licenses for regional and local areas. The applicant must submit to RATEL all the necessary technical documentation by December 31, 2009 and RATEL shall issue licenses for radio stations by February 12, 2010.

b) In the observed period the public debate on the Draft Rules on the Level of the Fee for the Use of Radio Frequencies was closed. All interested parties had the opportunity to address their objections and suggestions to RATEL by December 11, 2009. We remind that the Government did not approve RATEL's decision dated July 21, 2009, on the temporary 5% reduction of fees for the use of radio frequencies in 2009 for broadcasters, requiring changes to the said Rules. By the time of the closure of this Report, there was no information on RATEL's website about whether any particular objections had been adopted and if the final text of the Rules was approved by RATEL's Management Board and sent to the Serbian Government for approval.

c) In the observed period, pursuant to its powers under the Law on Telecommunications, RATEL passed a dozen of decisions on extending the deadline for the putting into operation of radio stations, giving more time to broadcasters to procure the necessary technical equipment. RATEL's Management Board also adopted more than 25 decisions prohibiting the operation of radio stations for unauthorized use of radio frequencies. Both efforts are commendable, for the first shows that RATEL has recognized and understood the economic hardships of the broadcasters, while the second is a sign that RATEL is determined to fight broadcasting piracy. In order to have good results in curbing unlawful broadcasting, which was one of the main problems for lawful broadcasters in 2009, in addition to the actions of regulatory bodies, there must be an organized and coordinated effort by all competent state authorities. In the scope of the Government's package of urgent measures for supporting the media in the time of crisis, the measure for combating unlawful broadcasting failed to produce any results. Hence, the efforts of regulatory bodies and RATEL in particular, had fewer results than expected, at the expense of lawful broadcasters that saw their situation further deteriorating.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

a) In this period, the Parliament ended its Second regular session in 2009, which lasted between October 6 and December 29, 2009. In December, the Sixth and Seventh sitting of the said session were held and the Second sitting, which started on the 26 of October, concluded.

The *Second sitting* was extremely important for the media sector. On voting day, December 11, 2009, the Parliament elected Goran Pekovic for member of the RBA Council as a candidate of domestic NGOs and citizen associations and also 19 members of the Serbian Broadcasting Institution Program Committee: 7 members of Parliament and 12 RBA candidates. In addition, the Parliament adopted the Law on Classified Data, the Law on the Amendments to the Law on Free Access to Information of Public Importance, the Law on Copyright and Related Rights and the Law on Bankruptcy. Although none of these laws may be considered as directly relevant for the media, they all affect them, which were elaborated in more detail in the section of this Report about the monitoring of the adoption of new laws.

The *Sixth sitting* was not important for the media sector.

On voting day of the *Seventh sitting*, on December 29, 2009, the Parliament elected three members of the RBA Council, namely *Goran Karadzic* at the proposal of the Vojvodina Parliament, *Svetozar Stojanovic* at the proposal of the Conference of Serbian Universities and his Grace *Bishop Porfirije Peric*, at the proposal of traditional churches and religious communities. The said three members were actually re-elected, as they were already members of the RBA Council (since 2005); their mandate shall be 6 years. Hence the RBA Council was added four new members, including Pekovic, who was elected on December 11. At the same session, at the proposal of the Government, the Parliament adopted the amendments to the Misdemeanors Law, the amendments to the Criminal Code and the amendments to the Law on the Prevention of Violence and Misbehavior at Sport Events. In the opinion of the authors of this Report, the courageous investigative journalism of Brankica Stankovic and the team of RTV B92's program "Insider" have greatly contributed to the adoption of mentioned amendments. The amendments to the Misdemeanors Law have implications directly affecting the media, which has been described in more details in section III of this Report – Monitoring of the Process of Adoption of New Laws.

b) At its session on December 18, 2009, the Parliament's Culture and Information Committee made its own list of two candidates for member of RBA Council, on the basis of proposals by public broadcasters' associations, journalists' associations, professional organizations of film and drama artists and composers' associations. The Committee concluded that the authorized proposers had failed to conform their lists to Broadcasting Law requirements in the additional 15-day term, having proposed three instead of two candidates. The associations of journalists and media associations proposed Gordana Susa and Branko Zujovic, while professional associations of film and drama artists and composers' associations proposed Bozidar Zecevic. Hence, in keeping with its powers granted by the Amendments to the Broadcasting Law adopted in May, the Committee selected by vote two candidates out of three proposed, specifically: Gordana Susa and Bozidar Zecevic and submitted such list to the Parliament for election one of them for RBA Council member. The Committee did not provide any explanation of its decision to the authorized proposers.

Interestingly, the Committee did not address a request to the Parliament to consider the said list of candidates in an urgent procedure, as it did with previous lists that were considered by the Parliament, electing four members of the RBA Council. According to the Serbian Constitution, it hence remained for the fifth new member of the RBA Council – who would fill in the vacancy created back on February 17, 2009 – to be either elected on the first regular session starting on the first working day in March, or on an extraordinary session, which may be held at the request of no less than one third of MPs or the Government.

4. THE MINISTRY OF CULTURE

a) On December 11, 2009, the Ministry of Culture posted on its website a press release about the adoption of the Law on Amendments to the Law on Free Access to Information of Public Importance, with the key information about these changes. Although the press release was not clear about it, the Law had transferred the authority to supervise its implementation from the Ministry of Culture to the Ministry of Public Administration and Local Self-Government. This Law was elaborated in more detail in section III of this Report – Monitoring of the process of adoption of new laws.

b) In a press release on December 18, 2009, the Ministry of Culture condemned the threats and insults against Brankica Stankovic, the author of the program “Insider”, voiced by aggressive football fan groups. The Ministry also promised to do everything in its power to protect journalists and enable them to do their job unhindered. In addition, the Minister of Culture, together with the representatives of ten diplomatic missions in Belgrade, visited RTV B92 on December 22, 2009, thus providing open support to this station and its reporters engaging in investigative journalism. Such reaction by the Ministry to direct death threats and hate speech against Brankica Stankovic and the “Insider” crew is the Ministry’s first public condemnation of threats made against journalists and freedom of expression in Serbia, at least to the best of knowledge of the authors of this Report. The Ministry’s support to the reporters of RTV B92 is commendable; however, we would like to see this competent authority voice such public reactions to various forms of threats, made either against reporters and their work, or against freedom of expression.

c) On December 14, 2009, the Ministry of Culture and the Council of Europe organized in Belgrade a round table entitled “New Media – Council of Europe Standards”. The participants of the round table were the representatives of the media industry and associations, while the topics were the following: Human Rights and New Media; Council of Europe Standards for the Protection of Human Rights in the New Media and Communication Environment; the Reykjavik Documents; Media Policy for a New Media Environment; and Media Strategy of Serbia and New Media.

The aim of the event was to try to find quality sustainable solutions for the challenges faced by the Serbian media, which would be in line with European standards and the best European practice.

d) In late December, the media reported about the plans voiced by representatives of the Ministry of Culture about their plans for the media sector in 2010. They announced the adoption of the Media Sector Development Strategy and the continuation of the transformation of Serbian media. According to statements made by Ministry officials, the Parliament is expected to consider the Amendments to the Broadcasting Law and the Law on Unlawful Media Concentration and Transparency of Public Media Ownership.

Similar statements were made in the course of 2009 too, but unfortunately they were not put into practice. The working group tasked with drawing up the Media Sector Development Strategy is yet to be established, although the authorities have repeatedly said the Strategy was urgently needed. The working group for drafting the amendments to the Broadcasting Law is no longer Ministry's group; now it is working under the auspices of OSCE, since the group members were discontented with the treatment getting from the Ministry, as well as with the passing of the amendments to the Law on Public Information without having been consulted. The Law on Unlawful Media Concentration and Transparency of Public Media Ownership is supposed to be in the procedure, but there is no information about the current phase of the process or its final text thereof. Therefore, it would be good to see the promises made by the authorities materialize in 2010; otherwise, the decline of the media sector will continue rapidly, which will unavoidably lead to an erosion of the accomplished level of society's democratization, which is still insufficient.

COLLECTIVE ORGANIZATIONS

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

On November 2, 2009, the OFPS Management Board passed a new Tariff for the fees charged to the users. The provisions of the Tariff concerning tariff scales for users, with a higher level of fees, shall come into force on January 1, 2010. The OFPS has hence used the last chance to once again determine the Tariff independently, prior to the passing of the new Law on Copyright and Related Rights. The OFPS thus make sure this Tariff's implementation until the level of the Tariff, conformed to the new Law, is introduced. The said Law does not allow collective organizations to pass the Tariff independently anymore; collective organizations shall be obliged to negotiate the level of the Tariff with the users. Failing an agreement, in which case the management of collective organizations shall set the Tariff proposal independently, such a Tariff shall become effective only if approved by the

Copyright and Related Rights Commission, which consists of an equal number of representatives of collective organizations and users, respectively.

We hereby only wish to highlight that the new OFPS Tariff has increased the fee for commercial TV broadcasters from between 0.70% and 1.25% to between 1% and 2% of overall revenues. The fee for commercial radio stations was increased from 3% to 3.5%. Along with a series of other bad solutions (increase of the minimum fee, scrapping the flexible scale, etc.), the increased fee makes this Tariff utterly expensive for broadcasters, putting them in an even more difficult situation.

The new Law on Copyright and Related Rights was adopted on December 11, 2009 and became effective on December 24, 2009. The legal effects of this Law on collective organizations and broadcasters are elaborated on in section III of this Report – Monitoring of the Adoption of New Laws.