

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. The Republic Broadcasting Agency placed on its website a report made by their supervising and analytical department relating to the RTS compliance with legal and program obligations. The Report covers the period between January and March 2010.

This is the first report of this kind ever published by the Broadcasting Agency. Please note that supervision of the broadcasters, including the institutions providing public service broadcasting, is a competence of the Agency set out in the Law. The analysis is limited to quantitative overviews of compliance with minimum program requirements as provided by the Broadcasting Law (a share of the program in Serbian language, a share of own production, a share of independent productions), shares of individual program genres in the total program offer, and the share of programs intended for specific social groups (such as programs in Roma language). The Report does not include a comparative analysis with the programs of public broadcasting services in Europe or the region, nor does it include a comparative analysis with the programs of commercial broadcasters in Serbia. The conclusion of the Report is that RTS complies with all supervised program obligations, apart from the minimum 10% requirement for independent productions which was not fully achieved in the relevant quarter (to tell the truth, it is not envisaged by the Law that this obligation should be fulfilled in each individual trimester but rather on annual level). Other things can be noted from the statistical data offered by the Report, such as that the aggregate share of children's and scientific-educational programs is smaller than the share of advertising, TV sales and announcement of programs. Even though there is no doubt that it is good that this Report was prepared and made publicly available, it should be insisted that in future, besides the quantitative analysis, such reports comprise a comparative analysis of the program as well.

1.2. Srboľjub Bogdanovic from the Republic Broadcasting Agency said for the Danas daily that the number of infringements of the Advertising Law in the programs of electronic media decreased in the previous period. The number of certain types of infringements, the ones

most frequently seen in real life, was decreased by several times. Bogdanovic particularly underlined the example of advertising in running letters outside the advertising blocks the number of which decreased by four to five times. This was possibly partly due to the misdemeanor charges that RBA had filed for January infringements, as well as to the talks the Council had held with the representatives of broadcasters, Bogdanovic said. Namely, in the beginning of March, RBA filed the first misdemeanor charges against all six broadcasters with national frequencies for of the total of 329 infringements of the provisions of the Advertising Law that were noted in January; a press conference was held for the same purpose. Most frequently, non-compliance was relating to the provisions on the duration and marking of advertising blocks, the interval between them, duration of the TV sale programs, and broadcasting of commercials during the children's program. In the meantime RBA started to file misdemeanor charges against radio broadcasters with national frequencies.

Let us remind ourselves that the Republic Broadcasting Agency announced that in January RTS had 33 infringements of the Advertising Law, TV Pink 36, TV B92 63, Happy TV 102, Kosava 85, Fox six, and Avala four. Interestingly, Bogdanovic now describes a violation of the Law that is reflected in advertising in running letters outside the advertising blocks as an example of the type of infringement the number of which has now decreased by four to five times. Please note that at the time when the Agency presented the data on the number of infringements of the Law at its press conference in January, this infringement was not included in the numbers. Namely, had the number of these infringements been large at that time, the results would have been different, particularly bearing in mind that advertising in running letters outside the advertising blocks was extremely common, especially on TV Pink. Even though it is surely positive that the number of registered infringements is now smaller than in January, it is perplexing that the Agency finds reasons for optimism in the decrease of the type of infringements which in January, for the reasons that were never explained, did not even count as an infringement.

1.3. On May 21, the Republic Broadcasting Agency published an announcement in which it indicated to a large number of complaints because of ill-cultured content in the programs broadcasted by a number of national broadcasters. The RBA Council made a decision to invite representatives of broadcasters for a discussion in which they would be told it was unacceptable to broadcast the program a large part of which consists of curses, insults, and verbal extremisms of all kinds. The RBA Council underlined that TV and radio programs need to comply with the rules of basic decency and that the urge to have more viewers and attract more attention cannot justify broadcasting of scandalous and offending content, or promotion of values inadmissible in a civilised society. Only a few days later, on May 25, 2010, the RBA Council held an emergency meeting because of the inappropriate behavior of

the participants of the “Farm” reality show on TV Pink. Pink was requested to make a public apology because of the inappropriate content in the program, “not in the name of the “Farm” participants, but in its own name”. One of the requests is to have the daily reviews “cleaned” of curses and offending content, and that the editorial staff pays attention in the course of live transmissions. This means that, in case of an incident, a camera recording some other part of the estate on the “Farm” will be activated or the transmission will be discontinued, explained Srboľjub Bogdanovic from the Republic Broadcasting Agency. Pink was also requested to put a designation that the program is not recommended for persons under 18 years of age.

With regard to the war that the Republic Broadcasting Agency declared to “uncultured content”, in the first place to swearwords in TV and radio programs, revocation of Article 7 paragraph 1 of the Convention on Cross-border Television as a basis is particularly interesting. Namely, this provision reads that all items of program services, in terms of their presentation and content, shall respect dignity of the human being and fundamental rights of others. In particular, they shall not be indecent and in particular not contain pornographic content, or give undue prominence to violence or be likely to incite to racial hatred. The Republic Broadcasting Agency’s Code of Conduct envisages that broadcasters are under the obligation to suppress extremism and insults in their programs, both in view of program presenters and their guests. It seems, however, that there is a trend that these provisions are rather broadly interpreted and that any freer speech is a priori forbidden, even at the hours when children as a rule are not watching or listening and, what is even worse, even without pondering the context in which such speech is used; this could lead, in some cases, to disproportionate restriction of freedom of expression.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

2.1. The Republic Telecommunications Agency submitted to the National Parliament of the Republic of Serbia the Report about its activities in 2009, with an outline operational plan for RATEL activities in 2010. The Parliamentary Traffic and Communications Committee discussed this Report on the meeting held on May 7. After the debate, the members of the Board unanimously adopted the Report.

The Law on Telecommunications provides that RATEL shall prepare and submit to the Government and the Parliament annual reports (accounts included) on their activities, particularly reports on development of telecommunications in the Republic of Serbia, implementation of tariff policy principles for the services envisaged by the Law, level of universal services implementation with assessment of the user satisfaction level, and

intended use and allocation of radio frequencies for civic purposes. The Law also provides that this report is to be published in a manner set out in the RATEL Articles of Association. The RATEL Articles of Association provide that reports shall be published on the Agency's website. This took place on May 19, when the 2009 Annual Report, Financial Report, and the Authorized Auditor's Report were published.

2.2. On May 24, 2010, RATEL issued two decisions to extend the deadlines within which radio stations were to commence operation against the licenses that had been issued earlier to the Public Company RTV Vrnjacka Banja.

Article 71 of the Law on Telecommunications provides that a radio station shall commence operation within a year upon obtaining of the relevant permit, unless a specific law provides otherwise. The same Article of the Law provides that if, for objective reasons, a user is not able to commission the radio station in the specific time period, they can, not later than 15 days before the expiry of the deadline for commencement of radio station operation, submit a request for extension of this deadline in writing, specifying the reasons for the delay. In this specific case, Public Company RTV Vrnjacka Banja referred to several failing auction attempts in view of privatization as the objective reason for their inability to, within the time period provided by the Law, commission the radio station; RATEL accepted this explanation.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

The National Parliament of the Republic of Serbia has adopted the Law on Amendments to the Law on Free Access to Information of Public Importance, and the Law on Amendments to the Law on Marking the Days of Mourning on the Territory of the Republic of Serbia, which will be discussed in more detail in the section dealing with monitoring of the legislation adoption process. Moreover, the laws on ratification of international acts related to the telecommunications of importance for pending digitalization of radio broadcasting were adopted. The ratified documents included the Final Acts from the Regional Conference on Radio Connections for Planning of Digital Terrestrial Radio Broadcasting Services held in Geneva in 2006, and the Protocol on amendments to particular segments of the Regional Agreement for the European Broadcasting Area (Stockholm, 1961) with the Resolutions (RRC-06-Rev.ST61). Article 12 of the Final Acts from Regional Conference RRC-06 defines duration of the period of transition from analogue to digital terrestrial broadcasting of TV

programs. Namely, this period expires on June 17, 2015. After the expiry of the transition period, all protected frequencies from the Analogue Plan will no longer be protected; or, only new digital distribution will be protected. It was in view of this Act, but also the Recommendation of the European Commission, COM (2005) 204, by which the member states of the European Union were suggested to cease analogue broadcasting and make a full transit to digital broadcasting of TV program before the beginning of 2012, that the Government of the Republic of Serbia specified, in the Digitalization Strategy, April 4, 2012 as a date for full transit to digital terrestrial broadcasting of TV program in Serbia.

4. THE MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY

The Government of the Republic of Serbia adopted the Draft Law on Electronic Communications and forwarded it to the Parliament on May 28, 2010 to be adopted in an emergency procedure, announced the Ministry for Telecommunications and Information Society.

The Draft Law is in full compliance with the EU 2002 regulatory framework allows a more dynamic liberalization of telecommunications, strengthens the position and role of the independent regulatory body, introduces new mechanisms for protection of users, ensures greater transparency of the decision-making process, promotes predictability of the regulatory framework and rule of law. Having been composed by the Ministry for Telecommunications working group, the Ministry worked on further inter-ministerial harmonization of the text of the Draft before it was to be adopted by the Government. This legal proposal is of utmost importance for the media sector and, in the first place, for electronic media. Namely, the Draft redefines the requirements for provision of electronic communication services, which means the requirements for distribution of radio and television program. Unlike the licensing mechanism for provision of services of radio and television program distribution (e.g. permit for provision of services of radio and television program distribution through a cable distribution network, permit for provision of the services of radio and television program distribution via satellite, or permit for provision of Internet services), here it is proposed that these services should be provided against a general authorization regime, namely directly by virtue of law, and the permits are envisaged solely for use of numeration and radio-frequencies. As specifically envisaged in the Draft, when defining the requirements and methods for the use of radio-frequencies for distribution and broadcasting of media content, the Agency for Electronic Communications (which is taking over the relevant competences from RATEL) will establish cooperation with the body

responsible for broadcasting and, where it is so provided by the Broadcasting Law, permits for use of radio-frequencies will be issued only at the request of the broadcasting regulatory body. In addition, the Agency for Electronic Communications will be authorized to introduce mandatory transmission of particular programs at the request of the broadcasting regulatory body (so-called “must carry” regulatory obligation). The draft also envisages that the Ministry for Telecommunications and Information Society will issue an act about transition from analogue to digital broadcasting of TV program and access to multiplexed terrestrial digital broadcasting upon proposal of the Agency for Electronic Communications which is being prepared in cooperation with the broadcasting regulatory body. This act will specifically regulate the manner and time schedule for the transition, the requirements and timelines for setting up the network for digital television program distribution, the requirements for creation of multiplexes, the scope of the use of radio-frequencies, to the extent necessary for effective transition to digital broadcasting of television program. Public Company „Broadcasting Equipment and Communications”, in accordance with the above act, will be issued an individual permit for use of radio-frequencies and imposed an obligation to set up an electronic communication network for multiplexing, distribution and broadcasting of digital television program. How the remaining radio-frequencies intended for terrestrial digital broadcasting and for provision of broadband services (digital dividend) will be used, will be determined by the Government after the process of transition to digital broadcasting is completed, upon the proposal of the Ministry and after public consultations are held.

5. THE MINISTRY OF CULTURE

By mid-July, Serbia will have its media strategy, which is now being prepared by the Ministry of Culture, said Deputy Minister for Media Natasa Vuckovic-Lesendric at a two-day conference that took place in Belgrade Media Centre under the title “The Visegrad Four: Learning from Experience”. “The Media Study” will show how much today’s media scene in Serbia is in line with European criteria. This document will be based on a comparative analysis of the situation on the media scene and the relevant legislation in three European countries – namely Denmark, Germany and Austria, chosen for their ethnic specificities, population numbers, status of public broadcasting services and local media – on one hand, and Serbia on the other, that was commissioned by the Ministry and prepared by European consultants. “In the course of this year we will adopt the new Law on Tanjug News Agency and amend the Decree on International Radio of Serbia, by which their respective statuses and funding will be defined,” announced Natasa Vuckovic-Lesendric. The Deputy Minister said that the Ministry was aware of the problems which occurred when only one of the news agencies was subsidized and intends to eliminate the possibility of unfair competition.

Namely, development of the media strategy is a kind of concession that the Government made to the media sector; it was preceded by the undivided criticism of the last year's amendments to the Law on Public Information, which the professional community qualified as unconstitutional and the act seriously impairing and restricting freedom of expression. Although at that time the Ministry had already set up a working group for media strategy drafting, the working group, composed of representatives of journalists' and media associations, was not active in the preceding period since the Media Study the Ministry had ordered to be made by EU consultants, financed from EU funds, was pending. It is to be expected, however, that after the Media Study is published in mid-June, this working group will be reactivated and used as a channel for broadest consultations with the journalists' and media associations about the developmental possibilities of the media sector in Serbia in the coming period.

COLLECTIVE ORGANIZATIONS

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

The negotiations about the uniform fees for broadcasting, rebroadcasting and publication of phonograms and interpretations recorded on them between the Organization of the Phonogram Producers of Serbia and the Organization for Collective Administration of Performing Rights (PI), on one hand, and the representative association from the ranks of the users of commercial broadcasters, the Association of Independent Electronic Media (ANEM) with the Association of Professional Broadcasters of Serbia (APRES), on the other, definitely fell short in May. According to the Law, the proposal of fees is now to be defined by the managing board of the Organization and forwarded for an opinion to the Commission for Copyright and Related Rights; only in case the Commission is of the opinion that the proposed fees do not cover the rights these specific organizations are licensed to exercise collectively, or in case the fee was not defined in accordance with the rules provided by the law, will the organizations be under the obligation to conduct new negotiations with the representative association of users, or to file a new proposal of fees the Commission for its opinion. In case that in this second round the Commission also finds that the fee was not defined in accordance with the rules specified by the law, it will be authorized to decide on the fee. The fact that the Government, which was to appoint the members to the Commission for Copyright and Related Rights, has not done it yet is complicating this process further.

The reasons underlying the collapse of the negotiations include the reluctance of collective organizations to make real concessions in view of relaxing their fees. Namely, the solutions of the new 2009 Law on Copyright and Related Rights relating to the manner of defining the fees for the organizations for collective administration were anchored in the unsustainability of the solutions from the previous Law, from 2004, which gave the organizations for collective administration the liberty to absolutely autonomously define the fee. During the negotiations, the collective organizations argued that their old fees, irrespective of the fact that they were defined autonomously and without consultations with the users, were so low that there was no room for further relaxation. The users, on the other hand, could not accept that the fees, which were defined in such an unfair manner that the legislator was forced to change the entire law, remained essentially identical in terms of the total level of fees. In the coming period it is necessary to exert further pressure on the Government to perform its legal obligation and appoint the members to the Commission for Copyright and Related Rights, and thus make it possible for the fees to be finally defined.

7. SOKOJ, the collective organization for the protection of musical authors' copyrights

The negotiations about uniform fees for broadcasting of musical works between SOKOJ – Serbian organization of the authors of music and the representative association from the ranks of users of commercial broadcasters, the Association of Independent Electronic Media (ANEM) together with the Association of Professional Broadcasters of Serbia (APRES) failed in May. All that was said in the previous section of this Report with regard to OFPS, the collective organization for protection of phonogram producers' related rights, applies to SOKOJ too.