

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 RBA Council decided to produce a list of events of national interest for the citizens of Serbia, which included about 60 cultural and sports events. The Decision, in which it is said that it was passed on the RBA Council meeting on May 21, was published on June 11. The cultural events include Nisvil, Bitef, Oktobarski salon, Gitar art festival, Exit, Fest, Kustendorf, World Media Freedom Day, and many others. There are more than 30 sports events of importance for Serbian public, including the Olympic Games, world and European championships in football, basketball, water polo, volleyball, handball, track & field, swimming, etc. The list also includes tennis events – Davis Cup and Fed Cup and all four Grand Slam tournaments, namely the Grand Slam matches with participation of Serbian players, and other different sports events.

Article 71 of the Broadcasting Law envisages that the Republic Broadcasting Agency shall draft a list of the events of interest for all citizens of the Republic of Serbia, which may be transmitted exclusively by a broadcaster with national frequency. The same Article of the Law envisages that the broadcaster with the exclusive right to transmit the events from the list defined by the RBA shall allow and enable all other interested broadcasters to record and broadcast short reports from these events, in the duration of up to ninety seconds, containing authentic images and sounds from such events. Article 9 of the European Convention on Cross-border Television, which Serbia ratified in 2009, also envisages that each signatory state shall examine and, where necessary, take legal measures, such as introduction of the right to short reporting on events of high interest for the public, to avoid undermining of the public right to information due to a broadcaster which exercises its exclusive rights, transmitting or retransmitting such an event. Article 9bis of the same Convention envisages that each signatory state retains the right to take measures to ensure that a broadcaster within its jurisdiction does not exclusively broadcast events, which are regarded by that signatory state as of major importance for the society, in such a way as to deprive a substantial portion of the public in that signatory state of the possibility to follow such events by live coverage or deferred coverage on free television. If it does so, the signatory state concerned may have recourse to drafting of a list of designated events which it considers to

be of major importance for society. In Serbia, there have been no events referred to in Article 9bis of the Convention with a regional or local television station purchasing exclusive rights to broadcast an event of national importance, at least not to the best knowledge of the author of this Report. On the other hand, the events referred to Article 9 of the Convention are extremely numerous, particularly with regard to major sports events where, as a rule, the principle of national exclusivity is respected in exploitation of broadcasting rights. That is why it is very positive that RBA has finally made a decision on defining a list of events of national interest, especially in view of the fact that this allows other interested broadcasters the right, which the broadcaster holding the exclusivity rights need to bear, to record and broadcast short reports that contain authentic image and sound from such an event, in the duration of up to ninety seconds. The reasons why the RBA has drafted this list now, although it had the right to do that ever since the adoption of the Broadcasting Law in 2002, lie in the fact that the World Football Cup took place this summer. The publication of this list on the World Cup commencement date allowed the broadcasters to, irrespective of the fact that the RTS was a holder of exclusive rights to broadcast the World Cup matches, broadcast short reports with authentic image and sound from South Africa.

1.2. On June 21, 2010, the RBA announced that its Council had decided to file misdemeanor charges against TV “Pink”, TV “Kosava”, and RTS. In the case of TV “Pink”, misdemeanor proceedings will be instigated because of the content of the “Farm” reality-show program, which can harm physical, mental, or moral development of children and adolescents. After an earlier intervention of the RBA Council, it is stated in this announcement, TV “Pink” made an apparent effort to make the “Farm” program comply with applicable regulations and, thereafter, no infringements to the Broadcasting Law or the Broadcasters’ Code of Conduct were recorded. However, the decision on instigation of misdemeanor proceeding was made because of the earlier, unacceptable excesses on TV “Pink” which is broadcasting this reality-show program. For the same infringement of the Broadcasting Law, it was decided to file a lawsuit with regard to the “Luda kuća” (Mad house) program on TV Kosava. The RBA will file misdemeanor charges against RTS because of broadcasting of beer advertisements, which is not allowed outside the time interval between 6 p.m. and 6 a.m. These advertising contents are broadcast on RTS immediately before the broadcasts of the World Cup football matches. The charges will also be filed to the magistrate court against all national broadcasters where any infringements of the Advertising Law were noted, announced RBA.

The RBA announcement refers to the provisions of Article 68, paragraph 1, items 5 and 6 of the Broadcasting Law. Article 68, paragraph 1, item 5 of the Law lays down the prohibition of broadcasting program, the content of which can harm physical, mental or moral development

of children and adolescents in the period between 6 p.m. and 12 p.m., and an obligation was envisaged for these programs to be clearly designated if broadcast between 6 p.m. and 12 p.m. Article 68, paragraph 1, item 6 of the Broadcasting Law lays down the prohibition of broadcasting a program containing pornography or contents that present and support violence, drug abuse, or other forms of criminal behavior, or the programs abusing gullibility of viewers or listeners. The sanction provided for these misdemeanors is a fine ranging between 300.000 and 1.000.000 dinars for the founder, and a fine ranging between 20.000 to 50.000 dinars for the responsible person. The RTS is believed to have infringed the provision of Article 68, paragraph 2, item 2 of the Advertising Law, which prohibits advertising of beer and wine, including any presentation of a trademark or other designation of beer or wine or a beer or wine producer, in radio and television programs, except in the period between 6 p.m. and 6 a.m. It is not clear, however, why is it stated in the announcement that misdemeanor charges were filed against RTS when whatever the public broadcasting institution is charged with constitutes an economic misdemeanor for which the fine envisaged amounts to 300.000 to 3.000.000 dinars for a legal person, or more if a profit of more than 1.500.000 dinars was made by such advertising, but not exceeding the triple value of the profit made. For the same economic misdemeanor, a responsible person in the legal person will be fined with 50.000 – 200.000 dinars.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

2.1. As reported by the “Danas” daily on June 15, 2010, referring to the data of the Republic Agency for Telecommunications, the battle against pirate stations in Serbia has been more effective since the beginning of 2010, compared to a year and a half earlier. Namely, the number of broadcasters, presently operating without a license in Serbia, amounts to 52, while the number of frequencies that are occupied by illegal broadcasting amounts to 70, RATEL claims. According to their data, the number of illegal broadcasters who are no longer operating is 134, and the number of freed up frequencies is 146. The “Danas” notes that, since September 2008, in the campaign aimed at closing down of radio and television stations broadcasting program without a license, RATEL has registered 181 pirate broadcasters with 211 frequencies; before January of current year, only about 70 stations were closed down. Besides, the number of illegal broadcasters changes on daily basis, considering that many stations, whose premises and equipment are sealed, break the official seal and resume their operations. RATEL maintains that the largest number of broadcasters without license is broadcasting in the territories of Novi Sad, Zrenjanin and Subotica.

One of the reasons that caused the battle against pirate broadcasters to be that long and rather ineffective, was explained in the section of this Report dealing with adoption of the Law on Electronic Communications. This law shall replace the 2005 Law on Communications, which replaced telecommunications inspectors with RATEL controllers; these controllers are not authorized to seize telecommunications equipment, namely illegal radars or their parts. The recently published report of the Independent Association of Journalists of Vojvodina (NDNV) states that the largest concentration of radio pirates is around Novi Sad, where “undue advantage is taken of the natural, dominant position of Fruska gora and broadcasting is made from local cafes and holiday homes”. A number of illegal radio stations have brought claims with different courts with the aim to procrastinate the process as much as possible, broadcasting the program and selling advertisements, taking advantage of the situation where RATEL cannot seize their radars. Others simply move to another location or shift to another frequency, also taking advantage of the fact that RATEL is not in a position to seize radars. In the report “Media in Vojvodina, Political Compromises or Professional Reporting“, NDNV underlines that most pirates are broadcasting music “with inevitable best wishes and greetings, which, considering they are ordered via text messaging or specially rated telephone calls, provides considerable income“. This is especially so having in mind the fact that illegal broadcasters do not have expenses for licenses, copyrights and performing rights, which guarantee their profit.

2.2. On June 14, 2010, RATEL website published a statement of the President of the Agency’s Managing Board, Prof. Jovan Radunovic, PhD, in which he was informing the public that, taking account of the pending adoption of the new Law on Electronic Communications, he made a personal decision to resign. In his statement, Radunovic mentions the accomplishments of the Agency in the previous period and in the broadcasting field he particularly underlines that the conditions have been created for the use of satellite DTH technology, as well as the conditions to start introducing digital television.

Article 14 of the Law on Telecommunications envisages, among the events in which the term of office of the President of the Agency’s Managing Board shall be terminated, his giving notice to the National Assembly of the Republic of Serbia, in writing. Article 12 of the Law, however, envisages that, where a new member of the Managing Board is not appointed before the term of office of his predecessor is terminated, the member of the Managing Board, whose term of office has expired, shall continue discharging his/her duty until the completion of the procedure for appointment of the new member of the Managing Board. The transitional and final provisions of the Law on Electronic Communications envisage that on the day on which the Law comes into force, the Republic Telecommunications Agency shall continue operations as the Republic Electronic Communications Agency, while the

members of the Managing Board of the Republic Telecommunications Agency shall continue operations until the appointment of the members to the managing board of the Republic Electronic Communications Agency, in accordance with the provisions of the new Law.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

In the period covered by this Report, the National Assembly of the Republic of Serbia adopted the Law on Electronic Communications, which was discussed in more detail in the section dealing with monitoring of adoption of new legislation.

4. THE MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY

4.1. On June 11, 2010, the Ministry for Telecommunications and Information Society initiated a public debate on the Draft Strategy for Electronic Telecommunications Development in the Republic of Serbia 2010 – 2020. The Draft Strategy was published on the e-Government portal of the Republic of Serbia. The previously initiated public debate on the Strategy of Information Society Development 2010 – 2020 and the Strategy for Electronic Telecommunications Development jointly comprise a kind of Digital Agenda for the Republic of Serbia.

The Draft Strategy for Electronic Telecommunications Development deals with digital television and networks for radio and television programs broadcasting to an extent to which digitalization is in actual fact an instrument for creation of digital dividend, namely for freeing up a part of the spectrum for the requirements of mobile broadband access. The Draft Strategy refers to the research conducted in 2009 by the World Bank, which shows that the 10% increase in broadband penetration rate produces a 1.3% increase of GSP. From these data, the Draft Strategy deduces that it is necessary to develop an independent national broadband communication network which should provide an environment conducive for introduction of communication services for the requirements of public administration, health care, education, the judiciary, military and police, distribution of television and radio, and other audiovisual and other services.

4.2. On June 16 and 17, 2010, in cooperation with the GSM Association, the Ministry for Telecommunications and Information Society organized the South-East Europe Ministerial

Conference on Digital Dividend. Jasna Matic, Minister for Telecommunications and Information Society in the Government of the Republic of Serbia, said that it was necessary to reach an agreement on the utilization of digital dividend at regional level. At the Ministerial Conference, Matic stressed that the countries of South Eastern Europe would decide on the manner in which they would be using the part of the spectrum freed up within the digitalization process. This includes the decision about the services that part of the spectrum would be intended for, namely on how to divide the freed up spectrum optimally among televisions, mobile operators, and different social users in electronic communications, she explained. According to the research presented in the ministerial conference, the estimated potential profit from digital dividend to be made in Serbia once the transition is made from analogue to digital transmission of television program, ranges between 572 and 950 million euro, provided digital dividend is used for other intended uses in addition to broadcasting, such as for broadband internet access.

Notably, in accordance with the Action Plan accompanying the Digitalization Strategy, the Ministry for Telecommunications and Information Society was to propose the decision on allocation of digital dividend to the Government of the Republic of Serbia in the first quarter of 2010, which the Government was to adopt in the second quarter. This deadline, as well as most other deadlines from the Action Plan accompanying the Digitalization strategy, has not been complied with. It is good, however, that even though they are sometimes organized in cooperation with the association of mobile operators and the industry dealing with GSM telephony which would definitely like to get a piece of the digital dividend cake, these conferences encourage public debate on allocation of digital dividend. After all, the spectrum is a public asset and its allocation must be made to satisfy the broadest possible public interest, and not the interest of any individual industry.

5. THE MINISTRY OF CULTURE

On June 25, 2010, the Media study, developed by the experts hired by the European Commission, Bent Norbi Bond, Aleksandar Benzek, and Andrej Zmecek, was presented as a foundation for development of the Media Strategy at the joint conference of the Ministry of Culture and the European Union Delegation to Serbia, under the title “European Path for Serbian Media”. The plan was that more than two months of public debate followed the first presentation of the Media Study. Natasa Vuckovic-Lesendric, Deputy Minister of Culture in charge of media, stressed that, in the past ten years, no systemic efforts had been made to solve a single problem encountered by media, which was why the ministry asked European experts to make this study. “The Media Study is an extensive paper with clear guidelines for

finding a solution for the issues that have piled up on Serbian media scene as a result of, among other things, an excessive number of regulations, poor administrative capacity, and absence of self-regulation,” Vuckovic-Lesendric underlined. Vincent Degert, European Commission Representative in Serbia, explained that the Media Study is only the first step in restructuring of Serbian media scene and introduction into a wide-ranging public debate. “It is clear that all media in the world and in Europe face the economic crisis that has affected all economic sectors. Media, however, are frequently victim not only of economic but also political pressures, which can affect editorial freedom and professional standards”, Degert said. “I expect to see disagreements and controversies, which are important in a democratic process, but it is most important that a public debate has begun”, he said. Later at the Conference, the consultants involved in development of the Media Study compared Serbian media scene with those in Denmark, Austria, and Germany. It was announced that six more round table sessions would be held in the coming period within the public debate on restructuring of media scene in Serbia.

Stating that it is a good thing that the Media Study was composed and that it is even better that, almost a year after work on the Strategy for the Development of Media in Serbia was announced, presentation of this Study starts a debate about restructuring of the media scene in Serbia, taking into account that this extensive document, whose original text in English, together with annexes, amounts to more than 360 pages, and which, before expiry of the period covered by this Report, was not made available in Serbia, we will analyze the Study as such and its recommendations in our next report.

COLLECTIVE ORGANIZATIONS

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

On 21 June 2010, the President of the Managing Board of the organization for protection of phonogram producers in Serbia – OFPS Branislav Stojanovic and the President of the Managing Board of the Organization for Collective Administration of Performing Rights – PI Zivorad Ajdacic, signed an agreement on business cooperation, in accordance with Article 127 of the Law on Copyright and Related Rights. The information about signing this Agreement, but not the text of the Agreement, is published on OFPS website. The text of the Agreement is available on the website of the Organization for Collective Administration of Performing Rights – PI.

Article 127 of the Law on Copyright and Related Rights provides that producers of published phonograms shall receive compensation for phonograms broadcasting and rebroadcasting, public communication of phonograms and public communication of phonograms that are broadcast, and that users shall be charged, as one-off payment, fee for broadcasting and rebroadcasting of interpretations from a recording published on a sound carrier, for public communication of performances broadcast from a recording published on a sound carrier, and for public communication of performance from a recording published on a sound carrier. The one-off fee shall be collected by one organization, designated by the agreement between the performers' organization and phonogram producers' organization. The above agreement provides that the organizations shall define the cost level for collection of the one-off fee and the time interval for transfer of a part of the one-off fee to other organization. This Agreement shall be published in the "Official Gazette of the Republic of Serbia", and the costs of publication shall be borne by the organizations. The agreement that was signed provides that the one-off fee shall be collected by OFPS on behalf of both organizations. The basic accounting period for the transfer of funds is a calendar month. The Agreement provides that the gross amount of collected one-off fee for the accounting month, diminished by the amount allocated for fund for financing of working groups/expert bodies provided by the Agreement (joint OFPS – PI collection service, the Council of Phonogram and Producers and Performers, and PI Coordinator, the competences of which are laid down in the Agreement), diminished by the amount allocated for financing of court fees for court collection of one-off compensation, and diminished by the amount allocated for financing of agents in the field and the amount of totally invoiced VAT shall be divided in two parts, and that the amount obtained in this way shall be transferred by OFPS to PI. The Agreement provides that the amount allocated for financing of working groups/expert bodies that are provided by the Agreement cannot be less than 10% or more than 20% of the total collected fee at annual level. The amount to be set apart into the fund for financing of court fees shall be defined by the Council of Phonogram Producers and Performers, at the proposal of the Head of the Joint Services who shall submit this proposal upon previous consultations with the legal department. The amount allocated into the fund for financing of agents in the field shall be defined by the Head of the Common Services as a percentage and proposed to the Council to accept or reject it. It is obvious at first glance, however, that these two collective organizations did not manage to keep the costs related to collection of one-off payment within the limits of the percentage laid down in the Law on Copyright and Related Rights. Namely, the Law provides that the costs incurred in connection with collection of the one-off fee may not exceed 10% of its value. In the Agreement that was signed it is declaratively stated that the contractual parties share an intention to have the total costs covered from the total of the difference between the basic and increased fee and 10% of the basic fee; here,

basic compensation is the compensation collected from the users who have concluded a contract with the organizations and thus obtained a permit to use phonograms and performances, while increased compensation is the compensation collected from the users who have not concluded a contract with the organizations, namely who have not obtained a permit to use phonograms and performances. In any case, according to the Agreement, the costs for financing of working groups/expert bodies involved in collection are defined at the level not less than 10% and not more than 20% of the total collected fee at annual level. Thus, considering that the amounts of court fees and remuneration for the agent in the field should be added, it is obvious that costs related to collection will significantly exceed the upper limit laid down by the legislator.

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

On June 30, 2010, SOKOJ announced that the total funds to be allocated to the authors for broadcasting, public performance and public communication of music works in 2009, amounted to 327.668.624 dinars. Compared with the accounting year of 2008, this fund has been increased by 23%. SOKOJ also announced that, based on the calculation for 2009, the allocation involved 7.816 authors and holders of copyrights, and that average royalties for authors and holders of the rights for the accounting year of 2009 amounted to 22.206,46 dinars. As it is stated there, disbursement was made in the period June 25 – 30, 2010.

Although the data that SOKOJ published with regard to the level of funds entered into the fund for allocation to authors and other holders of copyrights are not sufficient for a comprehensive analysis, a number of things are clear right away. Namely, even though one cannot see what part of the funds that were collected was collected from broadcasters, or whether SOKOJ's collection related costs have decreased, it turns out that, at the time of crisis, SOKOJ increased the allocation fund by an unbelievable 23%. If you take into account that, in the same period, radio and television advertising market, as estimated by some, dropped by 50%, and that the crisis affected other fields of business of importance for the users from which SOKOJ is collecting the fee, this large increase of the allocation fund only shows how unsustainable is this burden imposed on the users by this compensation for the utilization of the works of music.