

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

REGULATORY BODIES

1. THE REPUBLIC BROADCASTING AGENCY (RBA)

1.1. On August 2, 2010, the Republic Broadcasting Agency (RBA) posted on its website a list of applicants for the public competition for the issuance of television and radio broadcasting licenses on the regional and local level, whose applications have been complete and timely filed. The Agency also announced the criteria for awarding the licenses. An updated list was published on August 20, while the RBA Council published on August 31 a list of persons that have been issued a license for regional and local television and radio broadcasting. According to the list, two licenses were issued for regional radio broadcasting, one for local television broadcasting and 31 licenses for local radio broadcasting. The issued licenses include media that broadcast content in Albanian and Roma language, while the Catholic and Serbian Orthodox Church obtained new radio stations.

The Republic Broadcasting Agency has called a competition for the issuance of radio and television broadcasting licenses for several local and regional areas in March 2010. The deadline for submitting the applications expired on May 31. According to the Broadcasting Law, the RBA was entitled within seven days from the expiry of the deadline to publicly release the list of all applicants whose applications were complete and timely filed. This was done with a delay of almost two months. The said list was updated on August 20. The release of the updated list of applicants, whose applications were timely and complete, was not accompanied by an explanation. Two possibilities logically come to mind. First, it is possible that the RBA itself has made an omission when releasing the initial list. The second and more probable explanation is that some of the applicants of incomplete applications have in the meantime supplemented their applications. The latter possibility is provided for by the Broadcasting Law, according to which incomplete applications shall be rejected only after the applicant fails to furnish the additionally required documents in the additional deadline. Simultaneously with releasing of the list of applicants with complete and timely applications, RBA released the criteria for issuance of licenses on the public competition. These criteria involved business success i.e. the economic self-sustainability of the applicant, the station's ratings (viewers and listeners – applies to the applicants that are already broadcasting), experience in broadcasting or similar activities, the core activity of the applicant, contribution

to the development of domestic broadcasting, contribution to the development of the local or regional community in the sphere of information, culture and education, guaranteed contribution to quality and diversity of the program, prior conduct of the applicant, transparency of the ownership structure and origin of capital, prevention of dominant influence on the public opinion, conduct of the applicant during the competition procedure, contribution to the realization of the rights of ethnic minorities, religious communities, social groups and citizens' organizations (applies to civil society stations). We hereby remind that the RBA has been criticized over prior competitions for releasing the criteria for awarding the licenses only after the submission of applications and not beforehand. In spite of such criticism, the RBA stuck to that practice, invoking a provision of the Broadcasting Law which has placed the release of the said criteria among the activities taking place after and not before the submission of applications. The authors of this Report find that the criteria need to be released beforehand. It will be possible to determine the extent to which the released criteria are non-discriminatory, objective and measureable, as required by the Law, only after the RBA releases an explanation of its decisions delivered in relation to this competition. After the RBA has published the list of persons that have been issued a television and radio broadcasting license, the applicants will receive permits from RATEL for placing the transmitters for the use of radio frequencies, so that the RBA may issue unique licences. These developments are expected to take place in the next two months.

2. THE REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

2.1. On August 23, 2010, at a session of its Managing Board, the Republic Agency for Telecommunications adopted twenty decisions prohibiting the activities of radio stations (transmitters, signal delivery relay links). The decisions partly pertain to pirate broadcasters and provide for permanent ban, as well as to lawful broadcasters, which have been using radio relay links in unauthorized ranges for the signal delivery and/or operated their transmitters without having undergone prior technical inspection.

The said activities are in line with RATEL's mandate to control the use of the radio frequency spectrum, identify harmful interference and take measures for the removal thereof. These activities are also in accordance with the several times reiterated intention of the Agency to clamp down radio piracy as a serious hindrance to the normal functioning of electronic media in Serbia. We hereby want to point out that the recently adopted Law on Electronic Communications gives certain powers in this sphere to electronic communications inspectors from the Ministry of Telecommunications and Information Society and the provincial authorities on the territory of Vojvodina. The inspectorates are expected to become fully

operational as of the beginning of 2011, which will boost the effectiveness of combating radio piracy.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

The Parliament did not sit in August and neither did the parliamentary committees debating matters of relevance for the media sector.

4. THE MINISTRY OF CULTURE

4.1. On August 26, 2010, the Ministry of Culture released a public call for the submission of suggestions and comments on the recommendations contained in the Media Study, to be furnished to the Ministry by September 30. The Media Study was funded by the European Union within a project of assistance to the Ministry of Culture of the Republic of Serbia in drafting the Media Strategy. The Journalists' Association of Serbia invited its members to send suggestions, while the media reported that the Independent Journalists' Association of Serbia, the Association of Independent Electronic Media, Local Press and the Independent Journalists' Association of Vojvodina have set up working groups that would work on the draft of the Media Study. These organizations will then present their views on the future media strategy on a public debate. The four associations have reached a consensus on preparing ready-made solutions, as well as on determining minimum joint requirements, Danas reported on August 9, 2010. ANEM has previously announced that it had furnished to its members an internal document containing a short overview of the recommendations from the Study, accompanied by expert comments. ANEM members were requested to provide comments and suggestions in order to help shape positions ANEM would then stand for on round tables dedicated to the drafting of the Media Strategy. The Ministry has co-organised six round tables and the Media Strategy is expected to be adopted by the end of October. Some key recommendations of the Media Study pertain to the allocation of the subscription fee, the transformation of the Tanjug news agency, the setting up of regional public service broadcasters and the related change to the status of RTV Vojvodina.

4.2. On August 13, 2010, in an interview for the daily Danas, the Culture Minister Nebojsa Bradic, asked if he would resign over the decision of the Constitutional Court that found that many provisions of the Law on Amendments to the Law on Public Information were in

disaccord with the Constitution, stated he did not intend to leave his post. Bradic explained that the amendments to the Law had had a purpose at the time when they were passed, when the media were “brutally violating ethical, civilisational and legal norms”. The Minister went on to say that the Ministry had considerably contributed to improving the situation in the sphere of information, stressing that the media were not being intimidated or intimidating others, which was the case prior to the passing of the Law on Amendments to the Law on Public Information. Mr. Bradic added that “the whole case shook the public opinion“ and that the key word – responsibility – resurfaced once again. In his words, the whole situation led to an improvement of the media environment, which is good news for everyone.

The Minister’s decision to resign or not to resign is a personal choice or action. However, in view of the pending round tables dedicated to the drafting of the Media Strategy, the Minister’s opinion that the regulations that violate the Constitution and the fundamental human rights may have a purpose and be justified in certain circumstances, gives rise to concern. The Minister’s belief that, in the period preceding the adoption of the unconstitutional Law on Amendments to the Law on Public Information the media “were brutally violating ethical, civilisational and legal norms”, is a debatable position. However, his conviction that, in the situation he has described above, the state is entitled to pass unconstitutional laws and that such laws may have a positive effect on public information, is utterly unacceptable and disturbing. We hereby remind that the predominant public perception of the Law on Amendments to the Law on Public Information was diametrically opposed to Minister Bradic’s stance, namely that the controversial provisions of that Law have resulted in increased self-censorship in the Serbian media. Bradic’s statement unfortunately represents a step that the Serbia authorities were in the recent past reluctant to take. This step represents giving up even on their support only verbally declared to media freedom and human rights through advocating the dangerous hypothesis that some circumstances justify breaches of the Constitution.

COLLECTIVE ORGANIZATIONS

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

5.1. On August 28, 2010, the Organization of Phonogram Producers of Serbia (OFPS) posted on its website a press release, related to “unauthorized information about the activities of the OFPS that were published in the media”. The press release said that the

organization had been established and was operating in accordance with the Law on Copyright and Related Rights. According to the OFPS, its repertoire consists of phonograms of both domestic and foreign producers. The OFPS reminds that every person using the repertoire of the organization or publicly communicating or broadcasting music is required to obtain the permission of the OFPS prior such usage and pay a fee in the amount determined on the basis of the applicable fee tariffs.

Without delving into the reasons for OFPS' press release explaining matters that are already indisputable, we will point out the following. The concepts governing the way in which the tariffs of organizations for the realization of collective rights are determined, contained in the new Law on Copyright and Related Rights from 2009 were adopted as a result of the unsustainability of the models from the previous Law from 2004. According to the "old" Law, organizations for the realization of collective rights were entitled to completely freely determine the tariff. The new Law provides for a completely new model: the tariff is now determined by mutual agreement resulting from negotiations between the organization and the representative users association. Until the procedure of determining the tariff by mutual agreement is completed, the fee is paid according to the existing tariff. Prior to the adoption of the Law in December 2009, when the above described concept was already deemed to be a certainty, the OFPS set a new tariff on November 2, 2009, which was even more onerous than the existing one. The new tariff provided for an increase of the fee for commercial TV stations from the then 0.7% - 1.25% of the overall income to 1 - 2%, while commercial radio stations had to pay 3.5% instead of 3%. Negotiations ensued between the OFPS and the representative users association (ANEM, with the support of APRES and in consultation with the Serbian TV network), but the OFPS was reluctant to ease the tariff. Government has still not named the members of the Copyright and Related Rights Commission, who should provide an opinion about the proposed tariff proposed by OFPS, this time together with the collective organization protecting the rights of performers – PI. Media have been for months now paying a fee, which is not even based on the excessive tariff, which led to the above mentioned change to the Law, rather under an additionally increased tariff adopted by the OFPS on the eve of the coming into force of the new Law.

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

6.1. SOKOJ, together with the collective organization for protection of the rights of performers – PI, has invited the following organizations for negotiations about the unique tariff for the realization of rights to a special fee: the representative organization of producers

and/or importers of devices for sound and video recording, the representative association of producers and/or importers of blank sound and picture carriers, as well as individual producers and/or importers, if they are the only ones performing that kind of activity in the Republic of Serbia. These were invited to submit, within 15 days of the invitation, applications for taking part in the talks about the unique tariff for realizing the right to a special fee, as well as proof that they represent the majority of producers and/or importers of devices or sound or picture carriers, or proof of representativeness on the basis of other regulations, namely proof that they are, as individual producers or importers, the only ones performing that respective activity in the Republic of Serbia, in accordance with Article 174, paragraph 1 of the Law on Copyright and Related Rights.

The Law on Copyright and Related Rights stipulates that the authors of works that may be expected to be copied for personal, non-commercial use onto sound, picture and text carriers (books, music, films, etc.) shall be entitled to a special fee from the import/sale of technical devices and blank sound, picture and text carriers, which may be reasonably expected to be used for the said copying. The fee shall be charged to manufacturers of devices for sound and video recording, the manufacturers of photocopying machines or other similar copying devices, manufacturers of blank sound, picture and text carriers and in solidarity with them to the importers of devices for sound and video recording, photocopying machines or other similar copying devices and blank sound, picture and text carriers, unless they are importing small quantities intended for private and non-commercial use, as part of personal luggage. If the said devices and objects are not manufactured in the Republic of Serbia, the fee shall be charged to the importer. Although, according to the Law, the fee is not charged for technical devices that are typically not used for copying authors' works for personal, non-commercial usage (e.g. studio equipment and devices), as well as for blank sound, picture and text carriers that may be used only in conjunction with such technical devices, the charging of the special fee will undoubtedly result in an increase of the operating costs of electronic media.