

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

1.1. The implementation of the Public Information Law has been partly discussed in the Freedom of Expression section.

1.2 On November 11, 2010, at the session of the European Integration Committee of the Serbian Parliament, the Head of the EU Delegation to Serbia Vincent Degert presented the European Commission Progress Report for Serbia for the year 2010. Degert stressed that the said report was essentially positive, for it recognized Serbia's progress in political democratization and acknowledged a certain degree of economic recovery. However, the reports points to problems in several areas and particularly in the reform of the judiciary, fight against corruption and organized crime, the rule of law, the absence of a wider debate prior to passing new laws and frequent recourse to urgent proceedings when a law is passed. Degert especially pointed to the example of the Public Information Law, the provisions of which were invalidated by the Constitutional Court and which were adopted without consulting the public in the first place.

1.3. The majority of media in Serbia are not adhering to ethical and professional standards provided for by the Serbian journalists' Code of Ethics, the Public Information Law and other applicable regulations. This is the conclusion of a text published in the Danas daily on November 21. The representatives of journalists' associations agree that the main omission of the media is the failure to respect the presumption of innocence. The Chairman of IJAS (NUNS) Vukasin Obradovic said that his organization "impatiently awaits the Press Council to become operational", adding that this self-regulatory body could improve the situation in the field of the media. The Chairman of the Executive Board of the Association of Journalists of Serbia (UNS) Petar Jeremic said that the largest number of violations had taken place in the tabloid press, but added that there were examples of the public broadcasting service breaching the same rules. Jeremic believes that, related to the above state of affairs, the Press Council will have an important role to play in the case of print media, while the Republic Broadcasting Agency (RBA) should, in his opinion, oversee the observance of regulations in broadcast media.

2. Broadcasting Law

2.1. The television station SOS channel has announced that the Republic Agency for Telecommunications (RATEL) has switched off their transmitter on the Beogradjanka building “in order to prevent an examination with the purpose of determining if SOS kanal’s frequency was overlapping with the one of the Romanian Television”. SOS press release said that four years after being awarded a defective frequency, RATEL and the RRA are yet to solve the problem. As a consequence, the said television station has suffered millions in damage, while the viewers have been unable to watch their program on a regular basis. As the station claims, the complete documentation with all relevant measurements and information related to this case was furnished to the most important institutions in Serbia, as well as to the OSCE and the European Commission’s office in Belgrade.

The press release of SOS channel reveals only a part of the story related to the withdrawal of the license of this regional specialized sports station from Belgrade. Namely, on RBA’s website at <http://www.rra.org.rs/index.php?task=content&id=103>, one may see the decision of the RBA Council dated March 24, 2009, according to which SOS channel was to be stripped of its broadcasting license if it failed to pay its dues to the Agency in the amount of 20.956.831,16 RSD (more than 220 thousand euro at the then exchange rate) within seven days or to deposit a bank guarantee covering the same amount payable on May 31, 2009. Since SOS channel did not pay the due amount or deposit the guarantee, its license was withdrawn on April 1, 2009. On February 26, 2010, RATEL passed the decision no. 1-01-345-148/10, which is also available at <http://registar.ratel.rs/cyr/filestore/?filestore=6&id=738>, disallowing the operation of SOS channel radio stations (television transmitters) on the 36th and 38th channel in Belgrade, invoking the RBA request and Article 77 of the Telecommunications Law. This Article stipulates that a radio station’s permit may be withdrawn if it expires, if it is withdrawn upon decision of a broadcasting regulatory body or in some other way, if the television and radio broadcasting license expires pursuant to a special law regulating the field of broadcasting. SOS channel has indeed recurrently pointed to the problem of suffering harmful interferences from Romanian broadcasters, resulting in the television’s inability to properly cover with its signal the service zone on 36th UHF channel – for which it has obtained a license on an open competition and in line with the current allocation plan. However, unhappy with the slowness in solving this problem by the competent Serbian and Romanian administrations, SOS channel refused to pay its broadcasting fee, creating thereby the grounds for the withdrawal of the broadcasting license according to the provision of Article 61 of the Broadcasting Law. That provision says that the

broadcasting license shall cease to be valid before its expiry if the broadcaster, in spite of a written warning, fails to pay the broadcasting fee.

3. Law on Copyright and Related Rights

3.1. In the course of the month of November, a large number of stations in Serbia started receiving requests for information from the competent prosecutors. These requests pertained to the alleged commercial offense from Article 215, paragraph 1, subparagraph 7) of the Law on Copyright and Related Rights. The said Article provides for a fine ranging from 100 thousand to three million RSD for a commercial offense committed by a company or other legal entity that fails to furnish or fails to timely furnish to the organization for the collective realization of copyrights or related rights information about the name of the protected object, the frequency and scope of exploitation, as well as information about other circumstances relevant for calculating the fee paid according to the tariff. For the same commercial offense the Law also provides for a fine of 50.000 – 200.000 RSD charged to the responsible person in the legal entity. From the above requests it could have been ascertained that the OFPS – the Collective Organization for the Protection of Phonogram Producers' Related Rights – has filed a complaint with the RBA against a number of stations that, according to the OFPS, are not furnishing relevant information about the objects of protection they are using, on the basis of which the RBA has filed commercial offense charges with the competent prosecutors.

The Law on Copyright and Related Rights stipulates that radio and TV stations must submit on a monthly basis to organizations for the collective realization of copyrights or related rights lists of objects of protection these stations have aired, in the manner and in the form laid down by the general acts of the particular organization. These lists of aired objects of protection are important, since they affect the allocation of the funds collected from the fee to individual owners of rights. The problem with OFPS, however, lies with the fact that the manner and form of the lists that radio and television stations must submit are not clearly regulated by the OFPS general act. Namely, Article 9 of the the applicable fee tariffs charged by the OFPS to the users ("Official Gazette of the Republic of Serbia" no. 94/2009) only says that the user must, in writing, by post or e-mail or by using a form downloadable on the OFPS website, notify each instance where the repertoire has been used. From the said provision it stems that using the form from the OFPS website is optional. In any case, the OFPS website also contains the text of the Rules about the notification of aired phonograms by the broadcasters, which were adopted

by the OFPS Managing Board in late March 2010. These Rules stipulate, differently from the applicable tariff, that the notification of aired phonograms shall be deemed valid and complete and therefore acceptable only if made electronically on the form provided for by OFPS and physically delivered on a CD. The authors of this Report find the above to be almost incredible. Nevertheless, it reflects the problematic regulations in line with which Serbian broadcasters operate: someone may namely be fined by up to three million dinars where he has acted in keeping with the applicable Tariff published in the Official Gazette (sending the notification of the used repertoire by e-mail) due to the fact that a collective organization has subsequently prescribed by an internal act, unpublished in the Official Gazette and thus potentially unavailable to the users, that the above e-mail notification will cease to be considered valid and complete. It remains to be seen if the prosecutors will press charges upon receiving the information they started to collect from stations in November and if the courts will pronounce the fines provided for by Law in the ensuing proceedings.