

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

The Council of the Republic Broadcasting Agency (RBA) has passed a decision to ask for the approval of the Ministry of Culture for relieving broadcast media affected by the earthquake in Kraljevo from paying the fee to the Agency for a period of six months. The representatives of the Council and the Agency have visited the broadcast media in Kraljevo (three television stations, four radio stations and the RTS correspondents) and concluded that the earthquake had affected the normal operation of the media, as well as that the employees in these media had suffered serious damage. Advertising revenue is low to inexistent and there are no signs that the situation will improve. The media in Kraljevo are further burdened by having to pay overhead expenses, cable distribution of their program and fees charged by other government institutions, a press release dated November 17 said.

The said decision of the RBA Council, albeit positive at first glance, raises questions as to the position of the RBA and its autonomy. Namely, according to the provisions of the Broadcasting Law, the Agency is an autonomous and independent organization discharging public powers pursuant to the Law and regulations passed on the basis of the Law. One of the key measures of the Agency's regulatory activities in the field of broadcasting in Serbia should be a fee-setting policy. The fees are, again pursuant to the Law, also determined depending on the program concept of the broadcasters, namely the origin and type of programming that is aired, so as to encourage the airing of certain socially desirable programs. Furthermore, the purpose of regulation is to ensure the financial independence of regulators and to cover regulation costs. However, the Law stipulates that the Agency will determine the amount of the fee with the consent of the Government of the Republic of Serbia. Accordingly, the absence of the said consent in a concrete case could give leverage for the Government to influence the Agency's decisions. In the concrete case, there are two problems. The first is that the Law does not say that natural disasters affecting broadcasters may influence the amount of the fee. This might be interpreted as a mistake by the legislator. The second problem/question, in the opinion of the

authors of this Report, is why has the RBA Council asked for the approval from the Ministry of Culture to relieve the Kraljevo media affected by the earthquake from paying the Agency fee for a six-months in the first place? It is true that, according to the Law, the amount of the fee is laid down with the consent of not the Ministry of Culture, but the one of the Government of the Republic of Serbia. What is beyond doubt is that the situation created by the earthquake in Kraljevo and the intent of the Agency to help the local media has once again laid bare the already recognize shortcoming of the Broadcasting Law: the powers of the Agency to use the broadcasting fees as an effective mechanism for regulating the media market in Serbia are seriously limited, namely imprecisely defined.

2. REPUBLIC ELECTRONIC COMMUNICATIONS AGENCY (RATEL)

RATEL ended the public debate about the Draft Rules on the Amount of the Fee for the Use of Radio Frequencies in November. The Draft differs from the old Rules insofar as the criteria for determining the fee for the use of radio frequencies, provided for by the new Law on Electronic Communications, differ from the ones contained in the former Telecommunications Law. The old Law included the degree of economic development of the area covered by the radio station as a criterion, which is absent from the new Law. This may potentially lead to the evening out of the fees in areas with different degrees of development. The objections voiced by the media pertained to the inadequately used second corrective mechanism for determining the fee provided for by the Law on Electronic Communications. That criterion expresses the need to ensure the introduction of new services, market competition and rational use of the radio frequency spectrum. The authors of this Report believe that the omission to additionally reduce the radio frequency fee in underdeveloped areas – with the purpose of introducing new services, market competition and rational use of the radio frequency spectrum – may result in a further increasing gap between developed and underdeveloped areas of Serbia.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

As it was indicated earlier in this Report, the Serbian Parliament didn't debate any legislation of special relevance for the media sector in November. Two sessions of the Parliament's Culture

and Information Committee were held in the same period. However, on the table were the ways of presenting Serbia's cultural treasures on the European stage, as well as the Draft Law on Foundations, but not any affairs that directly pertain to the media.

4. THE MINISTRY OF CULTURE

The statements repeatedly made by the Culture Minister Nebojsa Bradic in November, about how the Draft Media Strategy was going to be presented to the public at the beginning of that month, unfortunately did not materialize. Media and journalists associations were first told by the Ministry that the said Draft would be introduced on November 16 and then on November 22. The presentation was once again postponed and now the end of January 2011 is mentioned as a possible date. It is hoped that this will not be merely another postponement and failed promise accompanying the process of the adoption of the Serbian Media Strategy. We remind that, after the release of the Media Study, produced by the experts hired by the European Commission and announced as a basis for drafting the Media Strategy, it was announced that the series of round tables in September discussing the Study would be accompanied by simultaneous work on the Draft. The Ministry was namely supposed to release on each round table the conclusions from the previous round table, which would then be joined together in a Draft Strategy. Unfortunately it didn't happen, in spite of the fact that the Ministry had hired the consulting company PricewaterhouseCoopers to write the Draft Strategy. According to the Ministry, the material that was written – albeit unseen by anyone outside the Ministry – is merely a part of the Strategy that pertains to the “obligations of Serbia on the European path”, whereas the financial analysis of the market that is supposed to represent the final touch to the Strategy, is reportedly still in the pipeline. Off the record, one may hear that the problematic parts of the Strategy are the ones that require a political decision on the fate of state media, the models of financing and the proposal contained in the Media Study to establish a larger number of regional public service broadcasters. Media and journalists' associations believe that the Ministry is in fact buying time and seeking a way to include in the Strategy concepts that were harshly criticized by the associations during the round tables. On the other hand, a particular concern is the fact that other ministries are already planning solutions from their scope of competence. The latter became obvious when the Ministry of Trade and Services presented the Draft Advertising Law, which is totally unaligned with the positions that were heard during the debate about the Media Strategy, which compromises the future thereof before it has even been adopted.

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of phonogram producers' related rights

OFPS – the collective organization for the protection of phonogram producers' related rights has announced that, on the basis of contacts with foreign organizations for the protection of phonogram producers' and performers' rights from Europe and the world, which were established in late October on the conference of the Global Performance Rights Committee held under the auspices of IFPI (International Federation of Phonogram Industry) in Copenhagen, it expected that it would soon enter into several international agreements concerning reciprocal protection.

Article 186 of the Law on Copyright and Related Rights stipulates that each organization for the collective protection of copyright and related rights must, pursuant to an agreement with the relevant foreign organization from the same field, ensure the collective realization of copyright and related rights of Serbian right holders abroad and foreign right holders in the Republic of Serbia. The organization must fulfill this obligation within five years from the issuance of the first license for the performance of activity. The OFPS obtained its first license back on July 14, 2002 and it was in the meantime often criticized for not being able to conclude a sufficient number of agreements with the relevant international organizations. According to information posted on the OFPS website, this organization has to date entered into agreements with the following international organizations: SCPP – France, VOIS – Russia, UMA – Ukraine, SENA – the Netherlands, PPL – Great Britain, RPA – Russia, EFY – Estonia, PROPHON – Bulgaria, The IPF Institute – Slovenia and ZAPRAF – Croatia.

6. PI – Organization for the collective realization of performers' rights

On a session held on November 22, the Management Board of the Organization for the collective realization of performers' rights PI called a regular session of PI's Assembly for December 22. In addition to the adoption of the annual statement of accounts, as well as the reports of the Managing and Supervisory Board respectively, the Assembly is expected to make decisions concerning the change of its legal organizational form and various adjustments so as to comply with the Law on Associations.

According to the transitory provisions of the Law on Copyright and Related Rights, the existing organizations for the collective protection of copyright and related rights that were engaged in the activity of realizing these rights prior to the entry into force of the new Law in 2009, shall resume their activities, but shall also conform their status and operations with the provisions of the new Law within one year from the entry into force thereof. In that sense, the existing organizations must notify their registration and change of legal organizational form to the Registry of Associations and apply for deletion from the Registry of Companies where they are registered. Since the Law on Copyright and Related Rights entered into force on December 24, 2009, the PI is practically trying to fulfil its obligation in the last days of the deadline. It remains to be seen if it will succeed. The other two organizations that have been issued a license for the collective realization of rights by the Intellectual Property Office – SOKOJ and OFPS – have made the adjustments back in March and April this year, respectively.