

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 Republic Broadcasting Agency has called another public competition for the issuance of 20 licenses for the broadcasting of radio program with local coverage on the territory of the municipalities of Blace, Bosilegrad, Crna Trava, Dimitrovgrad, Lebane (two licenses), Nis, Trgoviste, Sjenica, Boljevac, Golubac, Negotin, Razanj, Arilje, Krupanj, Mokra gora (three licenses), Banja Koviljaca and Kovin. The last day for submitting applications was March 2, 2011.

Under Article 49, paragraph 2 of the Broadcasting Law, the public competition for the issuance of broadcasting licenses shall be called when, according to the Radio Frequencies Allocation Plan, the possibility exists for the issuance of new broadcasting licenses. In our previous reports, we repeatedly emphasized that such concept was unsustainable. Namely, in the process of passing the Serbian Media Strategy, one of the rare opinions that have never been contested is the acknowledgment that the number of broadcast media in Serbia is economically unsustainable. Calling new public competitions and the issuance of new licenses, in the midst of the economic crisis, in the situation where the media market remains unregulated and in which the applicants tend to be economically unsustainable, is worsening the position of the media in Serbia. By doing so, the RBA is observing its legal obligation, which, in turn, is not conducive to reasonable use of the radio frequency spectrum or the development of broadcasting in Serbia. On the contrary, such actions will lead to further deterioration of the overall media situation.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

The Republic Agency for Electronic Communications posted on its website on February 9, 2011 a notice about the deadlines for the submission of technical documentation and issuance of individual licenses for the use of radio stations' radio frequencies for broadcasters that have been issued by the RBA licenses for broadcasting television and radio program for local areas.

In the concrete case, 18 licenses are issued – 17 for local radio stations and one for a local television station – issued by the RBA on the basis of a public competition from 2010. After the expiry of the deadlines for complaints, namely after the RBA Council delivered its decisions about the complaints that were submitted on time, the Council forwarded its decisions to RATEL for further consideration. RATEL issued a notice inviting the applicants to furnish, within 30 days (until March 10, 2011), technical and other documentation required by the Rules on the Issuance of Licenses for Radio Stations and the data and documentation to be submitted along with the application for the issuance of a radio station license. In further proceedings, in accordance with the Law on Electronic Communications and the Broadcasting Law, under the conditions prescribed by the Law on Electronic Communications and regulations governing this field, RATEL will issue licenses for transmitters, which are an integral part of the broadcasting license. The said procedure is regulated in detail by the Protocol on Cooperation between the RBA and RATEL.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

3.1. As we have already explained, the Parliament of the Republic of Serbia did not discuss in January and February 2011 any legislation of particular relevance for the media sector.

3.2. In mid-January 2011, the Parliament issued a call for applications for the radio and television live coverage of parliamentary sessions. The state budget has earmarked 80 million dinars for this purpose. The media have speculated that RTS or B92 might be interested in these transmissions. The General Manager of RTS Aleksandar Tijanic said, however, that his station would not enter into new agreements with the Parliament, until the latter repaid the debt due under previous agreements, estimated by Tijanic at 3.3 million Euros. Tijanic has included in that amount the losses RTS has incurred due to the transmissions of parliamentary sessions in the past. B92, which was interested in transmitting parliamentary sessions, but on its cable channel, was unhappy with the conditions of the tender, which were not platform-neutral and required terrestrial transmission only. The deadline for the applications expired on March 14. We hereby remind that until now, the parliamentary sessions have been, although reluctantly, transmitted by RTS. On September 24, 2007, the RBA passed a binding order, obliging RTS to transmit all sessions in the two regular annual sittings of the Parliament. After less than a month, under pressure from the public, which

believed that mandatory transmissions of parliamentary sessions represented a violation of the public service broadcaster's independence, the RBA replaced its binding order with a recommendation with the same content. RTS has adhered to this recommendation, but insisted it should be paid for live coverage of parliamentary sessions.

4. THE MINISTRY OF CULTURE

4.1. In early February 2011, the Ministry of Culture called five competitions for the co-financing of projects and programs from the field of public information; for the co-financing of projects and programs from the field of public information on minority languages; for the co-financing of projects and programs in the area of information for disabled persons; for the co-financing of projects and programs in the area of information for Serbs living in countries of the region; as well as for the co-financing of projects and programs of broadcast public media in Kosovo and Metohija. The budget of the Republic of Serbia has earmarked a total of 96 million dinars for the aforementioned five competitions.

4.2. In spite of the assurance given by the then Minister Nebojsa Bradic – made on December 29, 2010 at the meeting in the Ministry of Culture, attended by the representatives of journalists' associations, media associations, the Council of Europe Belgrade Office, the EU Delegation and the OSCE Mission to Serbia – that the Draft Media Strategy would be proposed by February 20, 2011, this had not happened by the time this Report was concluded. Several meetings were held in February between the representatives of journalists' and media associations with the State Secretary in the Ministry of Culture Snezana Stojanovic Plavsic and Minister Bradic. These meetings discussed how to include the representatives of journalists' and media associations and independent experts in the process of drafting the Draft of the Media Strategy. To this day, however, there is no definitive agreement on that subject.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

In the period covered by this Report, no positive breakthrough was achieved concerning the disagreements in the relations between the organizations for the collective protection of copyright and related rights and broadcast media in Serbia. Despite the fact that the Government appointed the President and the members of the Commission for Copyright and Related Rights on December 9, 2010, it is yet to furnish a request for opinion about the tariffs

proposals of the collective organizations to the representative association of broadcasters, as required by the Law on Copyright and Related Rights. This omission has further postponed the beginning of the enforcement of the Law, adopted back in early 2009.

In the meantime, the Organization of Phonogram Producers, OFPS and the Organization of Musical Authors of Serbia, SOKOJ, have pressed dozens of charges against media. We have written about one of these cases in this Report. Our impression is that these charges are utterly arbitrary and without valid foundation. OFPS has filed more than a hundred charges against stations throughout Serbia and their directors, by sending petitions to the RBA. The RBA declared itself incompetent for deciding about such petitions and forwarded them to public prosecutors. Public prosecutors are now initiating commercial infraction proceedings, involving fines ranging from 100.000 to 3.000.000 dinars. In its petitions, OFPS claimed that the broadcasters were not sending the log of used phonograms in the required OFPS format posted on its website. At the same time, the submission of the log of used phonograms is also regulated by the Tariff, which was also adopted by the OFPS managing board. This tariff is still valid and represents the only act that has been actually published in the Official Gazette. It stipulates that the submission of the log of used phonograms in the required OFPS format is merely one of several alternative forms in which these lists may be submitted, but not the only one. In the example described in this Report, the Commercial Court in Leskovac, acting as a first-instance court, did not accept this rationale. The media appealed with the Commercial Appellate Court, whose decision is pending. One of the more drastic example of arbitrary and unfounded proceedings concerns an ANEM member station in Nis, which has been sued by OFPS for 4% of its total revenues for 2008, although the tariff, on which OFPS' claim is founded, has ceased to be valid in May 2008, when it was replaced by a new tariff, under which the highest fee amounted to 3% of total revenues. In relation to that particular case, ANEM requested from the Intellectual Property Office, as the authority in charge of overseeing the work of collective organizations, and from the RBA, as its sector regulator, to take urgent measures to protect Serbian media from the arbitrariness of collective organizations.