

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)

1.1. The RBA Council announced on July 13 that it had suspended the proceedings for revoking the license of Televizija Prva station over the statements made in the talk show „Evening with Ivan Ivanovic“. The press release said that the Council has concluded, after having reviewed the reports of its departments and the explication of the broadcaster, that the said talk show did not include hate speech or violations of the Broadcasting Law. At the same time, the Council accepted the assurances of the editors of the station that they will see that the borders of good taste in the talk show are not crossed. We remind that the reason for the proceedings was the open letter by the Democratic Union of Croats (DZH) to the President of the RBA Council, Bishop Porfirije. In the said letter, the DHZ claimed that on April 29 and May 6, the host of the talk show “Evening with Ivan Ivanovic” insulted the Catholic Church and called “Al Qaeda to wait until Croatia is admitted in the EU and then plant an atomic bomb with clear insinuations as to where exactly to put it”.

Article 38 of the Public Information Law prohibits hate speech, in the form of banning the release of ideas, information and opinions inciting discrimination, hate or violence against persons or groups of persons because of their affiliation or non-affiliation to a particular race, religion, nation, ethnic group, gender or due to their sexual orientation, regardless of the fact if a criminal offense resulted from the release. Unfortunately, the Council did not release a more detailed explanation for suspending the proceedings for revoking the license of TV Prva, but it seems that RBA in this particular case managed to make a difference between a statement made in a humoristic talk show – even if it was devoid of good taste – and inciting discrimination.

1.2. The RBA Council said in a press release that the Misdemeanor Court in Belgrade, ruling upon a misdemeanor charge by the RBA in relation to the reality show “Moment of Truth” aired in October 2009 on Pink Television, fined that station in the amount of 750 thousand dinars. We remind that in the controversial show the host Tatjana Vojtehovski asked the guest – who had been raped by her father for years, starting from the age of eleven

– if she had ever had an orgasm during sexual intercourse with her father. After angry reactions from the public and accusations that the show is in breach of laws protecting minors and that it promotes violence implying that a rape victim may have an orgasm, the RBA filed charges to the Misdemeanor Court, invoking precisely the provisions of the Broadcasting Law protecting the physical, mental and moral development of children and youth.

According to the Broadcasting Law, the broadcasting of programs that may harm the physical, mental and moral development of children and youth may be subject to misdemeanor fines ranging from 300 thousand and one million dinars. In the case of Pink Television, the Court has not disclosed the circumstances that were considered in the weighing of the fine in the amount of 750 thousand dinars. However, of concern is the fact that it took the Misdemeanor Court almost two years from the incident to deliver a first-instance verdict, just as the RBA itself judged, after having filed misdemeanor charges, that the violation of the law in the concrete case was not serious enough in order to warrant a measure from the RBA's competence, or even a mere warning.

STATE AUTHORITIES

2. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

At the roundtable discussion “Serbian Media at the Crossroads”, held in the Media Center on July 7 in the organization of the OSCE Mission to Serbia, the Minister of Culture, Media and Information Society, Predrag Markovic, said in his introductory speech that the Ministry will receive until July 15 objections, suggestions, proposals and comments to the Draft Media Strategy, after which the text thereof will be finalized no later than by early September and tabled for further procedure. “All objections will be reviewed in order to protect everyone’s interests”, Markovic said, “and on the basis of public discussions held until now, we will try to find a way to guarantee the rights of citizens to information at the local and regional level”. The Ministry posted on its website all the comments received, as well as video clips from the round tables held in Kragujevac, Novi Pazar, Novi Sad, Nis, Belgrade and Cacak, which has definitely contributed to the transparency of the entire process. However, it remains to be seen, in the Minister’s own words, in which direction the text will be “finalized”, since further activities of the Ministry concerning the text has been to a great extent shrouded in secrecy. During the whole course of the public debate, the Ministry treated the text of the Draft it had released for public discussion - the drafting of which was aided by experts selected and appointed by the same Ministry – like an “alien element” and with unacceptable detachment.

Minister Markovic even said that in drafting the Media Strategy, Serbia gave up deciding and allowed the representatives of media associations to determine and shape the text of such an important document. Although the Minister obviously thought that such attitude of the state only confirmed its openness and democratic character, there are at least two possible scenarios that may explain the said detachment of the state from the document it had released for public discussion. The first is that the regulatory capacity of the state is so weak that it is simply clueless as to what it really wants in the media sector. The second is that what the state wants is to a great extent contrary to what is acceptable to media professionals and that the Ministry dares not openly say that. Whatever the truth might be, the attitude of the Ministry in the public discussion is everything but promising for the continuation of the work on the Media Strategy.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

3. THE ORGANIZATION OF PHONOGRAM PRODUCERS OF SERBIA (OFPS)

The President of the Managing Board of the Organization of Phonogram Producers of Serbia (OFPS) sent a letter to the President of the Employers' Union of Serbia inviting him to renew the discussions about the situation in the field of collective realization of copyright and related rights. He also invited him to resume talks about the unique tariff. The letter was also posted on the OFPS website. The motivation for the letter was the letter of the Employers' Union addressed to the presidents and judges of commercial courts and the Commercial Appellate Court. In that letter, the Union informed the courts it had signed a contract on cooperation with the organization Fair Share Ltd. for the purpose of offering the Union's members music for public communication that is outside of OFPS' and Sokoj's system of protection. OFPS Managing Board President said in the letter that, pursuant to the Law on Copyright and Related Rights, the right to a fee for broadcasting, re-broadcasting and public communication of phonograms and interpretations contained therein, may be realized only through the organization for collective realization.

The Law on Copyright and Related Rights foresees that copyright and related rights may be protected individually and collectively. Individual realization of copyright and related rights may be direct or through a representative with a power of attorney. Representatives may include natural or legal persons and hence a company like Fair Share Ltd. may act as a representative. However, the law establishes an assumption that the organization is authorized to act for the account of all holders of copyright, namely related rights concerning

the rights and type of objects of protection that are encompass by that organization's activity. The only possibility for the author or other holder of rights to walk out from the mechanism of collective protection is to inform the organization in writing that he/she will realize its rights individually. Collective organizations are obliged to report to the users about all authors or other holder of rights that protect their rights individually. However, there are a number of cases where collective protection is mandatory pursuant to the Law, namely when the rights may not be protected individually. This is the case with cable rebroadcasting of author works (Article 29, paragraph 2 of the Law on Copyrights and Related Rights), the special fee from import and sale, i.e. sale of technical equipment and blank sound, picture and text carriers for which it may be rightfully assumed they will be used for copying for personal, non-commercial purposes (Articles 39, 142 and 146 of the Law on Copyrights and Related Rights); with the right to a fee for lending an object of protection (Article 40 of the Law on Copyrights and Related Rights); with performers' fees for broadcasting, rebroadcasting and public communications of interpretations from a recording released on a sound carrier (Article 117 of the Law on Copyrights and Related Rights); with a fee charged by the producers of phonograms for broadcasting, rebroadcasting and public communications of released phonograms (Article 117 of the Law on Copyrights and Related Rights). Unfortunately, it is obvious that the extent of unawareness of regulations administering collective protection of copyright and related rights in Serbia is large. There are no grounds in the Law to avoid, through individual contracts with representatives, the obligation towards to collective organizations with regards to performers' fees and fees charged by the producers of phonograms for broadcasting, rebroadcasting and public communications of interpretations from recorded phonograms.