

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. “Enter television” has lost its terrestrial broadcasting license due to unpaid fees for broadcasting programs. This decision was passed by the Republic Broadcasting Agency Council, on a session held on August 8. “Enter” television possessed the regional coverage land program broadcasting license for Belgrade. “The crisis in the media has reached such a pitch that even the media in Belgrade that have the most income from advertising can not make it”, Goran Karadzic, deputy chairman of RBA Council, said for Novosti. He added that half of the total number of televisions broadcasting in Belgrade has lost licenses due to unpaid compensations for program broadcasting. Before “Enter”, “Art” TV and “TV Plus” had also lost their licenses.

In accordance with the provisions of the Broadcasting Law, the broadcaster shall pay a program broadcasting fee and a frequency utilization fee for the right to broadcast programs. The amount and manner of payment of the frequency utilization fee are determined in accordance with regulations concerning electronic communications and it is payable to the account of the regulatory body responsible for the field of electronic communications. The broadcasting fee is payable to the account of the Republic Broadcasting Agency. The Republic Broadcasting Agency shall determine the amount of the program broadcasting fee with approval from the Government of Serbia, based on criteria that include the population size in the broadcasting area and the broadcaster’s programming conception and/or the origin and type of programs being broadcast. In practice, this fee can be 10 times higher than the frequency utilization fee and it was often underlined that it presented a serious burden for the work of the media. The fact that even certain Belgrade media cannot pay the fee confirms that these remarks are not unfounded. Also, although the only reason that the legislator prescribed the obligation to pay this fee (different from the frequency utilization fee, which is in its nature the price of using a limited resource) was to provide stable funding and financial independence to the regulator, these fees have been significantly larger than the costs of regulation for years, which is only reinforced by the fact that RBA transfers the collected surplus into the state budget. On the other hand, non-payment of the fee is grounds for revoking the license. The Law stipulates that it can be revoked if the broadcaster does not

settle the obligation to pay the fee in spite of a written notice. The process rules of the Broadcasting Law stipulate that the broadcaster, whose license has been revoked, shall have the right to appeal against the Council decision within eight days of receiving the said decision. The appeal does not delay the execution of the decision, and an administrative dispute can be initiated against the Council's decision passed after the appeal.

STATE AUTHORITIES

2. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On August 17, 2011, the website of the Ministry of Culture, Media and Information Society reported that its Media Sector had completed the text of the Draft Media Strategy. We remind that, the announcement came after the public discussion on the text of the Draft prepared by the working group consisting of experts from media and journalists' associations, as well as the said Ministry. The Media Sector was supposed to incorporate into the text the objections, proposals, comments and suggestions arising from the discussion. However, the final version was not published; Culture Minister Predrag Markovic – according to an agreement with the Prime Minister – forwarded it to the Office of the PM with the aim of forming a Commission that would give suggestions to the final text of the Draft. After considering the suggestions, the Minister would present the text at a public hearing at the National Assembly of the Republic of Serbia before adoption procedure at the Government. The following were appointed as members of this Commission, formed by the Decision of Prime Minister Mirko Cvetković: Dragana Milicevic Milutinovic, State Secretary at the Ministry of Culture, Media and Information Society as Chairwoman; Irini Reljin, Telecommunications Assistant to the Minister of Culture, Media and Information Society; Goran Radosavljevic of the Ministry of Finance; Srdjan Majstorovic of the Serbian European Integration Office; Jelena Trivan, Chair of the Serbian Parliament's Culture and Media Committee; Dragan Penezic of the Commission for the Protection of Competition; Ranka Vujovic of the national Secretariat for Legislature; Zoran Sekulic as the representative of the media sector and Sandra Basic Hrvatin, European Commission expert. The Commission started work on August 22. Although there were no official communications concerning its work, it could be assumed that the same issues persisted – what were the deadline and manner in which the state would withdraw from ownership in media, i.e. to what extent could the state be an owner of any media at all. What is also disputed is the manner of Serbia's fight against illicit media concentration, cross media ownership and vertical integration – simultaneous participation in media and advertising markets, the market of press distribution and the market of electronic communication. Much has been said about the manner to meet the citizens' needs

for information of local and regional importance and information in minority languages, where the government – in spite of opposition from practically entire media community embodied in media and journalists' associations – refuses to abandon the idea of forming regional public broadcasting services and national minority councils reserving the right to establish minority media, which would subsequently be funded from the budget.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

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

The Organization of Phonogram Producers of Serbia announced that the Universal Music Group – the world's largest producer of phonograms and one of the 'big four' of the music industry (together with Sony Music Entertainment, Warner Music Group and EMI Group) – had registered its repertoire with the OFPS via PPL, a collective organization from the UK, with which OFPS has a signed bilateral agreement. The announcement does not specify whether the other three music industry leaders have registered their repertoire to the OFPS and when.

The publication of this announcement by the organization for the collective protection of related rights brings us back to the question on what grounds do collective organizations collect fees from users for the benefit of the owners of rights. In accordance with the Law on Copyright and Related Rights, the collective organization collects the fee either based on an order from the rights holders to collect said fee in its own name and for their benefit, in accordance with Article 153 of the Law, or pursuant to the assumption established in Article 180 of the Law that the organization is authorized to act for the benefit of all rights holders regarding those rights and those types of protected objects that are included in its activities, and finally – regarding foreign rights holders from abroad – based on a contract with the appropriate foreign organizations, in accordance with which it provides collective rights enforcement of Serbian holders abroad and foreign holders in Serbia. The Law stipulates that collective organizations are obligated to conclude such contracts within 5 years from the day of obtaining the first license to operate. As a reminder, OFPS gained its first license in 2002. The announcement does not make clear the nature of the repertoire registration by Universal Music Group, i.e. whether it represents Universal Music Group's order to OFPS within the meaning of Article 153 of the Law, or the broadening of the scope of rights covered with the already existing contract with PPL, or a completely different matter. The size of the repertoire in question can be testified by Universal Music Group's market share during the previous

decade, which – according to publicly available data – moved during the previous decade from one quarter to as much as one third on the global scale.