

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Law on Cinematography

In the period covered by this Report, the Serbian Parliament has adopted the Law on Cinematography, which contains some provisions that directly pertain to the media sector. In the part concerning the aim of boosting the domestic film industry, the draft of the aforementioned Law stipulated that the financial resources for that purpose shall be earmarked, among other sources, from the TV subscription fee, the fees charged by the RBA to broadcasters for their broadcasting right, as well as from the fees the operators of electronic communications pay to the Republic Agency for Electronic Communications (RATEL). It was proposed that 1.5% be allocated from the TV subscription fee, 20% from the collected RBA fee and 10% from the collected RATEL fee. The proposal was strongly criticized by both the media community and the regulatory bodies and was branded a blow to the foundation of their existence and the guarantees of their financial independence. The controversial proposal was ultimately amended under pressure so as to foresee solely an allocation from the proceeds of the RBA. Accordingly, the contentious article now stipulates that 20% of the RBA funds from the fees charged to the broadcasters shall be earmarked for boosting the national film industry, provided only that such amount does not exceed the difference between the revenue generated by the RBA and the Agency's expenditures. Professor Jovan Radunovic, the President of RATEL's managing board, announced the Agency would submit a request to the Constitutional Court to determine the constitutionality of the Law on Cinematography in the part containing the controversial provision. "For six months now we have been trying to contact the Culture Minister Predrag Markovic and talk to him, to no avail. Nobody is asking us anything. We must take them to court," Radunovic said.

We hereby want to point out that earmarking funds from the RTS fee in the amount of 1.5% is already provided for under the Broadcasting Law and hence is not a novelty. Article 83, paragraph 6 of the said Law already stipulates that the Serbian public service broadcaster (RTS) shall pay 1.5% of the overall collected monthly subscription fee in the budget of the Republic of Serbia for the purpose of developing the national film industry. However, contentious are the provisions pertaining to the earmarking of resources from the revenues of RBA and RATEL. The regulators have stated two types of objections. The first is that this earmarking is threatening their very foundations and guarantees of their financial independence. The RBA said that, due to an array of factors, including the financial crisis, the collection rate of the subscription fee is down, as is the number of broadcasters who have

seen their licenses revoked for non-payment of the fee. The Agency also reminded that new licenses were not being issued, since the frequencies were kept for the needs of the digitalization. The final result of it all being the steadily decreasing revenues of the RBA. The Agency has foreseen that the revenue collected from the fees will quickly plummet so as to barely suffice for covering regulations costs, or to even lower levels. RATEL claims that it will end the business year 2011 with a surplus of slightly more than five million Euros. For 2010, the surplus was 13 million Euros, but it decreased after RATEL had significantly reduced its fees to make the life of media easier in the economic crisis. Those who support the Draft Law on Cinematography claim that the contentious concept of earmarking resources for the film industry shall not be an additional burden. Film Director Boban Skerlic, the President of the Association of Film Directors of Serbia, who participated in the making of the Draft Law, told the daily "Politika" that the question remained where the funds from the fees were ultimately channeled to. "Under the Draft Law, instead in the budget, the money would be paid directly to the Film Center of Serbia", Skerlic said. However, it seems that the legislators have disregarded the very purposes for which the independent regulatory bodies for broadcasting and electronic communications (RBA and RATEL) were established in the first place. The RBA was founded in order to enable conditions for effective enforcement and improvement of broadcasting policy in the Republic of Serbia, in line with democratic standards. On the other hand, the goal of establishing RATEL was to effectively implement the policy in the area of electronic communications, boosting competition in the field of electronic communications networks and services, improving the capacity and quality thereof, contributing to the development of the market of electronic communications, as well as to protect the interests of the users. These bodies were not established as profit centers that would bankroll the needs of the state in other areas of activity. Moreover, the provisions of the Law on Cinematography are contrary to the applicable provisions of the Broadcasting Law, which provided for a different designated purpose of any surpluses the regulatory agencies should realize. Namely, according to the Broadcasting Law, the difference between the RBA's revenues and expenditures shall be paid in the budget of the Republic of Serbia and allotted, in equal amounts, for the improvement and development of culture, healthcare, education and social security. If the aforementioned difference is channeled, as the Draft Law Cinematography provides, to the Film Center of Serbia, the RBA would perhaps be in compliance with the aforementioned Law, but would, at the same time, be in contravention of the Broadcasting Law. Similarly, the Law on Electronic Communications also provides that the difference between RATEL's revenues and expenditures shall be paid into the budget and utilized through the Ministry of Culture, Media and Information Society for the purpose of improving and developing the area of electronic communications and information society. By adopting such Law, only a couple of months after the adoption of the Media Strategy, and instead of harmonizing concepts in various laws that are out of sync both materially and

legally, the Parliament is creating new problems, since these concepts are, as the Strategy points out, causing serious disruptions in the public information system. Since the Constitutional Court has, in several of its previous decisions, insisted on the indivisible character of the legal system and the unacceptability of the practice of undermining the essential concepts provided for by systemic laws regulating certain areas by passing by separate laws (e.g. the Broadcasting Law and the Law on Electronic Communications), it is to be expected that the contentious provisions of the Law on Cinematography will be found unconstitutional, since RATEL has announced it will ask the Constitutional Court to review those provisions. A particular concern, however, is the shortsightedness of the Government, as the proposer of the Law: by stubbornly insisting that the controversial concept is only about redirecting the funds that are charged anyway and not about introducing new charges, the Government omits the fact that these resources have already been used for other lawfully designated purposes and hence it was necessary to analyze the consequences the new concept would entail for healthcare, education, social security and/or the improvement and development of electronic communications and information society – all areas that will now see a certain amount of resources stripped from them. In the above mentioned interview for the daily “Danas”, the Chairman of the managing board of RATEL said that about nine million Euros from the surplus realized by the Agency in 2009 were used for digitalization. RATEL believes that this year’s surplus should be used for the development of the 112 System – the Emergency Interventions Department. Nonetheless, the legislator has clearly disregarded the potential consequences of the Law on Cinematography on the digitalization of broadcasting or the functioning of the said emergency department.