

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)

On December 21, 2011, the Republic Broadcasting Agency released a comparative review of violations of the Advertising Law the Agency's monitoring department identified as to have been committed by national broadcasters in October 2010 and October 2011. The RBA's press release also said that seven national television stations committed in October 2011 a total of 114 violations of the Advertising Law, which is almost ten times less than in October 2010, when there were 1099 such violations. According to the RBA, the decreasing trend is also visible in the case of radio stations, which is apparently a result of the broadcasters educating themselves about the provisions of the Advertising Law as of the spring of 2009 onwards. Furthermore, since January 2010, the RBA started to press misdemeanor charges against broadcasters over advertising-related violations, causing some broadcasters to be fined millions of dinars. The RBA's press release concluded that the Agency is in daily contact with the broadcasters as to all situations that require additional interpretation.

Although the trends highlighted by the RBA are by all means positive, it is obvious that educating the broadcasters about the provisions of the Advertising Law and being in daily contact with them is not enough. With a view to remedy such state of affairs, ANEM asked the RBA in December to pass, in keeping with Article 103, paragraph 4 of the Advertising Law, more detailed rules on advertising and sponsorship on television and radio. Bringing about such rules is necessary for several reasons. First, an array of violations of the Advertising Law pertains to various rules applicable to specific types of genres of television/radio program. The RBA has never published the criteria under which it has classified programs by genre. This is a source of serious legal uncertainty, because it often happens that the broadcaster and the RBA have classified the same program differently. Furthermore, after the adoption of the Advertising Law, the Republic of Serbia has also ratified the European Convention on Cross-border Television and some concepts from the national law and the the European Convention differ, which also causes legal uncertainty. Finally, more detailed rules on advertising and sponsorship were necessary in other countries too. The European Union had passed such rules back in 2004. Hence, while it is commendable to have the RBA in daily contact with broadcasters in relation to all situations

requiring additional interpretation, if we want positive trends to continue, we need to have detailed written rules that would further improve legal certainty in this field.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

The activities of RATEL have been partly elaborated on in the segment about the digitalization process.

STATE AUTHORITIES

3. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On December 22, 2011, the Ministry of Culture, Media and Information Society started public consultations about the Draft Rulebook on the Amendments to the Rulebook for the Switchover from Analog to Digital Television Broadcasting and Access to Multiplex in Terrestrial Digital Broadcasting (Rulebook on Digitalization) and the Draft Decision on the Amendments to the Strategy for the Switchover from Analog to Digital Radio and Television Broadcasting in the Republic of Serbia (Digitalization Strategy). The consultations will last until January 5, 2012. More will be said about the text of the Draft Rulebook and the Draft Decision on the Amendments to the Digitalization Strategy below, in the part of this Report concerning the digitalization process.

4. THE COMMISSION FOR COPYRIGHT AND RELATED RIGHTS

In its opinion dated December 12, 2011, the Commission for Copyright and Related Rights found, that the Draft Tariff of the fees charged by the Organization of Musical Authors of Serbia (Sokoj) for the exploitation of music works on radio and television stations, encompasses the rights for which Sokoj holds a license issued by the Intellectual Property Office. According to the Commission, the said Draft Tariff is also laid down in accordance with the Rules for Determining the Tariff, which are provided for by the Law on Copyright and Related Rights. The Commission's ruling put an end on the tariff dispute between ANEM, as the representative association of broadcasters, and Sokoj, on the tariff for the fees. We hereby remind that under the Law, the tariff must correspond to the type and manner of exploitation of the author's work, namely object of related rights; that the amount of the tariff must be proportionate to the significance born by the exploitation of the object of

protection from the repertoire of Sokoje for the revenues of the user; as well as that, when determining the tariff, it is necessary to consider the tariffs of collective organizations in the states whose GDP is similar to that of the Republic of Serbia. From the explanation of the Commission's opinion, however, it stems that the Commission did not ponder these legally provided criteria; it was rather guided by the claims by Sokoje that its tariff proposal was set in accordance with the "standards for determining the tariff that are universally recognized internationally and are based on the principles and recommendations of the World Intellectual Property Organization and CISAC". One may not see from the Commission's opinion which principles and recommendations by WIPO and CISAC have been considered. The tariff involves fees ranging from 2.20% to 4.20% from television broadcasting revenues, namely 2.50% - 4.50% from radio broadcasting revenues. ANEM announced it would file legal action in order to try to prove before a court of law that the Commission's opinion was not based on the Law. This was the first time, after the adoption of the Law on Copyright and Related Rights in 2009, that the tariff was determined under new rules – both those pertaining to the procedure of setting out the tariff and under substantive legal rules concerning the content of the tariff. Although radio and television stations had high expectations from the new Law, the results are a major disappointment. Compared to the hitherto tariff the broadcasters were unhappy with, the new tariff is cheaper only for television stations that have less than 10% of music in their program. For everyone else, the base new tariff is the same or even more expensive. For example, the highest fee under the old tariff was charged in the amount of 3.50% of the broadcasters' revenues for both radio and television. In contrast, under the new tariff, that percentage is now 4.20% for television and 4.50% for radio. The Administrative Court will ultimately determine if such an outcome has resulted from a violation of the rules provided for under the Law on Copyright and Related Rights from 2009.