

IV MONITORING OF THE WORK 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. On a session of the RBA Council held on October 26, 2012, this body decided to strip *TV Avala* of its broadcasting license prior to the term if was issued for. The Council stated that the formal reason for revoking the license at that time was the failure to pay the fee. However, the statistics about the program for the first ten months of this year shows that *TV Avala* has departed from its programming concept, based on which it was issued a license and that it has also failed to meet the legal obligation to produce its own program and news program. At the same session, proceedings were initiated for the revoking of the licenses of another 32 broadcasters that had failed to pay the broadcasting fee. When in early September 35 such proceedings were launched, the number of broadcasters, threatened with losing their licenses for failing to pay the fees to regulators, grew to 67 in only two months. Since the Media Strategy says that, according to the data of the RBA for August 2011, up to 321 radio stations operated in Serbia with a valid license, of which five national broadcasters, one on the province level, 48 regional and 267 local, as well as 134 TV stations (6 national, 30 regional and 98 local). The said 67 media, threatened with losing their licenses, account for 15% of all broadcast media with valid licenses. The above is evidence of the extent to which the crisis and inadequate public policy have affected the media sector, since the failure to pay the fee is not caused by poor management, but by the insolvency of impoverished media.

Failing to pay the broadcasting fee, even after the RBA's warning, constitute grounds for the termination of the license before its expiration date. The procedure for revoking the license is such that the broadcaster has the opportunity to make a statement about the relevant facts and attend the session of the Council debating his case. The decision of the Council to revoke the broadcasting license is adopted by a two-third majority of the overall members of the Council. Otherwise, the Agency determines the fee with prior approval of the Government. The amounts of the fees have often been controversial, since the broadcasters believe that the purpose of the fee should only be to cover regulation costs, while the RBA, with the consent of the Government, used to determine the fees to generate surplus, which was later channeled into the budget.

However, the surplus has been lesser and lesser each year, but the RBA nonetheless continues to plans it, so it is stated in the financial plan of the Agency for 2012. In that plan, the revenues of the Agency are planned at the level of 412.995.000 dinars, whereas the surplus is forecast at 31.780.200 dinars. The Broadcasting Law provides for the following criteria for setting the amount of the broadcasting fee: number of inhabitants in covered region, programming concept of the broadcaster, namely the origin and type of content broadcast; - the share of science and education content, art and children programming, or own news program; the share of own production or independent production content with science and education content, art and children programming, as well as the share of programming by other national broadcasters or translated foreign programs. The case of *TV Avala* is a precedent in the sense that it is the first station stripped off its license and that only local and regional stations have had problems with payment so far. In relation to the claims in the explanation of the decision related to *TV Avala*, particularly interesting is the part saying that the station failed in the first ten months of 2012 to fulfill its statutory obligations concerning the production of own program and news program. Furthermore, it says that *TV Avala* has diverged from the programming concept it was awarded the broadcasting license for in the first place. As for the said concept, *TV Avala* was initially planned as a channel with a substantial share of financial and business news content, but has moved away in the last few years from such a format to mostly air films and series. As for the obligatory programming quotas, commercial broadcasters are required under the Law to air no less than 50% of their annual programming in the Serbian language, of which at least 50% their own production. Due to a months-long employee strike over unpaid salaries, the share of own production had fallen dramatically. Therefore, the statement from the explanation that the quota had not been met in the last 10 months comes as no surprise.

1.2. Belgrade, October 31, 2012 (Politika) – On October 30, the RBA Council issued an order to the television stations Pink, Hepi and TV Prva to clearly designate the programs “Preljubnici” (Adulterers), “Luda kuca” (Mad House) and “Porodicne Tajne” (Family Secrets) as feature programs, since the viewers might easily be mistaken into thinking they were documentaries. Furthermore, the RBA ordered all the broadcasters to completely censor all offensive and foul language in their programs and to air content inappropriate for minors after midnight only. “We expect broadcasters to adhere to the General Binding Instruction on Broadcasters’ Conduct and to avoid airing inappropriate content at times when minors may reasonably be expected to be watching television,” the RBA said.

The Broadcasting Law does not contain specific provisions insisting on providing precise information to the viewers that would help them make an informed choice as to which programs

to watch. Nonetheless, such provisions exist in the Consumer Protection Law, which, however, stops short of providing for the competency of the RBA for supervising the enforcement of that Law. This is most definitely one of the issues that should not be overlooked in the coming media laws reform, since misleading the viewers that the content served to them is of documentary nature and not a feature program is unquestionably unacceptable. On the other hand, as to the order issued to the three national broadcasters concerning the recommended age of the viewers and the warning to parents that some content is not suitable for all juvenile persons, as well as imposing the obligation to air content inappropriate for minors after midnight, these obligations unquestionably stem from the relevant provisions of the Broadcasting Law and the General Binding Instruction on Broadcasters' Conduct.

2. *Electronic Communications Agency (RATEL)*

In mid-October, the Electronic Communications Agency (RATEL) released a list of pirate broadcasters containing about 48 stations. They still include one national station with 11 transmitters (Radio Balkan, the former Radio Fokus), as well as three stations that have continued to operate after they were stripped off their license (Radio City in Belgrade, Radio Jesenjin in Novi Sad and Radio Op-Top in Topola). The worst situation remains in Novi Sad, where there are up to nine pirate broadcasters. Zemun, Belgrade and Lazarevac have three each. Otherwise, an interesting example is the village of Melenci near Zrenjanin, with two pirate radio stations. Regrettably, in spite of all efforts, the number of pirates is on the rise and the authorities are obviously yet to devise mechanisms and procedures for the effective enforcement of their decision to shut down all pirate broadcasters and remove them from the air.

3. *The Press Council*

The Complaints Commission of the Press Council passed three decisions in October, while one procedure was settled by mutual agreement of the parties. Two proceedings, where the Complaints Commission had found a violation of the Code, concerned the obligation to respect copyrights and to state the sources for the reproduction of content from other media, namely the obligation to respect the right to a response, apology and correction. In the third decision, where it found there was no violation of the Code, the Complaints Commission stood up in defense of the right of the media and journalists to state value judgments, to comment and have a critical approach to the topics they were writing about. In the Commission's opinion, as long as it

conveys accurate information about a certain event described in the text, the media is entitled to interpret that event in line with its editorial policy and freedom of expression. Particularly interesting is the decision that the Complaints Commission passed in the dispute between the columnist of the daily "Politika" Dimitrije Vojinovic and his employer (the newspaper) with regard to Politika's refusal to release his response to a denial made by a third party in relation to Vojinovic's column. The denial in question concerned information stated by Vojinovic in his column, which were branded by the third party as "criminal and calumnious lies". In the response to the complaint of Politika's journalist, it was confirmed that the newspaper had apologized for Vojinovic's text and that the editors asked the columnist to wait with his response until Politika's lawyers reviewed the whole case, since the newspaper was threatened with a lawsuit. The Complaints Commission rejected Politika's explanation, saying that the Code was explicit when it came to the obligation to respect the right to a response and did not provide for any exceptions of that kind. Under the unanimous decision of the Commission's members, the threat of a lawsuit does not exempt in any way the newspaper from the duty to allow its columnist to exercise his right to a response. The Commission also rejected the explanation that "Politika" had to wait for the opinion of its lawyers, since the whole case was not about law and lawfulness, but about professional ethics. By apologizing to the third party, the Commission said, "Politika" practically endorsed the party's claim that the text was a "criminal and calumnious lie". Hence, it was obligated to enable the author to respond to such an accusation. The Commission's decisions, the arguments used and the promptness in their passing have boosted its reputation and authority, which is undoubtedly good news.

STATE AUTHORITIES

4. *The Parliament of the Republic of Serbia*

On October 31, the the Culture and Information Committee held its first session in the Parliament of the Republic of Serbia. Members of the Committee are MPs Irena Aleksic, Vesna Markovic and Marija Obradovic from the Serbian Progressive Party (SNS), Maja Videnovic, Vesna Marjanovic, Gorica Mojovic and Jelena Trivan from the Democratic Party, Dragana Djukovic and Snezana Stojanovic Plavsic from the United Regions of Serbia, Vesna Jovicki and Djordje Milicevic the Socialist Party of Serbia, Aleksandar Jugovic from the Serbian Renewal Movement, Sinisa Kovačević from the Democratic Party of Serbia, Zarko Korac from the caucus of the Liberal-Democratic Party, Vesna Milekic from the Social-Democratic Party of Serbia, Mira Petrovic from the United Pensioners Party and Dubravka Filipovski from Nova Serbia. By a

majority of votes, the members have elected MP Vesna Marjanovic from the Democratic Party for Chairperson of the Committee and MP Marija Obradovic from the Serbian Progressive Party for Deputy Chairperson.

According to the Parliament's Rules of Procedure, the Culture and Information Committee reviews draft laws and other acts; oversees the Government's policy; monitors the enforcement of laws and other acts; considers the work plan and report of the competent ministry and other state authority, organization or body; reviews the annual work plan of the Parliament; gives consent to acts of state authorities, organizations and bodies that are submitting these acts to the Parliament for approval in accordance with the Law; submits initiatives and proposals to the Parliament in accordance with Law and the Rules of Procedure; reviews initiatives, petitions and proposals from its scope of work and other issues from the competence of the Parliament.

5. *The Ministry of Culture and Media*

In the part of this Report dealing with monitoring of the process of adoption of new laws, we have already commented on the announcement of the Culture and Media Minister Bratislav Petkovic that a set of five media laws will soon be adopted. In the interview he later gave to "Vecernje Novosti", the Minister explained that the Media Strategy would not be altered; in his words, only the working versions of the prepared media laws will once again be reviewed and consolidated in the legal and technical sense, before being tabled for public debate. Petkovic also said that it was necessary to find a new model for the financing of the PSB. He stressed that the PSB was in the red due to the low collection rate of the TV subscription fee and that the state would have to intervene from the budget. What remains the key problem with the new Culture and Media Minister and his team, however, is the fact that the Ministry endorses, at least in principle, the main concepts of the Media Strategy and the suggestions coming from media professionals and the industry, but is still unwilling to make exceptions and renounce these principled positions in a number of concrete cases. Hence, the Ministry is, in principle, for the withdrawal of the state from media ownership but, on the other hand, when asked what if there are no buyers for the non-privatized media, it responds that "it is not excluded that the state will remain an owner in some media". Unfortunately, until the Ministry is completely consistent and principled in its positions, the concern will remain that the change of media laws is opted for only as a necessary evil that the state needs for obtaining a date for the start of the accession talks with the European Union and not as a genuine commitment of the new government.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. *Organization of Music Authors of Serbia – SokoJ*

6.1. The Protocol that SOKOJ signed with ANEM, as the representative association of broadcasters, has entered into force and is being enforced since early October. The Protocol has provided for major discounts and benefits for paying the minimum fee for the exploitation of music author's works for 2012 and has addressed the issue of settling outstanding debts from the previous period. In our previous Report, we presented the Protocol in detail. We remind that it provides for a 50% reduction of the fee for the period March 1 – December 31, 2012 for all the stations paying the minimum fee, regardless if they have debts from the previous period. The 50% discount of the minimum fee shall be applied through regional discounts, where such discounts already exist, in accordance with the existing tariff. This practically means that these discounts amount to 65% in Eastern and Southern Serbia, 60% in Western and Central Serbia, 55% in Vojvodina and 50% in Belgrade, Novi Sad and tourism centers. Civil Sector stations, which are already enjoying a 50% discount of the minimum fee based on the tariff, will be allowed to cumulate the discounts under the tariff and under the Protocol, respectively, so as to benefit from a total discount of not more than 75%. Additionally, the Protocol has put on equal footing (in using the discount) stations from local, ethnically mixed communities, the program of which is aired on one or several minority languages, with civil sector stations. Unsettled debts from the previous period shall be paid in several installments, interest-free, by March 31, 2013, based on an agreement these stations will individually enter into with SOKOJ. The same deadline will apply to unsettled debts that have already been taken to court, increased by legal costs, whereas the Protocol provides that SOKOJ will write off 50% of the interest on such debts. However, the implementation of the Protocol is late in the part where it provides for SOKOJ's obligation to organize, for all interested stations, free training for the use of the online portal for the submission of program lists. Meanwhile, a number of stations have criticized the signing of the Protocol, insisting that only a new, cheaper tariff may be negotiated about and not about discounts on the existing tariff. Unfortunately, negotiations always require two parties and the stations that criticized the Protocol fell short of explaining how to force SOKOJ to negotiate a new tariff, if that organization is reluctant to do it since it is happy with the existing tariff.